

ARTICLES

THE UNRESOLVED KK PARK SAGA ON HUMAN TRAFFICKING, CYBER SCAMS AND MODERN SLAVERY: ADAPTING THE NON- PUNISHMENT PRINCIPLE AS A SOLUTION

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ABSTRACT

Myanmar's KK Park scam factory saga is one of the most pressing and widely reported challenges of human trafficking and modern slavery in Southeast Asia. Victims were enticed, trapped, and coerced into conducting global-scale cyber scams. It involves three policy goals: stop crimes, protect enslaved victims, and protect scam victims. Holding the enslaved persons accountable for the scams that they committed is a balanced way to achieve these three policy goals, but they are *prima facie* shielded by the Non-Punishment Principle under international law, as victims of human trafficking and slavery. Applying this Principle directly without modifying it for the KK Park context has three shortcomings. First, the Non-Punishment Defense applies without regard to the enslaved victims' reckless fault for falling into *avoidable* job-scam-turned-enslavement. Second, the Defense looks at the crimes (scams), instead of their consequences (e.g. causing suicides of the scam victims). Third, the Defense overshadows the enslaved victims' laudable divulgence of their self-incriminating experience, because the Defense is premised on recognizing their victimization, instead of the former that deserves substantial mitigation. When the public has doubts as to their status as "ideal victims", a victimization-based Defense would have an arbitrary, weak basis. Garnering public understanding

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and support—via reinstating personal accountability—is crucial in the fight against KK modern slavery.

INTRODUCTION

The KK Park scam factory saga is one of the most pressing challenges of human trafficking and modern slavery in Asia. It started during the COVID-19 pandemic, and despite efforts of the media, governments, and NGOs, it is still happening today, where multilingual victims are trafficked and enslaved in parts of Southeast Asia for international cyber scams.¹ The situation calls for three policy goals, namely (1) to stop human trafficking and modern slavery,² (2) to protect the trafficked-enslaved victims, and (3) to protect the scam victims. This article considers the usefulness of the Non-Punishment Principle (the “Principle”) in this context and suggests that the Principle has to be adjusted for the KK situation. Heys & Niezna have explained this “international law” Principle:

The non-punishment principle reflects the understanding that victims of trafficking and slavery might be compelled to commit unlawful activities, and it prioritises the protection and rehabilitation of victims of trafficking and modern slavery over their prosecution. *The principle is recognised in international law*, and the UK developed a statutory defence under Section 45 (s45) of the Modern Slavery Act 2015

1. Nectar Gan, Joyce Jiang & Kocha Olarn, *A Chinese actor was abducted from Thailand. His swift return has sparked hopes – and fears – back home*, CNN (Jan. 15, 2025, 3:50 AM), <https://edition.cnn.com/2025/01/14/china/china-actor-thailand-scam-myanmar-intl-hnk/index.html> [<https://perma.cc/XGP3-68BP>]; Leo S.F. Lin, *Business As Usual? Chinese Organised Crime in Southeast Asia*, AUSTL. INST. OF INT'L AFFAIRS: AUSTRALIAN OUTLOOK (Jan. 17, 2025), <https://www.internationalaffairs.org.au/australianoutlook/business-as-usual-chinese-organised-crime-in-southeast-asia/> [<https://perma.cc/82RH-8RWY>]. (“Given the overall economic downturn in China, young job seekers will likely continue falling into the trap of organised fraud schemes. Despite the Chinese government’s crackdown on major organised crime rings, regulatory and enforcement loopholes exist in the Southeast Asian region. Especially in Myanmar, the intersection of organised fraud, human trafficking, and technology-driven crime has transformed the country into a critical crime nexus, with scam compounds taking advantage of gaps.”).

