

# Protecting Forced Offenders: Applying the Non-Punishment Principle to Victims of Trafficking into Scam Centres

*By Meg Fitzgerald\**

## Abstract

*This article examines the application of the non-punishment principle to victims of trafficking into scam centres in Southeast Asia. Since 2020, trafficking into scam centres has emerged as a significant form of trafficking in persons for forced criminality, where victims are coerced into perpetrating cyberfraud for their traffickers' economic gain. The non-punishment principle asserts that victims of trafficking should not be penalised for crimes committed as a direct consequence of their exploitation. However, its implementation in Southeast Asia faces significant challenges: victims are often misidentified as willing criminals, while the substantial financial losses from cyberfraud lead authorities to exclude such offenses from the principle's scope. Consequently, victims frequently face prosecution for money laundering and fraud upon returning to their home countries. Drawing on theoretical foundations of human rights, criminal responsibility, and punishment, this article argues for a comprehensive application of the non-punishment principle, regardless of crime severity. It demonstrates why traditional criminal defences, like duress, are inadequate, and argues for specific non-punishment provisions to protect victims trafficked into scam centres. The article concludes that effective responses require stronger legal and institutional frameworks, ensuring victims receive protection while maintaining focus on prosecuting the true masterminds of these crimes.*

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\* Independent researcher; Bachelor of Laws (LLB) (Honours) (Griffith University), Bachelor of Government & International Relations (Griffith University); [meg.fitzgerald@icloud.com](mailto:meg.fitzgerald@icloud.com). The views and opinions expressed in this article are those of the author and do not necessarily reflect the views or positions of any entities they represent.

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## I. INTRODUCTION

In Southeast Asia's bustling cities and remote borderlands, a new form of trafficking in persons (TIP) for forced criminality has taken root: trafficking into scam centres. Victims are harboured in compound-like buildings—often referred to as “scam centres”—where they are forced to commit large-scale cyberfraud, particularly scams and financial fraud. This practice represents not only a gross violation of human rights but also demonstrates how socio-political shifts—including government crackdowns, COVID-19 restrictions, and economic instability—can inadvertently create opportunities for criminal enterprises to flourish.

Scam centres present a fundamental challenge for criminal justice systems: despite clear indicators of trafficking, victims are frequently dismissed as illegal migrants or mischaracterised as complicit criminals. As a result, many victims are arrested, charged under criminal, administrative, or immigration laws, and denied the support typically available to victims of trafficking (VOT). The non-punishment principle holds that trafficked individuals should not be criminalised for illegal acts committed as a direct consequence of their trafficking situation. As this article demonstrates, the principle's application is essential not only for protecting individual victims, but also for maintaining the integrity of the criminal justice system and effectively combating trafficking networks.

However, implementation of the principle across Southeast Asia has encountered significant obstacles. The primary challenge lies in victim identification—the principle cannot be applied where individuals are not formally recognised as VOT. Furthermore, even in jurisdictions where trafficking into scam centres has been acknowledged as a form of TIP, authorities have often excluded cyberfraud from the principle's scope. This exclusion is typically justified by citing the severity and widespread societal impact of these crimes, with scam victims reporting losses averaging thousands of dollars. Such exclusions not only fail to serve the interests of justice but actively support trafficking operations by enabling criminals to exploit their victims as shields against prosecution.

This article argues for the comprehensive application of the non-punishment principle to victims trafficked into scam centres, contending that this protection should extend to all crimes committed as a direct consequence of their trafficking situation, regardless of their severity or societal impact. Drawing on theoretical frameworks of human rights, criminal responsibility, and punishment, this analysis makes a novel contribution to both trafficking and criminal justice scholarship by demonstrating why traditional limitations on the principle fundamentally misunderstand the nature of emerging trafficking operations. While the principle has been extensively studied in contexts such as drug trafficking, forced begging, and

status offenses, its application to large-scale cyberfraud presents unprecedented challenges. Trafficking into scam centres uniquely tests the boundaries of the principle because it represents the first widespread form of trafficking where victims are forced into committing cyberfraud as the very purpose of their exploitation, rather than as an incidental consequence of their trafficking situation.

Through this analysis, the article not only contributes to scholarly discourse but also provides practical guidance for policy implementation in addressing this emerging form of TIP. It advocates for specific domestic legal provisions that would extend the non-punishment principle to serious offenses committed in the context of trafficking, ensuring comprehensive protection for victims while maintaining focus on prosecuting the true perpetrators of these crimes.

## II. TRAFFICKING INTO SCAM CENTRES

The phenomenon of scam centres has created two distinct sets of victims: the “trafficked victims,” who are deceptively recruited and coerced into committing cyberfraud, and the “scam victims,” who are financially defrauded by cyberfraud syndicates and lose significant amounts of money. This article focuses on trafficked victims. Trafficking into scam centres has left government and authorities in Southeast Asia unprepared to respond to an emerging form of exploitation. Some governments have recognised it as trafficking for forced criminality, while others have had to be creative and rethink the meaning of existing forms of exploitation, such as forced labour, to include trafficking into scam centres within their legislative frameworks.

### A. Situational Overview

The Mekong Region has a well-documented history of organised crime and illicit economic activity. Several factors facilitated the emergence and growth of scam centres, including government crackdowns, COVID-19 restrictions, and changing social, economic, and political circumstances. From 2018 onwards, Chinese government crackdowns on organised crime groups (OCGs), gambling, and cryptocurrency led OCGs to relocate across Southeast Asia in areas with weak governance and corrupt local elites.<sup>1</sup> OCGs expanded their criminal operation by taking advantage of the proliferation of casinos, which have been reported to facilitate transnational crime, particularly money laundering. By the end of 2021, the United Nations Office on Drugs and Crime (UNODC) estimated over 340 licensed and non-

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<sup>1</sup> Pilar Domingo and others, *Trafficking for Forced Criminality: The Rise of Exploitation in Cyber-Scam Centres in Southeast Asia* (ODI, ASEAN–ACT 2023) 10; United States Institute of Peace, *Transnational Crime in Southeast Asia: A Growing Threat to Global Peace and Security* (USIP 2024) 7–8.

licensed casinos in the region,<sup>2</sup> making it the world's fastest-growing gambling market.<sup>3</sup> The majority of these casinos are situated in special economic zones and towns bordering countries that prohibit gambling, including China, Thailand, and Vietnam. A significant number of these casinos are owned by Chinese businesspeople seeking to attract gamblers from across borders and online bettors from throughout the region.<sup>4</sup> Cambodia's 2019 online gambling ban and the COVID-19 pandemic severely impacted the Chinese gambling tourism industry in Southeast Asia, providing a fertile ground for scam centres to grow.<sup>5</sup> Pandemic-related border restrictions and lockdowns compelled OCGs to seek alternative income streams, as gamblers and tourists were unable to visit casinos.<sup>6</sup> Moreover, the Chinese government's pandemic policy, requiring citizens abroad to return home or face severe consequences, created a significant labour shortage in casinos, which needed to be addressed.<sup>7</sup> The pandemic also restricted law enforcement's investigative capabilities, reducing their ability to address crime.<sup>8</sup> Lastly, the pandemic forced people to stay home, increasing the usage and demand for online platforms, including social media, digital payments, e-commerce applications, and cryptocurrencies. It also left many desperate, unemployed people searching for work online, more susceptible to deceptive adverts promising lucrative customer service jobs in Cambodia, Laos, and Myanmar.<sup>9</sup> As a result, OCGs shifted their operations, repurposing casinos across Cambodia, Myanmar, and Laos for cyberfraud operations.<sup>10</sup>

### 1. Modus operandi.

Crime groups are estimated to hold over 300,000 people from more than 60 countries in scam centres across the Mekong Region, with 100,000 in Cambodia, 120,000 in Myanmar, and 85,000 in Laos.<sup>11</sup> While Southeast Asia remains a hub for scam centres, Chinese crime groups have reproduced these successful cyberfraud operations in other regions, including the United Arab Emirates, Peru, Namibia, and Georgia.

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<sup>2</sup> United Nations Office on Drugs and Crime, *Casinos, Cyber Fraud, and Trafficking in Persons for Forced Criminality in Southeast Asia* (UNODC 2023) 5 <[https://www.unodc.org/roseap/uploads/documents/Publications/2023/TiP\\_for\\_FC\\_Policy\\_Report.pdf](https://www.unodc.org/roseap/uploads/documents/Publications/2023/TiP_for_FC_Policy_Report.pdf)>.

<sup>3</sup> Domingo and others, *Trafficking for Forced Criminality* (n 1) 6, 8.

<sup>4</sup> *ibid* 8.

<sup>5</sup> Alastair McCready, "From Industrial-Scale Scam Centers, Trafficking Victims Are Being Forced to Steal Billions" *Vice News* (13 July 2022) <<https://www.vice.com/en/article/pig-butcher-scams-cambodia-trafficking/>>.

<sup>6</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 7.

<sup>7</sup> *ibid*.

<sup>8</sup> *ibid*.

<sup>9</sup> McCready, "From Industrial-Scale Scam Centers" (n 5).

<sup>10</sup> *ibid*.

<sup>11</sup> United Nations Office of the High Commissioner for Human Rights, *Online Scam Operations and Trafficking into Forced Criminality in Southeast Asia: Recommendations for a Human Rights Response* (UN OHCHR 2023) 7; USIP, *Transnational Crime in Southeast Asia* (n 1) 19; UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 2.

Traffickers primarily target educated, tech-savvy, multilingual individuals aged 18–35, recruiting them through fraudulent job advertisements promising lucrative salaries and ideal working conditions.<sup>12</sup> Upon arrival, traffickers confiscate identification documents and confine victims inside “scam centres”—compound-like buildings with high walls, barbed wires, and guards—from which legal and illegal entertainment establishments, such as casinos, hotels, and registered companies operate. Victims are forced to commit cyberfraud for 12 to 20 hours a day.<sup>13</sup> Refusal to work or failure to meet targets results in severe punishment and torture,<sup>14</sup> including physical and psychological torture (e.g., beatings, electrocution), fines, salary deductions, increased ransom, sexual assaults, and deprivation of food, water, and natural light.<sup>15</sup> Some victims are sold across scam centres, with women at risk of sexual exploitation.<sup>16</sup>

The most common cyberfraud committed in scam centres is “pig-butcher” scams (shāzhūpán 杀猪盘). Scam operators use fake social media profiles to “fatten the pig” by developing friendly or romantic relationships to entice people into investing in fraudulent schemes through fake gambling websites and cryptocurrency investment platforms.<sup>17</sup> Before the “butchering,” scam operators allow small withdrawals or send small profits to make the platform appear legitimate.<sup>18</sup> Scam centres deceive victims by operating like legitimate businesses with separate departments for training, human resources, operations, and money laundering. They use detailed playbooks with strategies to relate to and win over scam victims of all demographics. As scam centres are linked to various legal and illegal establishments, they appear legitimate at face value.

## 2. Profits.

The scale of these operations is reflected in their profits. In 2023, UNODC estimated that scam centres in Southeast Asia generated between US\$27.4 and \$36.5 billion

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<sup>12</sup> “Regional Situation Report on Trafficking in Persons into Forced Criminality in Online Scamming Centres in Southeast Asia” *United Nations International Organization for Migration* (2024) 3 <[https://roasiapacific.iom.int/sites/g/files/tmzbd1671/files/documents/2024-02/iom-southeast-asia-trafficking-for-forced-criminality-update\\_december-2023.pdf](https://roasiapacific.iom.int/sites/g/files/tmzbd1671/files/documents/2024-02/iom-southeast-asia-trafficking-for-forced-criminality-update_december-2023.pdf)>; “Forced Scamming” *International Justice Mission (IJM)* (2024) <<https://www.ijm.org/our-work/trafficking-slavery/forced-scamming>>.

