

# The Non- Punishment Principal

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HUMAN  
TRAFFICKING  
INSTITUTE

# The Human Trafficking Institute

## OUR MISSION

The Human Trafficking Institute exists to decimate modern slavery at its source by empowering police and prosecutors to stop traffickers. Working inside criminal justice systems, the Institute provides the embedded experts, world-class training, investigative resources, and evidence-based research necessary to free victims.

# About Me



❑ 15 years as a Prosecutor in Florida and five of those in the Special Victims Unit.



❑ I joined HTI as the Country Director for Belize.

❑ Moved to Belize in January 2024.



❑ An embedded expert with the ATIPS Police Unit.



# What is the Non-Punishment Principal?

“trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked”.

-United Nations, The Inter-Agency Coordination Group Against Trafficking in Persons, Issue Brief 8, 2020

# Basis



- At the heart of every criminal case is the issue of **culpability**
- Foundations of Non-Punishment Principal in Common Law
  - Defense of **Duress**
  - Defense of **Necessity**
- Modern day understanding of **Trauma Bond**
- Definitions under **Palermo Protocol** for victims under 18, they cannot legally consent to the acts in question.
- For adults, coercion as means of trafficking.

# International Law on Non-Punishment Principal

1. “The Palermo Protocol”: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), supplementing the UN Convention against Transnational Organized Crime (2000). (Article 3)
2. United Nations Convention on the Rights of the Child 1989 (Articles 3, 32, 33, 35, 36)
3. International Labour Organization Forced Labour Convention, 1930.
4. OHCHR (United Nations Office of the High Commissioner on Human Rights) Recommendations, Principal 7
5. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography



# Palermo Protocol Article 3

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by **means of the threat or use of force or other forms of coercion**, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

## Palermo Protocol Article 3 cont.

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be **irrelevant** where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" **even if this does not involve any of the means** set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age



# Signatories to the “Palermo Protocol”

## Caribbean Counties

- Antigua and Barbuda
- Bahamas
- Barbados
- Cuba
- Dominican Republic
- Grenada
- Haiti
- Jamaica
- St. Kitts and Navis

## Central American Countries

- Belize
- Costa Rica
- El Salvador
- Guatemala
- Honduras
- Mexico
- Nicaragua
- Panama

# OHCHR Recommendations

“Trafficked persons shall not be detained, charged, or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.” Principal 7.

# Levels of immunity

- **Highest level of immunity**

- No criminal liability for:
  1. Immigration related offenses and
  2. Criminal offenses.
- Nexus required:
  - Direct result of victim being trafficked.

- **Limited immunity**

- Only immune from certain types of criminal liability and immigration offenses
- Nexus required:
  - Direct result of victim being trafficked.
  - Victim must provide evidence

- **Very limited immunity**

- Only immune from prosecution for immigration related offenses
- Nexus required:
  - Direct result of victim being trafficked.

# Caribbean Countries & The Application of the Non-Punishment Principal



# Where does your country stand?

- Take out your phone, search the TIP Act for your country
- Does your country provide full immunity or limited immunity to victims of TIP?
- Take 10 minutes at your tables, go around and share your home country's stance on the Non Punishment Principal

## Non Punishment Principal by Country:

- Barbados (s 14 TIP Act)
- Belize, (s 27 TIP Act)
- Guyana (ss 11 TIP Act)
- St Lucia (s 13 TIP Act)
- St Vincent and the Grenadines (s 11 TIP Act)
- Trinidad and Tobago (s 31 TIP Act)
- Antigua and Barbuda (s 28 TIP Act)
- Grenada (s 21 TIP Act)
- St Kitts and Nevis (s 10 TIP Act)
- Turks and Caicos Islands (s 23 TIP Act)
- Bahamas (s 10 TIP Act)
- Cayman Islands (s 7 TIP Act)
- Jamaica (s 8 TIP Act)

# By country: levels of immunity from prosecution under TIP

## • Broad immunity

- Barbados (s 14 TIP Act)
- Belize, (s 27 TIP Act)
- Guyana (ss 11 TIP Act)
- St Lucia (s 13 TIP Act)
- St Vincent and the Grenadines (s 11 TIP Act)
- Trinidad and Tobago (s 31 TIP Act)

## • Limited immunity

- Bahamas (s 10 TIP Act)
- Cayman Islands (s 7 TIP Act)
- Jamaica (s 8 TIP Act)

## • Very limited immunity

- Antigua and Barbuda (s 28 TIP Act)
- Grenada (s 21 TIP Act)
- St Kitts and Nevis (s 10 TIP Act)
- Turks and Caicos Islands (s 23 TIP Act).