2. When there is already widespread understanding that the Southeast Asia scam center issue is classified as one of both human trafficking and modern slavery, this article does not have to dwell on whether the definitions for these two categories are met. *See, e.g.*, Mark Turner & Anthea McCarthy-Jones, *Cyber slavery starts up in Southeast Asia*, E. ASIA F. (Jun. 14, 2023), <https://eastasiaforum.org/2023/06/14/cyber-slavery-starts-up-in-southeast-asia/>; Ivan Franceschini et. al., *A new type of victim? Profiling survivors of modern slavery in the online scam industry in Southeast Asia*, in TRENDS IN ORGANIZED CRIME (2024), <https://link.springer.com/article/10.1007/s12117-024-09552-2> [<https://perma.cc/9ZTF-AYMF>]. *cf.* Office of the High Comm’r for Hum. Rts. (OHCHR), *Online Scam Operations and Trafficking into Forced Criminality in Southeast Asia: Recommendations for a Human Rights Response* 11 (2023), https://bangkok.ohchr.org/sites/default/files/wp_files/2023/08/ONLINE-SCAM-OPERATIONS-2582023.pdf [<https://perma.cc/AHR2-Z7AH>] (opposite to this understanding, there have been contentions that they constitute “labour migration,” but “not trafficked”).

(“MSA”) to comply with it. The purpose of s45 is to protect victims of modern slavery from being punished for offences they have been compelled to commit.³

The Principle leads to the corresponding Non-Punishment Defense (the “Defense”), which shields the enslaved victims from criminal liability for the coerced crimes.⁴

An unmodified application of the Principle to the KK Park context has three major shortcomings. First, the Defense applies without regard to the victims’ reckless fault for falling into *avoidable* job-scam-turned-enslavement. Second, the Defense looks at the crimes (scams), instead of their consequences (e.g., causing suicides). Third, the Defense overshadows the victims’ laudable divulgence of their self-incriminating experience, because the Defense is premised on recognizing their victimization, instead of the former that deserves substantial mitigation. When the public has doubts as to their status as “ideal victims”, a victimization-based Defense would have an arbitrary, weak basis. Garnering public understanding and support—via reinstating personal accountability—is crucial in the fight against KK Park’s human trafficking and modern slavery.

Accountability for their crimes is an underexplored topic when the public attention focuses more on their rescue and crackdowns.⁵ A further reason for the lack of attention on the trafficked/enslaved persons’ accountability is that, despite the international legal authority of the Principle, “the Council of Europe identified a significant lack of awareness about the [Principle] amongst competent authorities.”⁶ Furthermore, Lin sensibly predicted that, despite the intergovernmental efforts to crack down on the scam centers in Myanmar, such criminal activities are going to persist because “young job seekers will likely continue falling into the trap of organised fraud schemes.”⁷ Holding the enslaved victims accountable for the scams is a way to deter and ensure that they take responsibility for signing up for suspiciously high-paying jobs abroad, as the media has often warned. Their liability should be heavily discounted to reflect not just their victimization as slaves, but also their undernoted contribution of speaking out about their experiences. A full blanket immunity,

3. Alicia Heys & Maayan Niezna, *The Non-Punishment Principle and its Implementation in the UK*, BONAVERO REPS. NO. 1/2024, at 4 (Feb. 1, 2024) (emphasis added), <https://www.law.ox.ac.uk/content/bonaveroreports-series> (follow the hyperlink beside “BONAVERO REPORT NO.1/2024 (February 2024)”) [<https://perma.cc/6WHV-QHG7>].

4. *Id.*

5. See, e.g., Helen Davidson & Rebecca Ratcliffe, *A kidnapped Chinese actor, a scam gang, and a very public rescue operation*, GUARDIAN (Jan. 14, 2025), <https://www.theguardian.com/world/2025/jan/14/wang-xing-chinese-actor-abduction-thailand-myanmar-scam-ntwnfb> [<https://perma.cc/H43J-BMFR>] (describing the governmental rescue as “very public”).

6. Anne Gallagher & Klara Skrivanova, *Human Rights and Trafficking in Persons*, Fifteenth Informal ASEM Seminar on Hum. Rts., 72 (Nov. 24-26, 2015), <https://asef.org/wp-content/uploads/2020/10/Background-Paper-15th-Seminar-Final.pdf>. [<https://perma.cc/ZN9Q-FETF>].

