

TO: Ms. Siobhán Mullally, UN Special Rapporteur on Trafficking in Persons
FROM: Human Trafficking Institute
DATE: February 13, 2021
RE: Input for the report on the implementation of the non-punishment principle

I. Introduction

Traffickers frequently force their victims to engage in illegal activities. As a result, survivors may fear legal repercussions and be reticent to cooperate with law enforcement, even after their trafficker is apprehended. Victims' distrust of law enforcement, wariness of being treated as a criminal, or lack of understanding of the crime committed against them helps traffickers avoid accountability for their crimes. Victims may have had negative experiences with law enforcement in the past or may worry about law enforcement punishing them for their own trafficking-related criminal activity. Because of this, it is vitally important to create a culture of trust between survivors and law enforcement in order to prosecute traffickers. The non-punishment principle makes this possible.

Part II of this submission uses data from the Human Trafficking Institute's annual Federal Human Trafficking Report to illustrate the necessity of the non-punishment principle. Part III explains two best practices for countries implementing the principle.

II. Data from U.S. Human Trafficking Prosecutions that Support the Importance of the Non-Punishment Principle

Human trafficking is an illicit industry worth an estimated \$150 billion annually.¹ Accordingly, traffickers are frequently motivated by financial desires. They view their victims as commodities and greatly value efficiency in their business model. For this reason, traffickers engage in subtle forms of coercion to influence and control their victims. Nonviolent coercion can be just as effective as violence at controlling victims, if not more. When looking at U.S. federal prosecutions in 2019, defendants in 72% of forced labor cases and 64% of sex trafficking cases used nonviolent coercion in addition to violent coercion.² Further, in almost a fourth (24%) of forced labor cases and almost a third (29%) of sex trafficking cases, defendants controlled their victims without using any violence at all.³

Nonviolent coercion can take a variety of forms, but often manifests when a trafficker threatens their victim with deportation or abuse of the legal process. For example, many foreign nationals who are in the United States with irregular immigration status fear that immigration authorities might remove or deport them from the country. Traffickers often use this fear to prevent victims from reporting exploitation to law enforcement. Of victims in new cases in 2019, 20% lacked regular immigration status when defendants recruited them, and 45% of forced labor cases involved threats of deportation or withholding of immigration documents.⁴ As a result, some foreign national trafficking survivors

¹ Profits and Poverty: The Economics of Forced Labor, International Labor Organization, 45, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

² *Id.* 26, 33.

³ 2019 Federal Human Trafficking Report, HUMAN TRAFFICKING INSTITUTE, 26, https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report_Low-Res.pdf.

⁴ *Id.* 22.

may see cooperating with law enforcement as a threat to their own immigration status. Similarly, traffickers may threaten to turn their victim into law enforcement for prostitution, drug abuse, or other petty crimes. Indeed, in 2019, defendants in at least 12 cases threatened victims with arrest.⁵

Traffickers also create and exacerbate victim vulnerabilities by forcing them to commit offenses like drug trafficking or illicit drug use, prostitution, immigration violations, and panhandling. Over half (68%) of all sex trafficking cases in 2019 were directed by individual pimps, who force their victims to prostitute on their behalf.⁶ Similarly, many traffickers will use drugs as part of their business model. Forty percent of traffickers exploited substance addiction to control their victims⁷ and 5% of all sex trafficking victims in 2019 were trafficked by their drug dealer.⁸ Prior arrests or fear of arrest for trafficking-related and non-trafficking crimes may leave survivors of trafficking with a significant mistrust of the legal system, which can make them less likely to fully cooperate in a case against their trafficker. The implications of a failure to utilize the non-punishment principle are stark: without the testimony of trafficking survivors, their traffickers may walk free.⁹

III. Recommendations

The Human Trafficking Institute recommends two primary best practices to implement the non-punishment principle effectively: specialized training for law enforcement agents to recognize trafficking victims and the utilization of victim-centered, trauma-informed investigations and prosecutions.

Governments should invest in specialized trafficking training for law enforcement, including training on how to identify trafficking victims. Trafficking, as a result of its often “hidden in plain sight” nature, can be more complex to investigate and prove than other crimes. Unlike many other offenses, trafficking may present challenges in victim and offender identification, resemble or intersect with other similar offences, and require continuous re-evaluation of the evidence to determine the appropriate charges. Specialized trafficking in persons training can help agents understand that trafficking victims are victims first, instead of labeling them as prostitutes, illegal immigrants, or petty criminals. By recognizing trafficking, agents can assist victims in their efforts to escape their trafficker and build a culture of trust from the very first stages of an investigation. Moreover, law enforcement needs training and awareness to be understand and be mindful of how a trafficker both creates and capitalizes on the fear that victims have of law enforcement

Victim-centered law enforcement agents will work to rebuild trust with victims and alleviate their fear of justice sector professionals. Accordingly, rather than threaten victims with prosecution if they choose not to cooperate, investigators and prosecutors should emphasize a victim-centered approach to anti-trafficking enforcement. The victim-centered approach instructs law enforcement to be sensitive to the victim’s needs as they attempt to gather evidence about the crime, and to support the

⁵ Data on file with the Human Trafficking Institute.

⁶ 2019 Federal Human Trafficking Report, HUMAN TRAFFICKING INSTITUTE, 24, https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report_Low-Res.pdf.

⁷ *Id.* at 26.

⁸ *Id.* at 25.

⁹ For further explanation of the importance of survivor testimony, *see*, U.S. DEP’T OF HOMELAND SEC., *A Victim-Centered Approach*, <https://www.dhs.gov/blue-campaign/law-enforcement>.

victim's "rights, dignity, autonomy, and self-determination, regardless of whether they chose to report [a crime] or cooperate with law enforcement."¹⁰ Prosecuting traffickers is crucial to eliminating human trafficking;¹¹ however, prosecutions often hinge upon the cooperation and testimony of the survivors. When working with survivors, law enforcement and government agents should utilize specific methods to ensure safety and encourage stability for survivors. A victim-centered approach may mean using special interviewing techniques with victims or affording victims the physical support that they need, such as accommodation, food, clothing, toiletries, and school supplies.

By implementing the non-punishment principle through these best practices, governments can better support survivors of human trafficking. In doing so, they will also more effectively prosecute traffickers and take important steps towards decimating human trafficking.

¹⁰ DEP'T OF JUSTICE, OFFICE FOR VICTIMS OF CRIME, *Human Trafficking Task Force e-Guide: Victim-Centered Approach*, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/>.

¹¹ For a further explanation of this claim, see Victor Boutros & John Cotton Richmond, *Investments in Human Trafficking Prosecutions are Indispensable*, ANTI-TRAFFICKING REVIEW, (2016), 107–110, www.antitraffickingreview.org.