# Why does the Non Punishment Principal matter?

- Shouldn't these people be charged with the crimes they commit?
- What makes a TIP victim so special?



# Trauma coercion attachment/ Trauma bonding

- Traffickers establish dependence:
  - Fear, isolation, control, violence, threats
- Victims often have domestic violence dynamics with their trafficker.
- Victims may not see themselves as victims initially.
- Survivors often are forced to take controlled substances by their traffickers leading to addiction and further criminal behavior.
- Fear of law enforcement/deportation authorities instilled by the trafficker leads to failure of victims to come forward.

# Impact of Criminal Records for Victims of TIP

- Data in 2016 NSN Survey (U.S.)
  - **91 % of 130 trafficking survivor respondents reported having been arrested.**
  - **42 % reported that they were arrested as minors**
  - **over 40 % reported being arrested 9 times or more.**
  - **73 % of respondents reported losing or not receiving employment because of their criminal records.**
  - **58 % of respondents suffered barriers to accessing safe and affordable housing** due to their past criminal convictions

# Impact of Criminal Records for Victims of TIP

Housing

Job

Child  
Custody

Registration  
Sex Offender

Voting

Education

Travel

# What happened when a trafficker turned the tables?

Chawla v. Director of Immigration (2019) (Supreme Court of Belize)

A suit against the Government of Belize for letting victims go.

# Chawla v. Director of Immigration (2019) (Supreme Court of Belize)

- Civil action against Immigration department in Belize for repatriating two alleged victims of TIP back to home country after alleged trafficker accused victims of stealing vehicle and cash.
- Victims were determined by Immigration to be TIP victims after criminal complaint by trafficker was investigated.
- But alleged trafficker still lost his lawsuit b/c of prosecutorial discretion to not charge victims with stealing his vehicle.

# Chawla v. Director of Immigration (2019) (Supreme Court of Belize)

- Judge made comments in opinion stating, “it is difficult to conceive how the theft of a car and cash could be viewed as a direct result of being trafficked..... “The language of (statute) does not extend to criminal acts in furtherance of escape from an alleged trafficker.””

“Firstly, the liberty of access to a vehicle driving all over the country and collecting substantial sums of cash is hardly associated with being a victim of trafficking.”

“Secondly, with all that liberty, the suspects could have easily gone into a police station and made a complaint.”

# Lessons learned from Chawla Case

- Court's opinion shows judge had limited understanding of TIP.
- Court didn't recognize Immigration Office's authority to determine whether victims were TIP.
- Court was given limited facts (as it appears) on how victims were exploited and what the means of exploitation were.
- Not a criminal case, was a civil judge.

Can prosecuting a victim of TIP become a violation of International Law due to the Non Punishment Principal?



# Case of V.C.L. and A.N. v. The UK (2021)

## Background

- Two Vietnamese Minors found working in separate cannabis factories in the UK during different police investigations
- Both Minors found by the “Competent Authority” to be victims of trafficking
- Crown Prosecutor charged both for working in cannabis factory
- Sentenced one to 22 months detention facility, other 18 months

## Appeal

- Appealed to Appellate Court
- Both Defendants appeal their cases to the European Court of Human Rights under the Convention for the Protection of Human Rights and Fundamental Freedoms

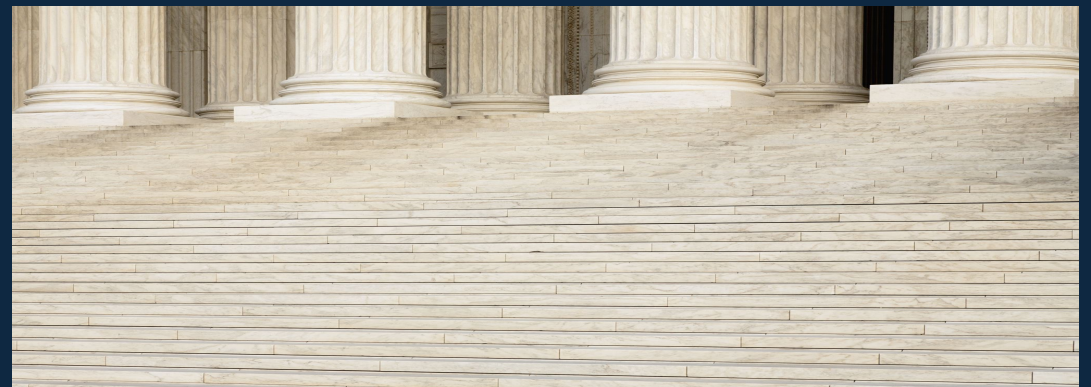
# Case of V.C.L. and A.N. v. The UK (2021)

## Arguments on Appeal

- Case of first impression!
- Questions on Appeal:
  1. Did the Crown fail to adequately protect the victims of trafficking by failing to conduct investigations into whether they had been trafficked?
  2. Did the Crown fail to apply the appropriate test as to whether the accused were victims of trafficking?