7. Lin, *supra* note 1.

by contrast, does not adequately balance the scam victims' interests and the deterrence of modern slavery. Reinstating *proper* accountability on their part helps prevent *avoidable* enslavement and garner public support for them. Accountability better serves all three policy goals.

Whilst the KK Park saga happens in Southeast Asia, it requires international attention because of its impact beyond the region. Victims of slavery are lured from abroad and trafficked within Southeast Asia for their language abilities to conduct cyber fraud.⁸ Enslaved victims reportedly come from many jurisdictions, such as China, Indonesia,⁹ India,¹⁰ Japan,¹¹ the Philippines,¹² Morocco,¹³ Singapore,¹⁴ Sri Lanka,¹⁵ and South Korea.¹⁶ At the same time, cyber scams are suffered internationally, and the US is one of the severely affected jurisdictions: "U.S. citizens are frequently victims of the Southeast Asian scamming industry. USIP estimated that Americans lost \$3.5 billion to scams specifically originating in Southeast Asia in 2023."¹⁷ One report revealed that a job seeker was trafficked, and "was forced to target Canadians and other English-speaking Westerners in cryptocurrency scams designed to steal their

8. See, e.g., David Whitehouse, *Cambodia, Myanmar 'Cyber-Slaves Are Being Recruited Globally, Research Finds*, DIPLOMAT (May. 8, 2023), <https://thediplomat.com/2023/05/cambodia-myanmar-cyber-slaves-are-being-recruited-globally-research-finds/> [<https://perma.cc/877K-USBN>]; Suneth Perera & Issariya Praithongyaem, *My hell in Myanmar cyber slavery camp*, BBC (Apr. 20, 2024), <https://www.bbc.com/news/articles/cw076g5wnr3o> [<https://perma.cc/RTV9-ARS6>].

9. *'Modern slavery': Thousands of Indonesians in clutches of scam syndicates*, STRAITS TIMES (Dec. 21, 2024), <https://www.straitstimes.com/asia/se-asia/modern-slavery-thousands-of-indonesians-in-clutches-of-scam-syndicates> [<https://perma.cc/5379-RZQ9>].

10. Cherylann Mollan, *Cambodia: Hundreds of Indians rescued from cyber-scam factories*, BBC (Apr. 1, 2024), <https://www.bbc.com/news/world-asia-india-68705913> [<https://perma.cc/WGN3-TZCJ>].

11. Shin Kasahara, *NGO: 6 Japanese held captive in 'crime hub' in east Myanmar*, ASAHI SHIMBUN (Jan. 15, 2025), <https://www.asahi.com/ajw/articles/15585261> [<https://perma.cc/35BJ-XQCU>].

12. Virma Simonette & Kelly Ng, *Hundreds rescued from love scam centre in the Philippines*, BBC (Mar. 14, 2024), <https://www.bbc.com/news/world-asia-68562643> [<https://perma.cc/2NV3-AH4P>].

13. Latifa Babas, *Six Moroccans freed from Myanmar scam ring after paying ransom, many still captive*, YABILADI (Mar. 7, 2024), <https://en.yabiladi.com/articles/details/151463/moroccans-freed-from-myanmar-scam.html> [<https://perma.cc/KF8P-LUFT>].

14. David Sun, *Well-educated Singaporeans among people trafficked to work in scam centres: United Nations report*, STRAITS TIMES (Nov. 15, 2024), <https://www.straitstimes.com/singapore/well-educated-singaporeans-trafficked-to-work-in-scam-centres-united-nations-report> [<https://perma.cc/BX8K-AVAZ>].

15. Perera & Praithongyaem, *supra* note 8.

16. Lim Jeong-won, *More Koreans getting scammed, kidnapped in Golden Triangle, warns Seoul*, KOREA JOONGANG DAILY (Feb. 28, 2024, 3:02 PM), <https://koreajoongangdaily.joins.com/news/2024-02-28/national/diplomacy/More-Koreans-getting-scammed-kidnapped-in-Golden-Triangle-warns-Seoul/1990990> [<https://perma.cc/PX3B-SHKJ>].