<sup>13</sup> “Forced Scamming” (n 12).

<sup>14</sup> USIP, *Transnational Crime in Southeast Asia* (n 1) 19.

<sup>15</sup> Domingo and others, *Trafficking for Forced Criminality* (n 1) 12.

<sup>16</sup> Jitsiree Thongnoi, “Online Scams in Southeast Asia Create Double Victims: Those Targeted and Those Forced to Carry Them Out” *Lowy Institute* (2023) <<https://www.lowyinstitute.org/the-interpreter/online-scams-southeast-asia-create-double-victims-those-targeted-those-forced-carry>>; “Complaint to the ASEAN Inter-Government Commission on Human Rights” *Global Alliance Against Traffic in Women, Tenaganita Malaysia, and Migrant Care Indonesia* (2023) 1 <<https://gaatw.org/events-and-news/68-gaatw-news/1270-complaint-to-the-asean-inter-governmental-commission-on-human-rights>>; UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 11.

<sup>17</sup> UN OHCHR, *Online Scam Operations* (n 11) 14–15.

<sup>18</sup> McCready, “From Industrial-Scale Scam Centers” (n 5).

annually.<sup>19</sup> Another study by the United States Institute of Peace derived an estimated global revenue of \$63.9 billion from pig-butcherings,<sup>20</sup> with \$43.8 billion from Mekong-based scam centres alone—over 40 percent of the combined formal GDP of Laos, Cambodia, and Myanmar.<sup>21</sup> These profits derive from multiple streams.<sup>22</sup> Firstly, scams perpetrated by VOT, with reports that one group of VOT can generate over US\$400,000 in a week,<sup>23</sup> while scam victims lose on average US\$173,000.<sup>24</sup> One scam victim reported losing US\$2.5 million from an online romance scam perpetrated by a Southeast Asia-based scam centre.<sup>25</sup> Secondly, extortion through ransoms for releasing VOT range from US\$5,000 to US\$30,000 per victim.<sup>26</sup> Lastly, there is the sale and re-sale of VOT to other scam centres or crime groups for further exploitation. VOT have been openly sold on social media platforms, like Telegram, for US\$10,000 to \$20,000.<sup>27</sup>

### 3. Aftermath for victims.

Victims attempting to leave are told to pay large sums or find replacements, potentially making them complicit in trafficking.<sup>28</sup> Some are rescued in raids, while others resort to dangerous escapes, often resulting in injuries or deaths.<sup>29</sup> In one case, 40 Vietnamese victims were filmed escaping a compound in Cambodia's Kandal province and swimming across the river back to Vietnam. A 16-year old boy died, swept away by the current, while another was caught, beaten, and brought back inside the compound.<sup>30</sup> Many victims are charged with immigration offences for illegal entry, "working" on tourist visas, or overstaying visas.<sup>31</sup> Many repatriated victims have also reported being charged with fraud, conspiracy to commit transnational organised

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<sup>19</sup> UNODC, *Transnational Organized Crime and the Convergence of Cyber-Enabled Fraud, Underground Banking and Technological Innovation in Southeast Asia: A Shifting Threat Landscape* (UNODC 2024) 22.

<sup>20</sup> USIP, *Transnational Crime in Southeast Asia* (n 1) 26.

<sup>21</sup> *ibid* 19.

<sup>22</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 20.

<sup>23</sup> *ibid*.

<sup>24</sup> Cezary Podkul and Cindy Liu, "Human Trafficking's Newest Abuse: Forcing Victims into Cyberscamming" *Propublica* (13 September 2022) <<https://www.propublica.org/article/human-traffickers-force-victims-into-cyberscamming>>; Domingo and others, *Trafficking for Forced Criminality* (n 1) 6.

<sup>25</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 20.

<sup>26</sup> *ibid*.

<sup>27</sup> *ibid*.

<sup>28</sup> Domingo and others, *Trafficking for Forced Criminality* (n 1) 10.

<sup>29</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 1; UN OHCHR, *Online Scam Operations* (n 11) 14.

<sup>30</sup> Mech Dara and Danielle Keeton-Olsen, "Dramatic Escape at Koh Thom Casino Triggers Gov't Denial" *Voice of Democracy* (2022) <<https://vodenglish.news/dramatic-escape-at-koh-thom-casino-triggers-govt-denial/>>; UN OHCHR, *Online Scam Operations* (n 11) 14.

<sup>31</sup> Natashya Gutierrez, "For Trafficking Victims Forced to Scam Others, the Nightmare Continues Even After Escape" *Time* (14 December 2023) <<https://time.com/6344077/pig-butcherings-scam-trafficking-victims-trauma/>>.

crime, money laundering, and TIP.<sup>32</sup> Some individuals have reportedly willingly entered scam centres as scammers, and once aware of the working conditions, either willingly chose to stay or not. Distinguishing victims from criminals is difficult, but a confidential NGO source estimated that 80–90% of those rescued or repatriated were VOT, aligning with IOM's finding that 86% of individuals referred for forced criminality were identified as VOT.<sup>33</sup> VOT are entitled to special protection and assistance, including non-punishment for crimes committed while trafficked.

The sophisticated nature of scam centres—combining elements of traditional trafficking with novel forms of exploitation—requires careful analysis of how existing legal frameworks apply. Since the non-punishment principle can only protect individuals formally identified as VOT, establishing that trafficking into scam centres falls within the Palermo Protocol's definition is essential. While the Protocol provides the basic structure for understanding trafficking, scam centres test its boundaries in several crucial ways that must be examined to ensure victim protection.

## B. Trafficking in Persons

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol), ratified by 182 countries including all ASEAN Member States, provides the first internationally recognised definition of trafficking in persons (TIP).<sup>34</sup> It defines TIP as:

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.<sup>35</sup>

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<sup>32</sup> Chayanit Itthipongmaetee, "Traffickers Escape Justice Over Borders as Victims Go Punished at Home" *Coconuts* (7 November 2022) <<https://coconuts.co/bangkok/features/traffickers-escape-justice-over-borders-as-victims-go-punished-at-home/>>.

<sup>33</sup> Miko Alazas, "Forced into Crime: Trafficking Survivors in Thailand Tell Stories" *UN IOM* (2023) <<https://thailand.iom.int/stories/forced-crime-trafficking-survivors-thailand-tell-their-stories>>.

<sup>34</sup> United Nations Treaty Collection, "Status of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime" *UN Treaties* (2024) <<https://treaties.un.org>>.

<sup>35</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol) art 3(a).

While debates on what constitutes TIP remain,<sup>36</sup> many countries and regional bodies have adopted the Palermo Protocol's definition in their legislative frameworks. In Southeast Asia, the legally binding 2015 ASEAN Convention Against Trafficking in Persons (ACTIP) adopts the same definition.<sup>37</sup>

The definition of trafficking contains three elements: the act, means, and purpose, all of which must be present.<sup>38</sup> The "act" element refers to five possible conducts, the "recruitment, transportation, transfer, harbouring or receipt of persons." These conducts are alternatives to one another, meaning the presence of one suffices for the "act" element to be fulfilled.<sup>39</sup> Victims trafficked into scam centres are recruited through online job advertisements or acquaintances. Traffickers arrange the transportation, receipt, and transfer of victims to scam centres, including travel fees, visas, and crossing borders. Once there, victims are harboured at the place of exploitation in on-site dormitories.<sup>40</sup>

The "means" element may be used throughout the trafficking process, and includes deception, coercion, force, abduction, fraud, and abuse of power or vulnerability.<sup>41</sup> Consent to exploitation is irrelevant if any means were used, as "one cannot 'consent' to be trafficked."<sup>42</sup> Therefore, consent is not an issue in establishing the crime of trafficking.<sup>43</sup> In scam centres, victims are deceived about their living and working conditions, and coerced through punishments, physical and psychological abuse, restricted movement, confiscated documents and mobile phone, fines, debts,

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<sup>36</sup> Lisa Denney and others, "Addressing Exploitation of Labour Migrants in Southeast Asia: Beyond a Counter-Trafficking Criminal Justice Response" *ASEAN-ACT* (2023) 9 <<https://www.aseanact.org/wp-content/uploads/2023/02/ODI-thematic-brief-2-3.pdf>>.

<sup>37</sup> Rapid Asia, "Trafficking Victim Protection in ASEAN: A Study on the Implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, in Seven ASEAN Member States" *ASEAN-ACT* (2022) 1 <[https://www.aseanact.org/wp-content/uploads/2023/03/080223\\_Victim-Protection-Study\\_RapidAsia-1.pdf](https://www.aseanact.org/wp-content/uploads/2023/03/080223_Victim-Protection-Study_RapidAsia-1.pdf)>; ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) art 2.

<sup>38</sup> Marija Jovanovic, "The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance" (2017) 1(1) *Journal of Trafficking and Human Exploitation* 41, 49.

<sup>39</sup> UNODC, *Legislative Guides for the Implementation of the UNTOC* (2nd edn, 2020) para 90.

<sup>40</sup> "Regional Situation Report" (n 12).

<sup>41</sup> UNODC, *Key Indicators of Trafficking in Persons for Forced Criminality to Commit Cyber Enabled Crimes* (UNODC 2023) 2 <[https://www.unodc.org/roseap/uploads/documents/Publications/2023/UNODC\\_Key\\_Indicators\\_of\\_TIP\\_for\\_Forced\\_Criminality\\_FINAL\\_September\\_2023.pdf](https://www.unodc.org/roseap/uploads/documents/Publications/2023/UNODC_Key_Indicators_of_TIP_for_Forced_Criminality_FINAL_September_2023.pdf)>.

<sup>42</sup> Ryszard Wilson Piotrowicz and Liliana Sorrentino, "Human Trafficking and the Emergence of the Non-Punishment Principle" (2016) 16(4) *Human Rights Law Review* 669, 671 <<https://doi.org/10.1093/hrlrngw028>>.

<sup>43</sup> UNODC, *Legislative Guides* (n 39) paras 146–47; Maria Grazia Giammarinaro, "The Importance of Implementing the Non-Punishment Provision: The Obligation to Protect Victims" *UNCHR* (2020) para 6 <<https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf>>.



and threats of violence, sexual exploitation, organ removal, or being sold to other syndicates. Some victims are abducted.<sup>44</sup>

The “purpose” element refers to the form of exploitation victims are subjected to during their trafficking situation. The use of “at a minimum” creates an open-ended list of forms of exploitation,<sup>45</sup> reflecting the drafters’ intention to include forms of exploitation that were not identified, not common, or would emerge in the future.<sup>46</sup> As trafficking into scam centres demonstrates, new forms of trafficking are constantly emerging, requiring governments and authorities to adapt to the TIP’s evolving nature.<sup>47</sup> The definition thus allows discretion for domestic measures to adopt a broader scope.

