

Office of the Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings

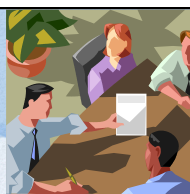
# Non-punishment of victims of trafficking

Policy and legislative recommendations  
towards the effective implementation  
of the non-punishment provision  
with regard to victims of trafficking

In consultation with the *Alliance against Trafficking in Persons* Expert Co-ordination Team

**LSI NGO PLATFORM 2013**  
**Tallin, 20 November 2013**  
**Liliana Sorrentino**

**OSCE** Organization for Security and  
Co-operation in Europe



- Why a non-punishment provision for victims?
- What are the international standards?
- What is the scope of these standards?
- How are they applied?
- How can we improve protection of victims' rights?



## Rationale

- Trafficked persons act without autonomy
- Compelled to commit offences in circumstances in which traffickers exercise control over them through deceptive, abusive and coercive means, including abuse of a position of vulnerability
- Are not responsible for committing the offence
- Should not be held accountable

## International Standards

UN, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002, P. 7: 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.


OSCE MC(8) Dec I/2000, “ensuring that victims of trafficking **do not face prosecution solely because they have been trafficked.**”

## International Standards

CETS N. 197, Art.26... provide for the possibility of **not imposing penalties** on victims **for their involvement in unlawful activities, to the extent that they have been compelled to do so.**

Directive, 2011/36/EU Art.8: .. shall, ...take the necessary measures to ensure that competent national authorities are entitled **not to prosecute or impose penalties** on victims of THB **for their involvement in criminal activities which they have been compelled to commit as a direct consequence** of being subjected to any of the acts referred to in Art. 2 [THB].

## Scope of non-punishment

- It is an obligation  **A LEGAL RIGHT FOR VICTIMS**
- Non-prosecution where the offence is caused or linked to THB
- No detention, incl. no administrative detention or other custody
- Non-imposition of penalties, neither criminal nor administrative
- Applies to any offences as long as link with THB is established.
- Non-refoulment

## Scope of non-punishment

- State discretion only regarding **how** to implement the NP obligation.
- **Understanding compulsion in the THB context:** being compelled to commit a crime includes the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will because of abusive, deceptive and coercive means, incl. abuse of a position of vulnerability.

## Scope of NP in child cases

- Broad understanding of compulsion in light of child vulnerability.
- Child's consent to an illegal activity in a THB situation cannot override the victim status of the child.
- Imperative application on NP where a child is trafficked to be used for an illegal purpose, or commits a status related offence.
- Involve child protection authorities and prioritize actions in the best interests of the child.

## Practice and Challenges

- Inconsistent implementation of NP
- Specific legislation in a few countries
- Limited use of general provisions on defence
- Guidance from Min. of Justice or Prosecution Services
- Restrictive interpretations of NP
- Tendency to narrow NP to sentencing considerations

## Practice and Challenges

- Frequent failure to implement NP, due to misidentification of victims

### Challenging cases

- Victims involved in recruitment or exploitation of others
- Victims trafficked for forced criminality (theft, drug offences)
- Credibility of victim-witness challenged because of a THB related offence

## A human rights approach

### States' positive obligations

- Investigate human trafficking where circumstances give rise to, or ought to give rise to, a credible suspicion that the person had been trafficked.
- Have in place legislation, “adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking”

## Key Recommendations



NP is linked to early identification and victims' right to have their trafficking investigated:

- proactive investigation
- suspension of deportation order
- provision of legal counseling and assistance
- provisional suspension of proceedings on the initiative of prosecutor and/or judge while identification is ongoing
- discontinue prosecution of victims for crimes directly linked to their trafficking as soon as possible.

## Key Recommendations



- Adopt legislation to ensure practical & effective protection of victims' rights, incl. protection against unjust punishment
- Adopt open-ended list of typical THB-related offences and ensure NP application to any offence as long as linked with THB
- Extend the application of NP to FL cases
- NP: immunity prosecution, detention and application of penalty


## Key Recommendations



- Protect the right to NP in bringing an appeal
- Ensure no criminal record for having being suspected or prosecuted of THB related offence
- Victims suspected or convicted of THB offences should not be restricted in their access to residency and/or labour rights
- Wide dissemination of guidance and training on NP application

**free movement** Updates and commentary on immigration and asylum law


Home / Cases / Convictions of trafficking victims quashed, new guidance given



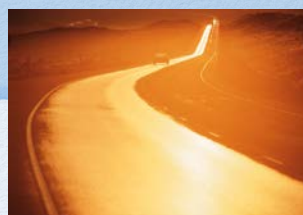
**Convictions of trafficking victims quashed, new guidance given**

Colin Yao — 24 June 2013

Finally, there has been a breakthrough in cases where victims of trafficking find themselves prosecuted and convicted here in the UK for engaging in the very activity into which the victim was forced. It may seem strange that it is the victims of trafficking that have ended up with criminal convictions rather than the traffickers, but that is precisely the situation so far contrived by mindless prosecutors, poorly informed defence lawyers and the courts.



The Free Movement Immigration law blog is written by members of the Immigration team at Garden Court Chambers in London, ranked as top tier in both Chambers and Partners and The Legal 500. The editor is Colin Yao.



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**Police: Trafficking victims will not be prosecuted**

People trafficked to Scotland to work in cannabis 'factories' and in the sex industry, will no longer be criminalised. Picture: PA

IL MONDO / esteri / 20 Settembre 2013

**Onu: Leggi Italia criminalizzano vittime tratta esseri umani**

Relatrice speciale Ezeilo: i Cie sono diventati delle "prigioni"



Roma, 20 set. Le leggi italiane sull'immigrazione rappresentano "un rischio reale di criminalizzazione delle vittime non identificate della tratta di esseri umani". È una delle preoccupazioni espresse dalla relatrice speciale dell'Onu sulla tratta di esseri umani, Joy Ngodi Ezeilo, presentando oggi alla stampa le conclusioni preliminari della visita condotta nel Paese dal 12 settembre scorso. Una politica che " dà priorità alla sicurezza delle frontiere, senza un'adeguata attenzione agli obblighi internazionali dell'Italia di rispetto dei diritti umani, si rivela un modo inefficace e insostenibile per contrastare questo orribile fenomeno della tratta delle persone, soprattutto di donne e bambini", ha sottolineato. Leggi particolarmente restrittive sull'immigrazione, ha aggiunto, hanno esposto le vittime della tratta, costrette a cercare di fuggire.

**Thank for your attention!**