17. Julia Dickson & Lauren Burke Preputnik, *Cyber Scamming Goes Global: Unveiling Southeast Asia's High-Tech Fraud Factories*, CSIS (Dec. 12, 2024), <https://www.csis.org/analysis/cyber-scamming-goes-global-unveiling-southeast-asias-high-tech-fraud-factories> [<https://perma.cc/4CQ5-DY3D>].

life savings.”¹⁸ Another report similarly noted that the trafficked victim was “forced to scam Australians.”¹⁹ Legal accountability is therefore an issue of international relevance.

I. THE “KK PARK” MODERN SLAVERY

A. The “KK Park” Cyber Scam Factory Saga

Job seekers from Asia and beyond are lured by fake high-paying work to travel to Southeast Asia, which is a human trafficking scheme.²⁰ The “KK Park,” a cyber scam site in Myanmar, has effectively become the slang term for scam factories. Such scam activities continue to exist in Southeast Asia. Victims are usually targeted for their language proficiency, such as the ability to speak Chinese.²¹ Scammers, lowering the job applicants’ guard, often lure them with promises of work in nearby tourist or vacation-friendly countries like Thailand, which is geographically proximate to the scam center in Myanmar.²² The job applicants are captured upon arrival, trafficked to these sites in Cambodia or Myanmar,²³ and coerced into conducting cyber scams.²⁴ The enslaved victims are provided with “well-rehearsed” scripts, and contact people abroad randomly

18. Katie Pedersen et al., *Human trafficking victim says he was forced to target Canadians in crypto investment scam*, CBC (Feb. 9, 2024), <https://www.cbc.ca/news/business/crypto-scam-human-trafficking-1.7105454> [<https://perma.cc/D6F6-NMAL>].

19. Cait Kelly, *‘I couldn’t escape’: the people trafficked into call centres and forced to scam Australians*, GUARDIAN (Apr. 2, 2023), <https://www.theguardian.com/law/2023/apr/02/i-couldnt-escape-the-people-trafficked-into-call-centres-and-forced-to-scam-australians> [<https://perma.cc/98DJ-VN6T>].

20. Julia Bayer, Julett Pineda & Yuchen Li., *How Chinese mafia are running a scam factory in Myanmar*, DW (Jan. 30, 2024), <https://www.dw.com/en/how-chinese-mafia-are-running-a-scam-factory-in-myanmar/a-68113480> [<https://perma.cc/BK5M-NTNR>] (reporting how an African job applicant for an IT position fell into enslavement). Dominic Faulder, *Asia’s scamdemic: How COVID-19 supercharged online crime*, NIKKEI (Nov. 16, 2022), <https://nikkei.shorthandstories.com/asias-scamdemic-how-covid-19-supercharged-online-crime/> [<https://perma.cc/7ZTL-3R2D>] (noting how cyber scams “[E]merged from a toxic combination of unemployment, lockdown isolation, and unprecedented social media use.”).

21. See Whitehouse, *supra* note 8.

22. Dave Grunebaum, *In Southeast Asia’s scam centers, human trafficking worsens*, VOA (Dec. 5, 2024, 12:00 PM), <https://www.voanews.com/a/in-southeast-asia-s-scam-centers-human-trafficking-worsens/7888452.html> [<https://perma.cc/6UYJ-FVMR>].

23. *Id.* (“Last year, the United Nations estimated that more than 200,000 people were forced to work in scam centers in Cambodia and Myanmar alone.”); Jintamas Saksornchai, *Thai police say Chinese actor was trafficked to Myanmar to work in a scam operation*, AP (Jan. 8, 2025, 5:10 AM), <https://apnews.com/article/thailand-china-actor-scam-myanmar-b1d6ac8d3d65446a7e82410bc9bf8b3e> [<https://perma.cc/V4LZ-KKFV>] (reporting that a Chinese actor was lured to work in Thailand, but then trafficked to a scam center in Myanmar); Vijitra Duangdee, *Myanmar scam operations move south along Thai border*, VOA (Feb. 1, 2025, 7:07 AM), <https://www.voanews.com/a/myanmar-scam-operations-move-south-along-thai-border/7959295.html> [<https://perma.cc/V3HB-JXZS>].