### 1. Trafficking for forced criminality.

UNODC defines trafficking for forced criminality as “TIP for the purpose of exploitation of victims through forcing or otherwise compelling them to commit criminal acts for economic or other gains of traffickers or exploiters.”<sup>48</sup> Though not new, this form of trafficking has increased significantly, now comprising 10.2% of all reported trafficking cases globally.<sup>49</sup> Victims have traditionally been exploited in activities, such as cannabis cultivation, drug production and trafficking, pickpocketing, theft, sham marriage, and benefit fraud.<sup>50</sup> In Southeast Asia, trafficking into scam centres represents the first large-scale manifestation of forced criminality. This form particularly exploits authorities’ difficulty in distinguishing victims from criminals, allowing traffickers to operate with impunity behind their victims. Malaysia is the only country in the region to have legislated forced criminality as a form of

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<sup>44</sup> UN OHCHR, *Online Scam Operations* (n 11) 14; UNODC, *Key Indicators of Trafficking in Persons for Forced Criminality* (n 41) 2–3; UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 13–15.

<sup>45</sup> Jovanovic, “Principle of Non-Punishment” (n 38) 45.

<sup>46</sup> Piotrowicz and Sorrentino, “Human Trafficking” (n 42) 3; UNODC, *Legislative Guides* (n 39) paras 115, 153.

<sup>47</sup> Mina Chiang and Valentina Casulli, “Guidance on Responding to Victims in Forced Scam Labour” *Humanity Research Consulting* (2023) 9 <[https://cdn.prod.website-files.com/662f5d242a3e7860ebcfde4f/663510dcfdb3739858440b87\\_HRC-Briefing-Guidance-on-Responding-to-Victims-in-Forced-Scam-Labour-english.compressed.pdf](https://cdn.prod.website-files.com/662f5d242a3e7860ebcfde4f/663510dcfdb3739858440b87_HRC-Briefing-Guidance-on-Responding-to-Victims-in-Forced-Scam-Labour-english.compressed.pdf)>; Silvia Rodríguez-López, “Telling Victims from Criminals: Human Trafficking for the Purposes of Criminal Exploitation” in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2019) 2 <<https://doi.org/10.1007/978-3-319-63058-8>>.

<sup>48</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 1.

<sup>49</sup> UNODC, *Global Report on Trafficking in Persons* (UNODC 2022) 23 <[https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOtIP\\_2022\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOtIP_2022_web.pdf)>.

<sup>50</sup> “Non-Criminalization/Non-Punishment of Victims of Trafficking” *Warnath Group* (2021) 2 <<https://www.warnathgroup.com/wp-content/uploads/2022/01/Non-criminalization-non-punishment-of-victims-of-trafficking.pdf>>; Organization for Security and Cooperation in Europe (OSCE), Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and Legislative Recommendations Towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking* (OSCE 2013) 9, para 1.

exploitation, defining it to include “any illegal activity,”<sup>51</sup> encompassing criminal offenses and other illegal activities that may fall under administrative, civil, or immigration law violations. In scam centres, victims are exploited to commit cyberfraud, primarily financial fraud, generating profits for criminals. Importantly, victims do not profit from these crimes; any small payments they receive serve to further coerce them and convince authorities of their complicity. Where jurisdictions do not recognise forced criminality in their legislation, alternative forms of exploitation may be applied to ensure victim protection and the criminalisation of traffickers.

## 2. Forced labour or services.

Some countries define trafficking through exhaustive lists of exploitative purposes, potentially excluding emerging forms of exploitation. In these jurisdictions, practitioners may classify the exploitation for criminal activities as “forced labor or services,” a widely recognised purpose in national frameworks. Thailand’s Anti-Trafficking in Persons Act exemplifies this exhaustive approach to defining exploitation as:

the exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, begging, removal of organ for commercial purpose, forced labour or services, or any other similar forcible extortion, regardless of such person’s consent.<sup>52</sup>

The Act defines “forced labour or services” as “compelling the other to work or provide service” through coercive means.<sup>53</sup> Internationally, forced labour has been defined in the Convention concerning Forced or Compulsory Labour of 1930 (No. 29) as “all work or service which is extracted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily.”<sup>54</sup> There are three aspects of forced labour which make it applicable to trafficking into scam centres. The term “all work or service” encompasses activities in non-regulated settings, including illegal activities,<sup>55</sup> thus potentially capturing cyberfraud. Secondly, the definition recognises various penalties, including non-payment of wages<sup>56</sup>—directly relevant to scam centres where victims face fines, salary deductions, and wage withholding as punishment. Lastly, the concept of voluntary offer requires “free and informed consent” and “freedom to leave.”<sup>57</sup> Therefore, even if victims initially

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<sup>51</sup> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Malaysia) s 2.

<sup>52</sup> Anti-Trafficking in Persons Act (No. 3) B.E. 2560 (2017) (Thailand) (Anti-TIP Act) s 4.

<sup>53</sup> *ibid.*

<sup>54</sup> Convention Concerning Forced or Compulsory Labour of 1930 (No. 29) art 2(1).

<sup>55</sup> “Non-Criminalization/Non-Punishment” (n 50) 8; UNODC, *Legislative Guides* (n 39) para 128.

<sup>56</sup> UNODC, *Legislative Guides* (n 39) para 129.

<sup>57</sup> *ibid.*, para 130.

consented to participate in scams, their consent becomes invalid if they cannot leave or were deceived about conditions.

Thailand's approach demonstrates how countries can protect VOT into scam centres under existing legal frameworks without explicit recognition of forced criminality. Although Thailand's Anti-TIP Act does not list forced criminality as a form of exploitation, authorities have acknowledged these trafficking situations by classifying them as forced labour under section 6/1.<sup>58</sup> This classification ensures victims receive protection where the trafficking's "act" and "means" elements are present and their exploitation fulfills forced labour criteria,<sup>59</sup> demonstrating how existing legal frameworks can be adapted to address emerging forms of trafficking.

### 3. Servitude, slavery, and practices similar to slavery.

These forms of exploitation are defined distinctly in international law:

- *Servitude* means "the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change."<sup>60</sup>
- *Slavery* means "the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised."<sup>61</sup>
- *Practices similar to slavery* includes "debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents."<sup>62</sup>

These classifications may apply to trafficking into scam centres where victims face debt-bondage conditions, such as being forced to pay for their release, recruitment, and basic necessities. They may also extend to cases where victims were sold or transferred between scam centres for profit.<sup>63</sup>

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<sup>58</sup> Anti-TIP Act (n 52) s 6/1; Royal Thai Government, "Country Report on Anti-Human Trafficking Efforts" *ASEAN–ACT Partnership Hub* (2021) 26 <<https://aseanactpartnershiphub.com/wp-content/uploads/2022/02/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021.pdf>>; Royal Thai Government, "Country Report on Anti-Human Trafficking Efforts" *Thai Anti-Human Trafficking Action* (2022) 24 <<https://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2023/02/2022-Country-Report.pdf>>; Royal Thai Government, "Progress Report on Anti-Human Trafficking Efforts" *Thai Anti-Human Trafficking Action* (2023) 19–20 <<https://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2024/02/2023-Country-Report-FINAL-as-of-25-Jan2-2.pdf>>.

<sup>59</sup> Rodríguez-López, "Telling Victims from Criminals" (n 47) 3.

<sup>60</sup> UNODC, *Model Legislative Provisions Against Trafficking in Persons* (UNODC 2020) 24.

<sup>61</sup> *ibid* 25.

<sup>62</sup> *ibid* 23.

<sup>63</sup> UNODC, *Key Indicators* (n 41) 4.

## C. Dismantling the Labour Dispute Claim

Some countries dismiss trafficking claims by mischaracterising victims as illegal migrants experiencing “contract or labour disputes.”<sup>64</sup> UNODC reports that many suspected cases of trafficking into scam centres are treated as simple employer-employee disputes requiring no further investigation.<sup>65</sup> This approach is exemplified by Cambodia’s Vice-Chairwoman of the National Committee for Counter Trafficking in Persons, who claimed that among 3,000 investigated individuals, “only about 40 or 50 have been actual victims . . . [t]he rest include mostly those who came to Cambodia illegally or had disputes with their employers, and were lying to escape legal consequences.”<sup>66</sup>

This mischaracterisation stems from the scam centres’ strategic use of employment contracts with their company fronts.<sup>67</sup> Victims report being coerced into signing contracts at various stages—before departure or upon arrival—that often differ from original job advertisements, are in foreign languages, and require illegal activities or ransom payments for termination.<sup>68</sup> These labour contracts represent physical manifestation of various trafficking “means” elements used by traffickers to deceive victims and trick authorities into legitimising their illegal operations.<sup>69</sup> Whether authorities are colluding with traffickers and accepting bribes in return for dropping charges,<sup>70</sup> or genuinely tricked by traffickers regarding the legitimacy of their businesses, the presence of labour contracts do not remove victims from their trafficking situation.

There are two key legal principles demonstrating why these labour contracts cannot negate trafficking situations. First, traffickers use contracts as a means to prove to authorities that their businesses are legitimate and as evidence that individuals consented to the work (exploitation), thereby binding them to contractual terms. During the drafting of the Palermo Protocol, Member States anticipated traffickers

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<sup>64</sup> Lindsey Kennedy, Nathan Paul Southern, and Huang Yan, “Cambodia’s Modern Slavery Nightmare: The Human Trafficking Crisis Overlooked by Authorities” *The Guardian* (2 November 2022) <<https://www.theguardian.com/world/2022/nov/03/cambodias-modern-slavery-nightmare-the-human-trafficking-crisis-overlooked-by-authorities>>; USIP, *Transnational Crime in Southeast Asia* (n 1) 32; UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 25.

<sup>65</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 29.

<sup>66</sup> Taing Rinit, “Cambodia Is Being Victimised by Biased Human Trafficking Reporting” *Khmer Times* (17 January 2024) <<https://www.khmertimeskh.com/501424151/cambodia-is-being-victimised-by-biased-human-trafficking-reporting/>>.

<sup>67</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 25.

<sup>68</sup> “Complaint to the ASEAN Inter-Government Commission on Human Rights” (n 16); UNODC, *Key Indicators* (n 41) 2.

<sup>69</sup> “Regional Situation Report” (n 12) 2; UNODC, *Key Indicators* (n 41) 3.

<sup>70</sup> “Trafficking in Persons Report: Cambodia” *United States Department of State* (2023) <<https://www.state.gov/reports/2023-trafficking-in-persons-report/cambodia/>>.

using consent as their first line of defence,<sup>71</sup> particularly where victims may have initially consented—for example, where they willingly signed (albeit deceptively) contracts prior to departing their home country. The Protocol therefore makes consent irrelevant to establishing trafficking, ensuring traffickers cannot use it as a defence.<sup>72</sup>

Second, a labour dispute requires a valid employment relationship between employer and employee.<sup>73</sup> Cambodia's Labour Law, for example, "governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia."<sup>74</sup> To be considered a "worker" or "employee" in Cambodia, the person must have signed a valid employment contract in return for remuneration.<sup>75</sup> Under Cambodia's Civil Code, even where the declarations of intention of both parties are made without any defects, a contract is void where its contents violate mandatory provisions of law or contravene public order and good customs.<sup>76</sup> As these contracts require victims to commit illegal acts of cyberfraud, namely financial fraud—that have caused thousands of victims to lose money—they both violate the law and contravene public order. Therefore, under Cambodian law, these contracts are void ab initio and unenforceable; parties acquire no rights under them, and traffickers cannot use them as a basis for legitimate labour disputes.<sup>77</sup>

Trafficking into scam centres should be explicitly recognised as trafficking for forced criminality. While these cases might fit within other categories like forced labour, servitude, or slavery-like practices, such classifications fail to capture the central feature of this exploitation: victims are specifically trafficked to commit crimes. As the UN Special Rapporteur notes, "failure to explicitly recognize forced criminality as a purpose of exploitation in some jurisdictions may hinder the application of the non-punishment principle."<sup>78</sup> This form of trafficking presents unique challenges for Southeast Asian criminal justice systems. VOT into scam centres occupy a complex dual status as both victims and apparent perpetrators. This demands legal responses

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<sup>71</sup> "The Role of 'Consent' in the Trafficking in Persons Protocol" UNODC (2014) 34 <[https://www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)>.