## Law on Appeal

- Analyzed under
  - International Law specifically- Article 4 of the Convention for the Protection of Human Rights and Palermo Protocol
  - And-Article 26 of the Anti-Trafficking Convention



# V.C.L. and A.N. v. The UK (2021)

## Findings by the Court

- In the instant case, the Court found the Crown failed to properly refer the first accused for an investigation into whether he was a victim of TIP.
- Crown failed to provide adequate reasons under Palermo Protocol for disagreeing with Competent Authority's finding that they were victims of TIP.
- The Crown's failure to investigate affected the overall fairness of the criminal proceedings and evidence of possible defense for victim was not secured.
- The Crown violated Article 4 and Article 6 of the Convention for Protection of HR.

# V.C.L. and A.N. v. The UK (2021): Lessons learned

- Prosecution of child trafficking victims is **not precluded** by Non-Punishment Principal in International Law, all laws provide for prosecutorial discretion.
- Nevertheless, the prosecution of TIP victims “may, in certain circumstances, **be at odds with the State’s duty** to take **operational** measures to protect them where they are aware, or **ought** to be aware, of circumstances giving rise to a **credible suspicion** that an individual has been trafficked”. (sec 159.)
- **Early identification** of TIP victims is of paramount importance
- Decision whether to prosecute should only be taken once a **trafficking assessment** has been made by a qualified person.
- Prosecutor not bound by findings BUT must **have clear reasons** which are consistent with definition of TIP contained in **Palermo Protocol** and Anti Trafficking Convention for disagreeing with it.

# Difficulties in application of Non Punishment Principal

- **Gaps in knowledge and understanding of the law among law enforcement, immigration, judiciary and other Government partners.**
- **Inconsistency in the interpretation of the law among different branches of government.**
- **Lack of specificity in the law itself as to what crimes it applies to.**
- **What about TIP victims who weren't initially found and later request their criminal records to be cleared?**

Which difficulties apply to your experience with the Non Punishment Principal's application in your home country?

# Best practices: Our laws must address these questions to guide the Courts

- Who will determine whether the accused is an alleged victim of trafficking in persons?
- How will they make this determination?
- What will the standard of proof be?
- Will the decision be made through prosecutorial discretion or by a court hearing?
- What types of crimes will be eligible?
- Will post conviction relief be available (sealing and expungement)?

# Recommended practices

1. Expand the application of Non-Punishment Principal beyond immigration related offenses.
2. Develop a screening process for Police and Prosecutors to identify victims of trafficking in persons using the Palermo Protocol so victims aren't charged with crimes.
3. Clarify in law that Prosecutor is tasked with determining whether person is victim of TIP.
4. Educate every branch of government including the judiciary on identification of victims of TIP and the Non-Punishment Principal.
5. Develop a legal framework to seal or expunge past criminal records of TIP victims while they were victims of TIP.



# Example of Expungement process for victim of TIP

1. Victim is permitted to file a petition to expunge prior arrests and convictions
2. No filing fee charged to the victim
3. Jurisdiction to file petition is in any place victim was arrested
4. Multiple arrests/charges can be in one Petition
5. Arrest/charge must have occurred while the victim was being trafficked
6. Standard of proof at the hearing is preponderance of the evidence
7. Victim required to be out of human trafficking or sought services
8. Victim provides a sworn affidavit and documentation of their status of trafficking
9. Prosecutor has opportunity to respond to victim's Petition

# Example Expungement process: certain crimes ineligible

- A. Arson;
- b. Sexual battery;
- c. Robbery;
- d. Kidnapping;
- e. Aggravated child abuse;
- f. Aggravated abuse of an elderly person or disabled adult;
- g. Aggravated assault with a deadly weapon;
- h. Murder;
- i. Manslaughter;
- J. Aggravated manslaughter of an elderly person or disabled adult;
- k. Aggravated manslaughter of a child;
- l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- m. Armed burglary;
- n. Aggravated battery; or
- o. Aggravated stalking.

Non Punishment Principal =  
Goal is Justice for Victims of TIP

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THANK YOU!