24. Charlie Campbell, *Poppies to Pig-Butchering: Inside the Golden Triangle’s Criminal Reboot*, TIME (Mar. 20, 2024, 11:00 PM), <https://time.com/6899646/scams-trafficking-drugs-southeast-asia-golden-triangle/> [<https://perma.cc/3VPP-74WF>].

via social media, cold calls, WhatsApp, Telegram, etc.²⁵

The enslaved, based on the scripts' instructions, pose as attractive singles for honey traps as in "pig butchering" scams.²⁶ The scripts are highly sophisticated, usually spanning over a month, patiently discussing causal topics such as pets, food, or hobbies, to lower the guard of the target. Once trust is built, the fraudster will come up with an excuse for urgent money, like healthcare bills or an investment opportunity.²⁷

Another common type of scripted scheme involves impersonation as law enforcement officers asking for personal particulars and bank information. For example, it can involve fabrications that some seldom-seen family members, like grandchildren, are in urgent need of bail money.

In general, the schemes utilize manipulative tactics, such as false urgency, loneliness, fear of missing out on moneymaking opportunities (the "FOMO" or "Kiasu" cultural-psychological construct),²⁸ sympathy, misconceptions about cross-border legal procedures, etc.

At the same time, they deploy cutting-edge technologies, like AI voice change and face shift, making the fraud nearly flawless, even to highly educated professionals.²⁹ Reportedly, "between 2020 and 2024, victims worldwide lost approximately \$75 billion to the Southeast Asian-based cyber scams."³⁰

B. The Coercion and Enslavement

The enslaved are given three options. The first option is to obey the demands to avoid torture.³¹ Repeated failures to defraud will result in organ harvesting.

25. See, e.g., Cordelia Lynch, *'They fall in love with me': Inside the fraud factories driving the online scam boom*, SKY NEWS (Oct. 18, 2024), <https://news.sky.com/story/they-fall-in-love-with-me-inside-the-fraud-factories-driving-the-online-scam-boom-13234505> [https://perma.cc/639A-A7RE].

26. See, e.g., Teele Rebane & Ivan Watson, *Killed by a scam: A father took his life after losing his savings to international criminal gangs. He's not the only one*, CNN (Jun. 20, 2024, 5:25 AM), <https://edition.cnn.com/2024/06/17/asia/pig-butchering-scam-southeast-asia-dst-intl-hnk/index.html> [https://perma.cc/E4CR-L6UA].

27. See, e.g., Sarah Hooper, *Forced to say 'sweet nothings': Hundreds rescued from love scam centre*, METRO (Mar. 15, 2024, 10:31 AM), <https://metro.co.uk/2024/03/14/hundreds-rescued-scam-masquerading-online-gambling-centre-20464696/> [https://perma.cc/EP2S-C975].

28. See, e.g., Brandon Christopher Dulisse, Nathan Connealy & Matthew William Logan, *"Get Rich Quick," Scheme or Script? The Effect of Cryptoculture on the Susceptibility of Fraud Victimization among Cryptocurrency Purchasers*, 94 J. CRIM. JUST. (2024).

29. U.N. Office on Drugs & Crime [UNODC], *Transnational Organized Crime and the Convergence of Cyber-Enabled Fraud, Underground Banking and Technological Innovation in Southeast Asia: A Shifting Threat Landscape* (Oct. 2024), https://www.unodc.org/roseap/uploads/documents/Publications/2024/TOC_Convergence_Report_2024.pdf. [https://perma.cc/D9GJ-7S4M].

30. Clara Fong & Abigail McGowan, *How Myanmar Became a Global Center for Cyber Scams*, COUNCIL ON FOREIGN RELATIONS (May 31, 2024), <https://www.cfr.org/in-brief/how-myanmar-became-global-center-cyber-scams> [https://perma.cc/C4QM-VU7V].