<sup>72</sup> Palermo Protocol (n 35) art 3(b); UN OHCHR, *Online Scam Operations* (n 11) 20.

<sup>73</sup> Robert Herron and Caroline Vandenabeele, *Labour Dispute Resolution: An Introductory Guide* (ILO Regional Office for Asia and the Pacific 1999); International Training Centre of the International Labour Organization, *Labour Dispute Systems: Guidelines for Improved Performance* (ILO 2013).

<sup>74</sup> Labour Law 1997 (Cambodia) art 1.

<sup>75</sup> *ibid*, arts 3, 5.

<sup>76</sup> Civil Code of Cambodia, s 354(1); additionally, under Section 665(2), an employee can terminate the contract immediately if the actual working conditions differ from those specified in the contract. Under the Labour Law (Cambodia) art 83, a contract may be terminated immediately where the employer used fraudulent measures to entice the worker into signing the contract under conditions to which they would not otherwise have agreed if they had realised it, refused to pay all or part of the wages, and used abusive language, threat, violence or assault.

<sup>77</sup> UNODC, *Key Indicators* (n 41).

<sup>78</sup> United Nations General Assembly, "Implementation of the Non-Punishment Principle, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children," Human Rights Council 47th Session, UN Doc A/HRC/47/34 (2021) para 38; UN OHCHR, *Online Scam Operations* (n 11) 20.

that can simultaneously recognise their victimhood while addressing their compelled criminal activities. The non-punishment principle offers a crucial framework for resolving this tension, providing a legal basis for victim protection while maintaining focus on prosecuting traffickers. Understanding its application requires examining both theoretical foundations and practical implementation challenges in the Southeast Asian context.

### III. THE NON-PUNISHMENT PRINCIPLE: THEORETICAL FOUNDATIONS

The non-punishment principle, also sometimes referred to as non-liability or non-criminalisation,<sup>79</sup> seeks to protect VOT from being (criminally) liable, including, though not limited to, detention, prosecution, and punishment (e.g., imprisonment, fines), for unlawful acts committed as a direct consequence of their trafficking situation.<sup>80</sup> Despite the non-punishment principle not being explicitly mentioned in the Palermo Protocol, it is understood to derive from one of its main purposes: to “protect and assist the victims of such trafficking, with full respect for their human rights.”<sup>81</sup> As a human rights-based criminal justice response to TIP, the principle aims to safeguard victims’ rights, encourage reporting, maintain justice system integrity, and ensure victims are not punished in lieu of their traffickers.<sup>82</sup> While scholarly discourse initially focused on the principle’s application to status-related offenses, trafficking patterns have evolved to include more complex forms of exploitation, particularly those involving forced criminality. This evolution has prompted renewed examination of the principle’s theoretical foundations, which rest on both human rights and criminal law principles.

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<sup>79</sup> For discussions on the various articulations of the principle, see Andreas Schloenhardt and Rebekkah Markey-Towler, “Non-Criminalisation of Victims of Trafficking in Persons—Principles, Promises, and Perspectives” (2016) 4(1) Groningen Journal of International Law 10, 33 <<https://doi.org/10.21827/59db68fc35c13>>.

<sup>80</sup> UNGA, “Implementation of the Non-Punishment Principle” (n 78) para 18.

<sup>81</sup> Palermo Protocol (n 35) art 2(2); Schloenhardt and Markey-Towler (n 79) 25; International Criminal Court, *Dominic Ongwen* (Amicus Curiae Observation) ICC-02/04-01/15A (21 December 2021) para 19; UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime (UNTOC), Working Group on Trafficking in Persons, “Guidance on The Issue of Appropriate Criminal Justice Responses to Victims Who Have Been Compelled to Commit Offences as a Result of Their Being Trafficked” (7 April 2022) UN Doc CTOC/COP/WG.4/2022/2, 2–3; UN Conference of the Parties to the UNTOC, Working Group on Trafficking in Persons, “Non-Punishment and Non-Prosecution of Victims of Trafficking in Persons: Administrative and Judicial Approaches to Offences Committed in the Process of Such Trafficking” (9 December 2009) UN Doc CTOC/COP/WG.4/2010/4, para 10.

<sup>82</sup> “Non-Punishment of Victims of Trafficking” *The Inter-Agency Coordination Group Against Trafficking in Persons (ICAT)* (2020) 1 <[https://icat.un.org/sites/g/files/tmzbd1461/files/publications/19-10800\\_icat\\_issue\\_brief\\_8\\_ebook\\_final.pdf](https://icat.un.org/sites/g/files/tmzbd1461/files/publications/19-10800_icat_issue_brief_8_ebook_final.pdf)>; “Non-Criminalization/Non-Punishment” (n 50) 4.

## A. Human Rights Law Foundations

The Protocol recognises the need to protect the “internationally recognised human rights”<sup>83</sup> of trafficked victims arising from both international instruments and norms of customary international law.<sup>84</sup> It does not affect “the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law.”<sup>85</sup> Therefore, the Protocol must be implemented in tandem with other human rights treaties,<sup>86</sup> including those underpinning basic guarantees of criminal law.<sup>87</sup>

Early scholarship, particularly by Gallagher, emphasised that “criminalization is the antithesis of a victim-centred approach, inevitably operating to deny trafficked persons the rights to which they are entitled under international law.”<sup>88</sup> This human rights-based approach recognises that unwarranted criminalisation prevents victims from accessing justice, protection, and assistance,<sup>89</sup> which in turn, exacerbates their trauma, stigmatisation, and risks of re-trafficking.<sup>90</sup> For example, legal proceedings may violate the privacy and anonymity of victims, exposing them to shame, community rejection, or retaliation from traffickers.<sup>91</sup> In *VCL and AN*, the Court found that failure to apply non-punishment prevented the applicants from securing evidence critical to their defence, violating their right to a fair trial.<sup>92</sup> Similarly, criminal charges and records impede victims’ access to compensation, social support, employment, housing, and other essential services, perpetuating their victimisation.<sup>93</sup>

The real-world impact of these human rights violations is evident. A Thai victim’s experience illustrates these consequences: “[n]o one wants to hire me as soon

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<sup>83</sup> Palermo Protocol (n 35) preamble.

<sup>84</sup> UNODC, *Legislative Guides* (n 39) paras 60–61.

<sup>85</sup> Palermo Protocol (n 35) art 14(1); UNODC, *Legislative Guides* (n 39) para 55.

<sup>86</sup> For example, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC); UNODC, *Legislative Guides* (n 39) para 61.

<sup>87</sup> For example, right to a fair trial, presumption of innocence, right to liberty, right to remedy. See, among others, the Universal Declaration of Human Rights (UDHR) arts 6, 7, 8, 9, 10, and 11; ICCPR, arts 9, 10, 14, 15, 16, and 17.

<sup>88</sup> Anne Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) ch 5 <<https://doi.org/10.1017/CBO9780511761065>>.

<sup>89</sup> UN Conference of the Parties to the UNTOC, “Non-Punishment and Non-Prosecution” (n 81) para 6.

<sup>90</sup> “Non-Criminalization/Non-Punishment” (n 50) 3.

<sup>91</sup> “ASEAN Do No Harm Guide for Frontline Responders” *ASEAN–ACT* (2023) 79 <<https://www.aseanact.org/wp-content/uploads/2023/01/2022-DNH-Final-ENG.pdf>>.

<sup>92</sup> European Court of Human Rights, *V.C.L and A.N. v The United Kingdom*, App Nos. 77587/12 and 74603/12 (16 February 2021).

<sup>93</sup> “Non-Criminalization/Non-Punishment” (n 50) 3; “Challenges in Identifying Victims of Trafficking Who Are Encountered as Offenders” *Nexus Institute* (2022) 3 <<https://nexusinstitute.net/wp-content/uploads/2022/12/Thematic-dialogue-brief.-Challenges-in-identifying-VoTs-encountered-as-offenders.-Final-8.9.22.pdf>>.

as they see that I am facing criminal charges . . . . [W]hat they don't know is that I'm actually a victim, not a criminal."<sup>94</sup> Despite awaiting a court ruling, this victim was double victimised: first by traffickers, then by state-imposed stigma blocking employment opportunities. Such cases demonstrate why the non-punishment principle is crucial for mitigating long-term harm from trafficking and subsequent criminalisation.

The principle thus materialises the Protocol's human rights-based approach by ensuring the full respect of VOT's human rights, which includes protecting them from the human rights consequences of unwarranted criminalisation. It safeguards and restores the dignity of VOT by recognising their victimisation and providing protection rather than punishment.<sup>95</sup> Therefore, early application proves crucial for preventing further victimisation and trauma, supporting recovery and reintegration.

## B. Criminal Law Foundations

While human rights law provides essential theoretical foundations for the non-punishment principle, its practical implementation draws significantly from criminal law and questions of responsibility and punishment. This is particularly important as criminal law systems exist and are enforced in all jurisdictions, including those where human rights protections may be limited.<sup>96</sup>

The principle does not provide VOT with blanket immunity from criminal prosecution.<sup>97</sup> If a victim voluntarily commits a crime outside their trafficking situation, they remain liable to the same degree as any other person.<sup>98</sup> Rather, the principle seeks to maintain justice system integrity while protecting victims by carefully balancing two considerations: the offenses committed against victims by traffickers, and the offenses committed by victims under the traffickers' control.<sup>99</sup> This balance is achieved through several interconnected theoretical frameworks.

### 1. Autonomy and criminal intent.

According to Hart, "if punishment is to be justified at all, the criminal's act must be that of a responsible agent: that is, it must be the act of one who could have kept the law which he has broken."<sup>100</sup> A responsible agent must have *mens rea*, or criminal intent. The non-punishment principle recognises that VOT are subjected to coercive circumstances removing their autonomy, with their actions directed by traffickers

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<sup>94</sup> Chayanit Itthipongmaetee, "Thai Man Rescued from Captivity Abroad Now Faces Prison at Home" *Coconuts* (2022) <<https://cchrcambodia.org/storage/posts/6765/3339-en.pdf>>.

<sup>95</sup> "Non-Punishment of Victims of Trafficking" (n 82) 2; "Challenges" (n 93) 2.

<sup>96</sup> Jovanovic, "The Principle of Non-Punishment" (n 38) 57.

<sup>97</sup> Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 11.

<sup>98</sup> "Non-Criminalization/Non-Punishment" (n 50) 6.

<sup>99</sup> Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 11, 17.

<sup>100</sup> H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn, Oxford University Press 2008) 160.



rather than their own volition. VOT are in a situation where they have no choice but to submit to the exploitation and the will of their exploiters.<sup>101</sup> In Hart's words, given the fact that victims are denied the ability to act independently during their trafficking situation, they would not have been able to keep the law which they broke.<sup>102</sup> The state's moral licence cannot blame and punish someone for what they have done if they could not help doing it.<sup>103</sup> Therefore, even if a trafficked victim deliberately committed an offence during their exploitation, they cannot be held criminally liable for that offence as they lacked agency.<sup>104</sup> This aligns with the Protocol's recognition that victims cannot intend their exploitation where trafficking means are used. As Kremnitzer wrote, "where guilt cannot be established, punishment does not serve justice and should be avoided even if the defendant caused a great evil."<sup>105</sup> This principle is particularly relevant to trafficking into scam centres, where authorities often justify prosecution based on the substantial financial losses. However, the magnitude of financial harm cannot override the fundamental principle that punishment is unjustified where traffickers have systematically stripped victims of autonomy.

## 2. Choice, capacity, and character.

Recent scholarship has demonstrated how established criminal theories of choice, capacity, and character provide additional theoretical justification for protecting VOT from criminalisation. The choice theory argues that punishment is justified when an offence is the product of the accused's choice to act wrongfully.<sup>106</sup> However, VOT do not choose their exploitation, nor can they consent to it. Therefore, it is not their choice to act wrongfully but the choice of their traffickers, thereby negating the justification for punishment. The capacity theory asserts that individuals should not be held criminally liable if they lacked the opportunity to act differently under the circumstances, such as in situations of duress or necessity. VOT subjected to physical or psychological violence, confinement, and threats, lack this opportunity for autonomous action. Lastly, the character theory asserts that criminal liability should reflect the moral character of the individual, whereby criminal liability arises from conduct that reflects a person's bad character or propensity for crime.<sup>107</sup> As Zabyelina

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<sup>101</sup> Inter-Parliamentary Union and UNODC, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (Inter-Parliamentary Union and UNODC 2009) 43.

<sup>102</sup> Piotrowicz and Sorrentino, "Human Trafficking" (n 42) 8.

<sup>103</sup> Hart, *Punishment and Responsibility* (n 100) 22, 174.

<sup>104</sup> Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 19.

<sup>105</sup> Mordechai Kremnitzer, "An Argument for Retributivism in International Criminal Law" in Florian Jeßberger and Julia Geneuss (eds), *Why Punish Perpetrators of Mass Atrocities? Purposes of Punishment in International Criminal Law* (Cambridge University Press 2020) 167 <<https://doi.org/10.1017/9781108566360>>.

<sup>106</sup> Anthony Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (Bloomsbury Publishing 2009) 27; Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 17–18.

<sup>107</sup> Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 18, 20.

notes, VOT commit crimes under coercive circumstances imposed by traffickers, not from a criminal disposition: “but for their trafficked status, [VOT] would not have committed the offence at all.”<sup>108</sup> Similarly, victims trafficked into scam centres would not perpetrate cyberfraud but for their trafficking situation. Their actions reflect exploitation rather than their character.

### 3. Purposes of punishment.

The non-punishment principle recognises that punishing VOT serves none of the traditional purposes of punishment: retribution, deterrence, incapacitation, and rehabilitation<sup>109</sup> Retributive justice holds that those who acted wrongfully deserve proportionate punishment to the harm caused.<sup>110</sup> At face value, retribution may appear legitimate to provide a sense of justice to scam victims. However, Bradley clarifies that retribution’s central focus is depriving criminals of undue advantages (e.g., illicit profits) gained through their crimes over those who remain inside the legally required pattern of restraint.<sup>111</sup> VOT derive no such advantage from scams; traffickers control all illicit profits. Thus, retribution should target the traffickers who profit as puppeteers through their victims’ forced criminal activities.

Deterrence aims to prevent recidivism and dissuade others from committing similar offences by making an example of the punished individual.<sup>112</sup> However, punishment cannot deter VOT who, as agents of traffickers, lack autonomy and have no choice but to commit crimes under their commands. Punishing victims actually reduces deterrence by enabling traffickers to evade detection. Therefore, effective deterrence requires focusing on the traffickers who orchestrate these crimes.

Incapacitation seeks to protect society by removing dangerous individuals from the general population (e.g., through imprisonment), thereby preventing them from committing further crimes during the period of incapacitation. Rehabilitation focuses on reforming offenders to facilitate their return to society as law-abiding citizens. However, VOT are neither inherently dangerous nor in need of reform. Their criminal acts stem purely from their trafficking situation; once freed, VOT naturally return to law-abiding behaviour.

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<sup>108</sup> Yuliya Zabyelina, “The Application of the Non-Punishment Principle to Victims of Human Trafficking in the United States” in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2019) 6 <<https://doi.org/10.1007/978-3-319-63058-8>>.

<sup>109</sup> “Explanatory Brief on the Non-Punishment Principle” *LaStrada International* (2023) 1 <[https://documentation.lastradainternational.org/lisidocs/3512-LSI%20-%20Explanatory%20Brief%20on%20the%20Non-Punishment%20Principle%20\(Nov%202023\).pdf](https://documentation.lastradainternational.org/lisidocs/3512-LSI%20-%20Explanatory%20Brief%20on%20the%20Non-Punishment%20Principle%20(Nov%202023).pdf)>.

<sup>110</sup> Kremnitzer, “Argument for Retributivism” (n 105) 161.

<sup>111</sup> Gerard V. Bradley, “Retribution: The Central Aim of Punishment” (2023) 27(19) *Harvard Journal of Law and Public Policy* 19, 23.

<sup>112</sup> International Criminal Court, *Prosecutor v Al Mahdi* (Judgment and Sentence) (2016) ICC-01/12-01/15 (27 September 2016) para 67.

#### 4. Integrity of the justice system.

These theoretical foundations reveal why criminalising VOT undermines broader justice system integrity. Traffickers deliberately manipulate the justice system by forcing victims to commit crimes, effectively shielding themselves from prosecution while exposing VOT to criminal liability.<sup>113</sup> Manipulation includes using subtle forms of coercion, including legal threats, to maintain control over victims.<sup>114</sup> Some victim trafficked into scam centres have faced defamation charges from traffickers attempting to silence their testimony. Where scam centres are linked to legitimate businesses or elites, crime groups have significantly more resources to pursue legal actions against victims who may be unemployed, in debt, or relying on legal aid. Manipulation of the justice system proves effective across jurisdictions. In the UK, no one has ever been convicted of trafficking for the purposes of cannabis cultivation, although VOT have been sanctioned instead.<sup>115</sup> Similarly, very few criminal masterminds behind the scam centres have been convicted. Most arrests have involved local recruiters, low-ranked scammers, and VOT. Punishing VOT for crimes committed during their trafficking situation fails to target the real culprits of TIP cases.<sup>116</sup>

When victims fear criminalisation, they avoid seeking protection or cooperating with law enforcement, including acting as witnesses against traffickers.<sup>117</sup> As ASEAN-ACT noted, “[w]here authorities treat victims like perpetrators, traffickers are proven correct.”<sup>118</sup> This treatment enables traffickers to continue their criminal activities undisrupted and without deterrence or accountability.<sup>119</sup> Therefore, greater awareness of the non-punishment principle among law enforcement authorities can diminish the traffickers’ power over victims regarding criminalisation and encourage victims to report their traffickers and assist in criminal proceedings.

### C. Trafficking into Scam Centres: Challenging Traditional Frameworks

The application of these theoretical frameworks to trafficking into scam centres in Southeast Asia represents a new frontier in trafficking scholarship for several reasons.

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<sup>113</sup> “Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States” *ASEAN-ACT* (2022) 11 <[https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment\\_print\\_smallsize.pdf](https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment_print_smallsize.pdf)>; Zabyelina, “Application of the Non-Punishment Principle” (n 108) 12; “Challenges” (n 93) 3.

<sup>114</sup> Schloenhardt and Markey-Towler, “Non-Criminalisation” (n 79) 11.

<sup>115</sup> Rodríguez-López, “Telling Victims from Criminals” (n 47) 8–9.

<sup>116</sup> OSCE, *Policy and Legislative Recommendations* (n 50) 10, para 4.

<sup>117</sup> “Non-Criminalization/Non-Punishment” (n 50) 3; “Explanatory Brief” (n 110) 1; UN Conference of the Parties to the UNTOC, “Non-Punishment and Non-Prosecution” (n 81) para 6.

<sup>118</sup> “Implementation of the Non-Punishment Principle” (n 113) 11.

<sup>119</sup> “Non-Criminalization/Non-Punishment” (n 50) 3; “Implementation of the Non-Punishment Principle” (n 113) 11; UN Conference of the Parties to the UNTOC, “Guidance” (n 81) 4.

Unlike previously studied forms of trafficking for forced criminality, scam centres represent the first large-scale instance where the commission of cyberfraud is the primary trafficking purpose. This challenges traditional applications of the principle, which typically address crimes committed to survive trafficking or evade detection. Trafficking into scam centres also creates a previously unexamined category of victim-perpetrators who operate within sophisticated criminal enterprises, often with apparent autonomy despite underlying coercion, testing existing theoretical frameworks for distinguishing between victimhood and criminal responsibility. Lastly, the scale of financial losses creates tension between victim protection and public accountability, challenging traditional justifications for withholding punishment even when criminal intent is absent. This complex reality demands evolution in our understanding of the non-punishment principle. While the theoretical foundations established above—from human rights protections to criminal law principles—provide crucial guidance, trafficking into scam centres reveals significant gaps in current frameworks. The systematic nature of victim exploitation for cyberfraud, the sophistication of control mechanisms, and the scale of operations all challenge traditional approaches to victim protection. The rationale for applying the non-punishment principle to trafficking into scam centres is thus multifaceted, rooted in both human rights and criminal law foundations. The principle not only safeguards victims' rights and prevents further victimisation, but also maintains criminal justice system integrity while ensuring traffickers, not their victims, are held accountable.

These theoretical foundations demonstrate why the non-punishment principle is crucial for protecting VOT. However, translating these theories into effective legal protection requires examining how the principle has been interpreted and implemented in international and regional frameworks, particularly regarding the unique challenges of trafficking into scam centres.

#### IV. SCOPE OF THE NON-PUNISHMENT PRINCIPLE

The non-punishment principle has been widely incorporated in various soft and hard law instruments, though its scope—including offences covered and threshold for application—varies considerably between instruments. Globally, the scope of the non-punishment principle has been understood through two primary models: the causation model, which relies on the causal link between trafficking experience and unlawful acts, and the compulsion model, which focuses on coercion to justify non-punishment.

## A. International and Southeast Asian Frameworks

### 1. International development.

The non-punishment principle, though not included in the final Palermo Protocol, was suggested during negotiations by UNHCR,<sup>120</sup> which called on States to “refrain from detaining or prosecuting trafficked persons for status-related offences.”<sup>121</sup> It was officially adopted in UNCHR’s 2002 Recommended Principles and Guidelines, stating that: “Trafficked Persons shall not be detained, charged, or prosecuted for their illegal entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”<sup>122</sup> The principle has since been reinforced through various United Nations General Assembly and Security Council resolutions.<sup>123</sup> The UN Security Council has repeatedly called upon States not to penalise VOT for involvement in unlawful activities.<sup>124</sup> The Working Group on Trafficking in Persons, established to assist the implementation of the Palermo Protocol, reaffirmed the non-punishment principle in 2009,<sup>125</sup> 2010,<sup>126</sup> 2018,<sup>127</sup> 2019,<sup>128</sup> and 2020. In 2020, the Working Group recommended that States ensure “victims of trafficking in persons are not inappropriately punished or prosecuted for acts they commit as a direct

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<sup>120</sup> UNODC, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (UNODC 2006) 368.

<sup>121</sup> UNGA, “Informal Note by the United Nations High Commissioner for Human Rights,” 4th Session of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime (1999) UN Doc A/AC.254/16, para 17.

<sup>122</sup> UNCHR, “Recommended Principles and Guidelines on Human Rights and Human Trafficking” (2002) principle 7, guidelines 2(5) and 4(5).

<sup>123</sup> UNGA Res 76/7 (23 November 2021) annex, para 13; UNGA Res 75/158 (23 December 2020) para 27; UNGA Res 65/228 (31 March 2011) annex, para 18(k); UNGA Res 64/293 (12 August 2010); UNGA Res 63/156 (30 January 2009) para 12; UNGA Res 61/144 (1 February 2007) para 18; UNGA Res 59/166 (10 February 2005) paras 8, 18; UNGA Res 57/176 (30 January 2003) para 8; UNGA Res 55/67 (31 January 2001) paras 6, 13; UNGA Res 52/98 (6 February 1998) para 4; UNGA Res 51/66 (31 January 1997) para 7; UNSC Res 2388 (21 November 2017).

<sup>124</sup> UNSC, S/RES/2331 (20 December 2016).

<sup>125</sup> UN Conference of the Parties to the UNTOC, Working Group on Trafficking in Persons, “Report on the Meeting of the Working Group on Trafficking in Persons, Held in Vienna on 14 and 15 April 2009” (21 April 2009) UN Doc CTOC/COP/WG.4/2009/2, para 12.

<sup>126</sup> UN Conference of the Parties to the UNTOC, Working Group on Trafficking in Persons, “Report on the Meeting of the Working Group on Trafficking in Persons, Held in Vienna from 27 to 29 January 2010” (16 February 2010) UN Doc CTOC/COP/WG.4/2010/6 paras 50, 51, 109.

<sup>127</sup> UN Conference of the Parties to the UNTOC, Working Group on Trafficking in Persons, “Report on the Meeting of the Working Group on Trafficking in Persons, Held in Vienna on 2 and 3 July 2018” (18 July 2018) UN Doc CTOC/COP/WG.4/2010/6, para 7(c).

<sup>128</sup> UN Conference of the Parties to the UNTOC, Working Group on Trafficking in Persons, “Report on the Meeting of the Working Group on Trafficking in Persons, Held in Vienna from 9 to 11 September 2019” (25 September 2019) UN Doc CTOC/COP/WG.4/2010/6, para 4, recommendation 17(b).

consequence of being trafficked.”<sup>129</sup> UNODC has also promoted non-punishment principle provisions in its Model Laws and Legislative Guides to support States in developing and adapting anti-trafficking responses.<sup>130</sup>

## 2. Implementation in Southeast Asia.

The 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), binding on all ten ASEAN Member States, provides that “[e]ach Party shall, subject to its domestic laws, rules, regulation and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.”<sup>131</sup> This provision provides States discretion and flexibility on not whether to apply the non-punishment principle, but rather how it may be achieved in accordance with domestic frameworks.<sup>132</sup> The wording “not holding” excludes the possibility to interpret non-punishment as a mere mitigation of the penalty, while the use of “unlawful acts” ensures victims are protected from punishment beyond criminal activities.

Domestically, seven ASEAN Member States have incorporated non-punishment provisions aligned with ACTIP. However, implementation varies significantly across jurisdictions. The Philippines adopted a causation-based model, providing that “[t]rafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking . . . or in obedience to the order made by the trafficker in relation thereto.”<sup>133</sup> In contrast, Thailand adopted a closed-list of offences, providing that victims cannot be prosecuted for immigration-related offences, providing false information, document-related offences, prostitution-related offences, or working without permit, unless the Minister of Justice grants permission in writing.<sup>134</sup> Thailand’s closed-list means that even if a person is identified as a VOT into scam centres, the non-punishment provision will not apply to them as committing cyberfraud is not a listed offence permissible of being excused.

Some ASEAN states have additional obligations through other instruments. Malaysia and Thailand, for instance, have ratified the ILO’s 2014 Protocol to the Forced Labour Convention,<sup>135</sup> requiring States to not prosecute or impose penalties on

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<sup>129</sup> UN Conference of the Parties to the UNTOC, “Effective Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime” (15 October 2020) UN Doc CTOC/COP/2020/L.6/Rev.1, para 13(g).

<sup>130</sup> UNODC, *Model Legislative Provisions* (n 60) 45; UNODC, *Legislative Guides* (n 39) para 35.

<sup>131</sup> ACTIP (n 37) art 14(7).

<sup>132</sup> Giammarinaro, “The Importance” (n 43) para 14.

<sup>133</sup> Anti-Trafficking in Persons Act (RA No. 9208) of 2003 (Philippines) s 17.

<sup>134</sup> Anti-Trafficking in Persons Act B.E. 2551 (2008) (Thailand), subsequently amended in 2015 (B.E. 2558) and 2017 (B.E. 2560) s 41.

<sup>135</sup> “Ratifications of Po29—Protocol of 2014 to the Forced Labour Convention, 1930” *ILO Normlex* (2024) <<https://normlex.ilo.org/>>.

victims compelled to commit unlawful activities as a direct consequence of forced labour.<sup>136</sup> This becomes particularly relevant where trafficking is recognised as forced labour, as in Thailand's treatment of scam centre cases.

## B. Compulsion and Causation Models

### 1. Compulsion model.

The compulsion model asserts that victims should not be held criminally responsible for offences they were compelled to commit in the course of being trafficked.<sup>137</sup> Drawing on traditional criminal defences of duress and necessity,<sup>138</sup> this model proves restrictive in trafficking contexts. Hoshi argues that a "compulsion-based approach is incapable of dealing with the subtle realities of trafficking in persons"<sup>139</sup> as it fails to take into account the complex impact of trauma and "ongoing control" endured by VOT, especially in the absence of an "immediate risk" and beyond the trafficking situation.<sup>140</sup> This limitation is particularly evident in scam centres. While violence is common, traffickers also employ subtle control methods, such as psychological manipulation and abuse of vulnerability, which the compulsion model struggles to capture. The Special Rapporteur has clarified that compulsion should include "the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will."<sup>141</sup> This approach recognises that compulsion can arise from circumstances, not just direct force.<sup>142</sup> Therefore, compulsion should be interpreted broadly in light of the definition of trafficking, with compulsion understood as including all of the means of trafficking.<sup>143</sup>

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<sup>136</sup> Protocol to the Forced Labour Convention No. 29 (2014) art 4(2).

<sup>137</sup> "Implementation of the Non-Punishment Principle" (n 113) 33.

<sup>138</sup> "Explanatory Brief" (n 109) 1.

<sup>139</sup> Bijan Hoshi, "The Trafficking Defence: A Proposed Model for the Non-Criminalisation of Trafficked Persons in International Law" (2013) 1(2) *Groningen Journal of International Law* 54, 55, 70 <<https://doi.org/10.21827/5a86a78872676>>.

<sup>140</sup> The International Bar Association and the British Institute of International and Comparative Law, *Human Trafficking and The Rights of Trafficked Persons: An Exploratory Analysis on The Application of The Non-Punishment Principle* (International Bar Association 2023) 14; Hoshi, "The Trafficking Defence" (n 139) 55.

<sup>141</sup> UNGA, "Trafficking in Persons, Especially Women and Children, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children," Human Rights Council, 44th Session, UN Doc A/HRC/44/45 (2020) para 32.

<sup>142</sup> Stephen Knight, "The Trafficking Defence in Criminal Law: Nexus and Compulsion" (2023) 87(3) *The Journal of Criminal Law* 192 <<https://doi.org/10.1177/00220183231151920>>.

<sup>143</sup> Piotrowicz and Sorrentino, "Human Trafficking" (n 42) 9; "Non-Punishment of Victims of Trafficking" (n 82) 5; "Non-Criminalization/Non-Punishment" (n 50) 9–10; Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 35; UNGA, "Trafficking in Persons" (n 141) para 36.

## 2. Causation model.

The causation model offers a more practical approach, particularly for scam centre cases. Instead of requiring proof of force or immediate threats, it examines the causal link between the trafficking and unlawful acts,<sup>144</sup> making it more inclusive of subtle control methods. This link is clearest where criminal acts are direct consequences of the trafficking's purpose.<sup>145</sup>

Challenges arise when crimes appear less connected to the exploitation. The *Mehak* case illustrates these difficulties: a victim trafficked for domestic servitude was found guilty of a baby's manslaughter under the orders of her traffickers. The Netherlands Hague Court ruled the non-punishment principle inapplicable because the "assaults and manslaughter of the victim were not sufficiently directly connected with the work that the suspect had to perform during the exploitation."<sup>146</sup> Scam centre cases differ fundamentally: the cyberfraud committed by victims is directly connected to their exploitation—in fact, the criminal acts are inseparable from their exploitation as they constitute the very purpose of their trafficking.

Some also interpret "direct consequence" as requiring temporal proximity between the trafficking and unlawful acts.<sup>147</sup> This interpretation undermines the causation model, potentially excluding acts committed under ongoing control or prior to trafficking. There is no reason why this model would favour a proximity approach over mere causation.<sup>148</sup> Many jurisdictions use a "but for" test to determine causation: but for their trafficking situation, would the crime have occurred? But for their trafficking, victims in scam centres would not have committed cyberfraud. This broader approach better recognises trafficking's persistent impact, even after direct control ends.

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<sup>144</sup> Giammarinaro, "The Importance" (n 43) para 23; UNGA, "Implementation of The Non-Punishment Principle" (n 78); Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 35; UNGA, "Trafficking in Persons" (n 141).

<sup>145</sup> "Implementation of the Non-Punishment Principle" (n 113) 36.

<sup>146</sup> Corinne Dettmeijer-Vermeulen and Luuk Esser, "The Victim Of Human Trafficking as Offender: A Combination With Grave Consequences: A Reflection on the Criminal, Immigration and Labour Law Procedures Involving a Victim of Human Trafficking in the Dutch *Mehak* Case" (2017) 1(1) *Journal of Trafficking and Human Exploitation* 77, 83 <<https://doi.org/10.7590/24522775113>>; Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *National Rapporteur on Trafficking in Human Beings, Trafficking in Human Beings: Case Law on Trafficking in Human Beings 2009–2012: An Analysis* (Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children 2012) 133.

<sup>147</sup> Julia Muraszkievicz, "Protecting Victims of Human Trafficking from Liability: An Evaluation of Section 45 of the Modern Slavery Act" (2019) 83(5) *The Journal of Criminal Law* 394, 398 <<https://doi.org/10.1177/0022018319857497>>; Dettmeijer-Vermeulen and Esser, "The Victim" (n 146) 85.

<sup>148</sup> Knight, "Trafficking Defence in Criminal Law" (n 142) 196.



## C. Offences Within Scope

International instruments advocate applying the non-punishment principle to any offence with an established link to trafficking.<sup>149</sup> No international instrument permits restricting the principle's scope based on crime severity or through closed-lists of offenses committed "in the course of" or "as a direct consequence" of trafficking. Narrow interpretations of the offences included within the scope of the non-punishment undermine the effectiveness of the principle, limiting its protection.<sup>150</sup> As trafficking into scam centres demonstrates, new forms of exploitation emerge, requiring open-ended non-punishment provisions that will protect victims from all unlawful acts linked to trafficking, regardless of severity.<sup>151</sup> Offences covered by the principle broadly fall into three categories: status-offences, purpose offences, and secondary offences.

Status offences arise from the presence of victims in transit or destination countries and where victims enter, stay, work, or exit from a country in violation of existing immigration and labour laws.<sup>152</sup> Status offences facilitate the trafficking of an individual and help traffickers maintain control over victims.

Purpose offences represent "the reason why a victim was trafficked in the first place."<sup>153</sup> Traffickers deliberately use victims as instruments to commit crime,<sup>154</sup> such as pickpocketing, drug trafficking, and financial fraud. These criminal acts serve dual purposes: generating financial gain for traffickers while exposing victims to criminal liability, thereby deterring them from seeking help.<sup>155</sup> In scam centres, this connection is particularly evident as cyberfraud constitutes the very purpose of the trafficking.

Secondary offences may occur when victims, attempting to escape, survive or sustain themselves following their trafficking situation.<sup>156</sup> These may include property damage, assault, or theft, and reflect the victims' desperate circumstances and lack of support.

Regardless of the category, these offences share a common thread: they would not have occurred but for the trafficking situation.

## D. Implementation Challenges

Effective implementation of the non-punishment principle faces two primary obstacles. First, victim identification remains "one of the main challenges in anti-

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<sup>149</sup> OSCE, *Policy and Legislative Recommendations* (n 50) para 57.

<sup>150</sup> UN OHCHR, *Online Scam Operations* (n 11).

<sup>151</sup> International Bar Association, *Human Trafficking* (n 140) 13; UNGA, "Implementation of the Non-Punishment Principle" (n 78) paras 37, 41.

<sup>152</sup> Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 13.

<sup>153</sup> Jovanovic, "Principle of Non-Punishment" (n 38) 66.

<sup>154</sup> Schloenhardt and Markey-Towler, "Non-Criminalisation" (n 79) 14.

<sup>155</sup> "Explanatory Brief" (n 110) 4.

<sup>156</sup> Jovanovic, "Principle of Non-Punishment" (n 38) 66.

trafficking work.”<sup>157</sup> The principle only applies after formal victim identification,<sup>158</sup> yet many jurisdictions lack clear identification procedures or appeal mechanisms, allowing for significant discretion in protection.<sup>159</sup> Authorities often struggle to identify VOT who present as offenders, particularly in forced criminality cases where they must look for the “crime behind the crime.”<sup>160</sup> USAID notes that victims often go unrecognised because authorities misidentify them as willing participants in criminal activities.<sup>161</sup> Additionally, authorities may rely on victims to self-identify as VOT.<sup>162</sup> When authorities rely on self-identification, this problem compounds—victims who committed crimes may view themselves as offenders rather than VOT, associating trafficking with being “sold” or “taken” by means of violence for forced labour or sexual exploitation.<sup>163</sup> The Thai experience illustrates these challenges. In October 2022, the Royal Thai Police reported that 70% of returned VOT from scam centres faced prosecution for money laundering, fraud, and conspiracy to commit organised crime.<sup>164</sup> UNODC documented cases where victims were charged with scamming offences and “offered a deal in which they could plead guilty and receive a reduced prison sentence of three years,” even though these offences were likely committed as a result of being trafficked for forced criminality.<sup>165</sup> Limited screening resources, faced with thousands of cases, prevent thorough victim identification. Once in the criminal justice system as offenders, victims rarely get redirected to protection channels.<sup>166</sup> Therefore, it is the State’s obligation to positively ensure effective identification of trafficked victims and subsequent application of the non-punishment principle.<sup>167</sup>

Secondly, inconsistent applications by authorities produce varying outcomes for VOT.<sup>168</sup> Justice systems remain “geared towards the prosecution, punishment and

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<sup>157</sup> *ibid* 62–63.

<sup>158</sup> “Challenges” (n 93); Pilar Domingo and Kwanruthai Siripatthanakosol, “Labour Migrants’ Vulnerability to Human Trafficking and Labour Exploitation in Southeast Asia: An Analysis of Thailand” ASEAN–ACT (2023) 26 <[https://aseanactpartnershiphub.com/wp-content/uploads/2023/08/Thailand\\_Country\\_Study\\_for\\_the\\_website\\_2Fompsf.pdf](https://aseanactpartnershiphub.com/wp-content/uploads/2023/08/Thailand_Country_Study_for_the_website_2Fompsf.pdf)>; Rapid Asia, “Trafficking Victim Protection” (n 37) 59.

<sup>159</sup> ASEAN–ACT, “Implementation of the Non-Punishment Principle” (n 113) 89.

<sup>160</sup> Rodríguez-López, “Telling Victims from Criminals” (n 47) 11.

<sup>161</sup> “Challenges” (n 93) 1–2, 4; Rodríguez-López, “Telling Victims from Criminals” (n 47) 9.

<sup>162</sup> “Challenges” (n 93) 5.

<sup>163</sup> Rodríguez-López, “Telling Victims from Criminals” (n 47) 10.

<sup>164</sup> UNCHR, *Online Scam Operations* (n 11) 20; Rebecca Ratcliffe, “Sold to Gangs, Forced to Run Online Scams: Inside Cambodia’s Cybercrime Crisis” *The Guardian* (2022) <<https://www.theguardian.com/world/2022/oct/10/sold-to-gangs-forced-to-run-online-scams-inside-cambodias-cybercrime-crisis>>; Mazoe Ford and Supattra Vimonsuknopparat, “Inside the Call Centre Scam that Lured Vulnerable Workers to Cambodia and Trapped Them in the Murky World of Human Trafficking” *ABC* (2022) <<https://www.abc.net.au/news/2022-12-29/inside-call-centre-scams-in-cambodia-torture-fear-and-survival/101770352>>; “Complaint to the ASEAN Inter-Government Commission on Human Rights” (n 16) 3.

<sup>165</sup> UNODC, *Casinos, Cyber Fraud, and Trafficking in Persons* (n 2) 26–27.

<sup>166</sup> “Implementation of the Non-Punishment Principle” (n 115) 8–9; “Challenges” (n 93) 6.

<sup>167</sup> UNGA, “Implementation of the Non-Punishment Principle” (n 78) para 49; International Bar Association, *Human Trafficking* (n 140) 49.

<sup>168</sup> *ibid*.

deportation of offenders, . . . without considerations of the nexus between the offence(s) committed and the exploitation.”<sup>169</sup> Some authorities lack awareness of protective laws,<sup>170</sup> while others operate under discretionary or narrow provisions, like Thailand’s closed-list approach, thereby limiting the protection afforded to VOT. Performance metrics also create problematic incentives: law enforcers measured by arrests and charges may face liability for neglecting duties if they don’t pursue prosecution, disincentivising application of the principle.<sup>171</sup> The Thai system demonstrates these implementation challenges. NGOs have reported cases where individuals identified as VOT by the Department of Special Investigation and cleared to go home were later identified as scammers and charged on related offences by the Royal Thai Police, despite discretionary powers not to pursue charges.<sup>172</sup> Public pressure compounds this problem—with scam victims losing millions, authorities feel pressured to hold someone accountable, often leading to the prosecution of VOT under perceived public interest.

The complex interplay between theoretical foundations and practical challenges demonstrates why non-punishment provisions must be broadly codified. Only comprehensive provisions can ensure uniform victim protection while preventing traffickers from exploiting legal gaps. While the principle has emerged as a cornerstone of victim protection and ASEAN demonstrates commitment through ACTIP, significant implementation barriers persist. These challenges necessitate stronger legal and institutional frameworks that prioritise victim protection over prosecution metrics.

## V. BEYOND CRIMINAL DEFENCES: THE NEED FOR COMPREHENSIVE NON-PUNISHMENT PROVISIONS

Having established the theoretical foundations and scope of the non-punishment principle, we must examine why existing criminal law mechanisms prove inadequate for protecting VOT into scam centres. While some jurisdictions rely on traditional criminal defenses like duress to protect VOT, this approach fails to address the complex realities of trafficking into scam centres.

### A. The Defence of Duress

Duress is a traditional criminal defence excusing crimes committed under threat of imminent harm.<sup>173</sup> Its rationale holds that “threats of immediate death or serious

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<sup>169</sup> *ibid* 48.

<sup>170</sup> Chiang and Casulli, “Guidance on Responding” (n 47) 8.

<sup>171</sup> “Challenges” (n 93) 4.

<sup>172</sup> “Implementation of the Non-Punishment Principle” (n 113) 93.

<sup>173</sup> J. J. Child and others, *Simester and Sullivan’s Criminal Law: Theory and Doctrine* (7th edn, Bloomsbury Publishing 2022) ch 20, 799.

personal violence so great as to overbear the ordinary power of human resistance should be accepted as justifications for acts which would otherwise be criminal.”<sup>174</sup> Under this defence, individuals acknowledge committing an offense, but claim the circumstances under which they committed the offence excuses them from criminal responsibility.<sup>175</sup> Four conditions typically must be met for duress to apply: (1) the threat must be of serious harm or death and must be imminent; (2) the individual must have no reasonable opportunity to escape the situation; (3) the harm threatened must exceed or equal the harm caused by the crime; and (4) the individual must not have voluntarily exposed themselves to the risk of duress.<sup>176</sup>

International criminal law similarly recognises duress, defining it as resulting from “a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.”<sup>177</sup> The *Ongwen* case emphasised these strict requirements, holding that “a merely abstract danger or simply an elevated probability that a dangerous situation might occur—even if continuously present—does not suffice” to satisfy the requirements for the defence of duress.<sup>178</sup> This strict interpretation reflects traditional domestic applications rather than the broader protections of the non-punishment principle.

Criminal law’s focus on accountability makes duress unsuitable for addressing the complex circumstances that compel VOT to commit crimes. In reality, the defence has rarely been used in trafficking cases due to its narrow interpretation.<sup>179</sup> Particularly problematic is its failure to recognise forms of coercion beyond immediate physical threats, such as psychological manipulation, abuse of power, exploitation of vulnerability, and threats extended over time.<sup>180</sup> This limitation proves especially significant in cases where traffickers employ subtle control methods or maintain power over victims for extended periods.

## B. Applying Duress to Case Scenarios

Duress should be considered a last resort for VOT as it fails to protect them from further victimisation.<sup>181</sup> Ideally, the non-punishment principle should apply early to prevent charges, prosecution, and sanctions. However, victims may rely on duress when they are either not identified as VOT or when non-punishment provisions prove too narrow. The following analysis examines three cases selected to illustrate the

<sup>174</sup> Schloenhardt and Markey-Towler, “Non-Criminalisation” (n 79) 20–21.

<sup>175</sup> International Criminal Court, *Dominic Ongwen* (n 81) 58.

<sup>176</sup> William Wilson, *Central Issues in Criminal Theory* (Bloomsbury Publishing 2002) ch 10.

<sup>177</sup> Rome Statute of the International Criminal Court, art 31(1)(d).

<sup>178</sup> International Criminal Court, *Prosecutor v Dominic Ongwen* (Trial Judgment) ICC-02/04-01/15 (4 February 2021) para 2582.

<sup>179</sup> OSCE, *Policy and Legislative Recommendations* (n 50).

<sup>180</sup> Giammarinaro, “The Importance” (n 43).

<sup>181</sup> Hoshi, “The Trafficking Defence” (n 139) 70–71.

limitations of duress in common scenarios of trafficking into scam centres. These cases were selected based on specific criteria: (1) they represent distinct patterns of trafficking identified in UNODC and IOM reports on trafficking into scam centres; (2) they demonstrate different challenges in applying traditional criminal defences; and (3) they highlight gaps between existing legal protections and the realities of trafficking into scam centres.

1. Where the victim did not intend the exploitation.

Jane's case demonstrates how psychological manipulation and indirect threats fall outside traditional duress parameters despite clear trafficking.

- Jane, a 25-year-old from a rural area, saw an online job posting for a high-paying administrative assistant position in a different country. Excited about the opportunity, she applied and was quickly accepted. The company paid for her travel expenses (act). Upon arrival, she was greeted by a representative who took her to a remote compound (act), claiming it was the company's headquarters. Once inside, her ID documents were confiscated (means). She was confined on the third floor of the compound (act) and informed that she would be working every day in a call centre, scamming people out of money (purpose). She witnessed her peers get physically abused for not complying; but was never physically abused herself (means). She also witnessed peers dying while attempting to escape, jumping from the third floor (means). Jane was given a small wage to maintain the appearance of a legitimate job (means). Jane was continuously monitored and occasionally reminded that if she tried to escape or failed to comply, she would face severe consequences, including threats against her family back home (means). Jane was "rescued" in a raid and repatriated home. The officers in charge of her case identified her as a VOT for forced criminality. However, the non-punishment provision of Jane's country does not protect VOT who have committed financial crimes. Jane was charged with scamming offences and seeks to rely on the defence of duress.

Regarding safe avenues of escape, Kremnitzer argues that "criminal law should not demand courageous resistance, but rather reasonable behaviour in the circumstances."<sup>182</sup> Jane clearly had no safe escape option: confined, without documents, and under constant surveillance. While she did not voluntarily expose herself to harm, having been deceived about the job, the duress defence likely fails on other grounds. In *R v LM*, the Court of Appeal of England and Wales held that duress requires a "direct threat of death or serious injury aimed at the defendant or someone sufficiently close."<sup>183</sup> Witnessing the abuse and death of others, though traumatic, falls outside this requirement. The occasional threats are also unlikely to meet the

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<sup>182</sup> Kremnitzer, "Argument for Retributivism" (n 105) 168.

<sup>183</sup> Knight, "Trafficking Defence in Criminal Law" (n 142).

threshold of duress. In a Malaysian case, the court ruled that under duress, “there must be reasonable fear, at the very time, of instant death. Persons who do criminal acts from fear of anything but instant death do them at their peril. If an offence is completed when all danger of instant death has been removed the person committing the offence is not protected under this section.”<sup>184</sup> At the very time threats are made, they “should be capable of being carried out then and there.”<sup>185</sup> It has also been argued that “[n]othing below threats of death, serious harm, or rape is regarded, in law, as having sufficient coercive effect.”<sup>186</sup> Jane’s actions were driven by anticipated rather than immediate threats, and threats against her family lacked required immediacy. Moreover, courts would likely find the periodic threats she faced disproportionate to the extensive financial harm from daily cyberfraud operations. While duress would likely fail, the non-punishment principle would recognise the persistent coercive environment that shaped her actions, accounting for both subtle and overt forms of control that compelled her crimes.

## 2. Where the individual intended the exploitation but was deceived.

John’s case illustrates how initial consent, even when obtained through deception, can preclude the defence of duress despite clear subsequent exploitation.

- John, a 30-year-old and recently unemployed, was approached by a friend with an opportunity to make a lot of money quickly by working in a scam centre abroad (act). Desperate for cash, John agreed. John paid his way to travel and was initially excited about the prospect of earning significant income. Upon arrival, he was taken to a facility where the criminal nature of the work was revealed (purpose). John also found himself in a cramped, dirty room shared with several other workers (means). He was informed that if he did not meet strict sales targets, he would face physical punishment. John quickly learned that failing to meet quotas resulted in severe physical abuse, confinement to small, dark rooms without food, and other forms of mistreatment (means). His movements were closely monitored, and attempts to escape were met with threats and violence. The constant threat of physical harm, coupled with the deplorable living conditions, kept John compliant, despite his initial willingness to engage in scamming (means). Authorities recognised John’s exploitative situation but still identified him as a willing offender.

John’s case presents mixed elements for duress. He faced direct threats and physical harm for non-compliance. Crimes against life are typically seen as more severe than crimes against property. Therefore, the threats and harm against John’s life would likely be considered greater than or equal to the harm caused against

<sup>184</sup> *Mohamed Yusof Bin Haji Ahmad v Public Prosecutor* [1983] 2 M.L.J. 167, 170.

<sup>185</sup> *ibid* 171.

<sup>186</sup> J. J. Child and others, *Simester and Sullivan’s Criminal Law* (n 173) 801.

property through defrauding people of money. The abusive conditions and surveillance eliminated safe escape options. However, John intended to work in the scam centre and should have foreseen that working in a criminal environment would carry risks. In *R v LM*, the Court of Appeal held that duress will not apply where a defendant “voluntarily associated” with people such that they lay themselves open to compulsion to commit offences.<sup>187</sup> Therefore, John’s initial intention to work in the scam centre likely precludes the defence.

If John had been properly identified as a VOT, the non-punishment principle would have offered better protection, recognising that “one cannot consent to one’s own exploitation.”<sup>188</sup> Indeed, John’s friend exploited his position of vulnerability—his unemployment—to recruit and deceive him into taking the job.<sup>189</sup> While John originally consented to working in the scam centre, he did not consent to the abusive conditions, nor to losing his freedom.<sup>190</sup> As UNODC notes regarding sex trafficking, “a person’s awareness of being employed in the sex industry or in prostitution does not exclude such person from becoming a victim of trafficking.”<sup>191</sup> Similarly, while John knew the work’s nature, he was deceived about conditions that proved exploitative and coercive. In such cases, initial consent should not impede identifying individuals as VOT.

### 3. Where the individual intends and willingly commits crime.

Sara’s case represents the complex intersection of apparent voluntary participation and underlying coercion.

- Sarah, a 28-year-old, was previously trafficked into a scam centre but was rescued during a police raid. After struggling to find legitimate work and facing financial difficulties, she decided to return to the scam centre, fully aware of the nature of the work. Sarah contacted her former recruiters, who facilitated her return. She was welcomed back and quickly resumed her previous role. This time, Sarah knew what to expect. She worked hard to meet and exceed sales quotas, which led to her being rewarded with better living conditions and additional privileges. Unlike many of her peers, Sarah was not subjected to physical abuse or severe punishments due to her success in scamming people. Her compliance and performance resulted in promotions and increased responsibility within the scam centre.

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<sup>187</sup> Knight, “Trafficking Defence in Criminal Law” (n 142) 201.

<sup>188</sup> UNODC, *The International Legal Definition of Trafficking in Persons: Consolidation of Research Findings and Reflection on Issues Raised* (UNODC 2018) 10.

<sup>189</sup> UNODC, *Guidance Note on ‘Abuse of a Position of Vulnerability’ as a Means of Trafficking in Persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (UNODC 2012) paras 2.3, 2.5, and 5.2.

<sup>190</sup> “The Role of ‘Consent’” (n 71).

<sup>191</sup> UNODC, *Model Law Against Trafficking in Persons* (UNODC 2009) 33–34.

Here, neither duress nor the non-punishment principle applies. Sarah knowingly returned to the scam centre, aware of conditions. She faced no imminent threats, and her compliance was driven by rewards, rather than coercion. The defence of duress will not apply considering the voluntary exposure to the risks and the absence of imminent threats. Similarly, the non-punishment principle would not apply as Sarah stopped being a VOT the second time she willingly went to work in the scam centre. As UNODC states, “where a person has consented, and that consent has not been nullified, what may have initially looked like a situation of trafficking may be proven not to be.”<sup>192</sup> Despite the exploitative environment, Sarah herself isn’t exploited. Her informed consent of the risks and work conditions and continued willing participation preclude both duress and non-punishment.

### C. Implications for Non-Punishment Provisions

These cases demonstrate critical limitations of relying on criminal defences rather than specific non-punishment provisions. The defence of duress was designed for discrete instances of compulsion, not the sustained coercion characteristic of trafficking. The requirement for immediate threats fails to capture sophisticated control mechanisms in scam centres. Particularly, it struggles where criminal activities constitute the purpose rather than the byproduct of exploitation. Additionally, the formal business structures of scam centres complicate proving coercion. Duress places excessive burden on victims to prove specific threats. However, complex recruitment patterns involving both consent and coercion create evidential difficulties.

As demonstrated by Jane and John’s cases, a specific non-punishment provision is crucial because duress proves unsuitable for addressing the circumstances under which VOT commit crimes. When victims commit offenses under their exploiters’ directions, they act subject to both physical and psychological pressure, ultimately generating profit for their traffickers. Even when victims like Jane and John fail to meet duress requirements—whether due to lack of imminent threat or voluntary exposure to risks—they deserve to have their criminal acts excused as much as those who qualify for traditional defences. As stated by Zornosa, “from a sheer culpability standpoint, society should allocate all of the blame to the trafficker and none to the victim.”<sup>193</sup>

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<sup>192</sup> UNODC, *Abuse of a Position of Vulnerability and Other “Means” Within the Definition of Trafficking in Persons* (UNODC 2013) 78.

<sup>193</sup> Francisco Zornosa, “Protecting Human Trafficking Victims From Punishment and Promoting Their Rehabilitation: The Need for an Affirmative Defence” (2016) 22(1) *Washington and Lee Journal of Civil Rights and Social Justice* 177, 190.



## VI. CONCLUSION

The analysis of trafficking into scam centres in Southeast Asia reveals not only unprecedented challenges for legal frameworks but also the urgent need to evolve victim protection mechanisms. Unlike traditional forms of trafficking, victims are specifically recruited and exploited to commit crimes, creating a complex dynamic where criminal acts are not incidental but the very purpose of exploitation. This novel form of trafficking demands evolution in how we apply the non-punishment principle. The case studies presented in this article highlighted the complex realities faced by these victims, demonstrating how traditional defences like duress fall short in addressing their circumstances. The sophisticated combination of physical force, psychological manipulation, and business-like structures defies conventional legal responses. The non-punishment principle, properly applied, offers a more appropriate framework by acknowledging that victims' criminal acts stem directly from their exploitation rather than free choice. However, significant barriers hinder the principle's implementation. Jurisdictions often mischaracterise trafficking into scam centres as labour disputes or immigration violations, while the scale of cyberfraud complicates applying non-punishment protections. These challenges are not insurmountable but require specific responses: legal frameworks must explicitly recognise trafficking for forced criminality, victim identification processes need strengthening, and law enforcement requires better training in recognising complex exploitation patterns. This article's analysis demonstrates that effective responses to trafficking into scam centres require reconceptualising how we approach victim protection. The non-punishment principle must evolve beyond traditional notions of coercion to address situations where criminal activity constitutes the exploitation itself. Only through such evolution can legal frameworks ensure justice for victims while maintaining focus on prosecuting the true architects of these crimes. As the issue of trafficking into scam centres continues to evolve, so too must our legal and protective frameworks, ensuring that all victims receive the justice and support they deserve.

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