31. Davidson & Ratcliffe, *supra* note 5.

The second option is to call their family for ransom.³² Contacting the outside world is not strictly prohibited, since escaping the scam site is impossible. The final option, as another way out, requires the enslaved to find new victims as replacements.³³

II. HOW THE CURRENT FRAMEWORK FAILS TO DULY BALANCE THE THREE POLICY OBJECTIVES?

A. Crackdowns Are Inadequate and Too Difficult

The most effective prevention and protection for both scam and enslaved victims should be a governmental crackdown on the enterprise, because it directly addresses the source of human trafficking and slavery.

But this has not been successful.³⁴ The situation is inherently complicated because the scam factories are strategically situated in “lawless border” areas,³⁵ and the syndicates involve the junta’s control.³⁶ This makes intergovernmental interventions more challenging due to political and jurisdictional considerations. For example, the Chinese government crackdowns struck a blow against the crimes, but then the resurgent criminal enterprise targeted non-Chinese nationals instead and strategically avoided the Chinese government’s radar.³⁷

In addition, the goal of crackdowns is to prevent future similar incidents. However, imposing accountability is not just about the prevention of future cases, but also the resolution and reparation of cases that have already happened. In other words, crackdowns are not an adequate substitute for accountability. Even if all the scam centers are finally eliminated, accountability remains a relevant issue, as the wrongful acts have already been committed.

32. *Id.*

33. Raja Noraina Raja Rahim & Hakimi Suria Kencana, *Woman sends last messages before alleged human trafficking ordeal at Thailand-Myanmar border*, NEW STRAITS TIMES (Mar. 13, 2024), <https://www.nst.com.my/news/nation/2024/03/1025316/woman-sends-last-messages-alleged-human-trafficking-ordeal-thailand> [https://perma.cc/4YXF-6GW9].

34. Bayer, Pineda & Li, *supra* note 20.

35. See, e.g., Jihane Rahhou, *Cyber Mafias Hold Moroccans Captives on Thailand-Myanmar Border*, MOROCCO WORLD NEWS (May 1, 2024), <https://www.moroccoworldnews.com/2024/05/362396/cyber-mafias-hold-moroccans-captives-on-thailand-myanmar-border> [https://perma.cc/99EH-QB2Z]; Jonathan Head, *The Chinese mafia’s downfall in a lawless casino town*, BBC (Nov. 23, 2023), <https://www.bbc.com/news/world-asia-67471138> [https://perma.cc/S9V7-K49T].

36. Jason Tower & Priscilla A. Clapp, *Beijing’s crackdown pushes Myanmar criminal groups to Karen State as the junta’s control of these groups and their revenue weakens*, U.S. INST. OF PEACE (Apr. 22, 2024), <https://www.usip.org/publications/2024/04/china-forces-myanmar-scam-syndicates-move-thai-border> [https://perma.cc/Y688-CL8L]; Helen Regan et al., *Myanmar military loses control of key town on Thai border, rebels say, in major win for anti-junta resistance*, CNN (Apr. 11, 2024), <https://edition.cnn.com/2024/04/11/asia/myanmar-myanmar-knu-military-junta-intl-hnk/index.html> [https://perma.cc/U59U-25K2].

37. Vincent MacIsaac, *Myanmar’s Scam Hells Can’t Release Their Captives*, IRRAWADDY: BURMA (Sep. 6, 2024), <https://www.irrawaddy.com/news/burma/myanmars-scam-hells-cant-release-their-captives.html> [https://perma.cc/E4BL-7YC7].

B. No Recourse for the Scam Victims

The scam victims, feeling angry and betrayed after being defrauded of their lifelong savings, may want to recover their financial loss. In addition, they might want to vindicate justice by holding the culprit accountable for the damage caused. However, they cannot possibly sue the remote masterminds behind the scenes due to a number of reasons, like the inability to apprehend them, etc.³⁸

The enslaved executed the scams, and the scam victims might want to hold them accountable for the misdeeds. The enslaved returns home upon release and might be in the same or an approximate jurisdiction as the scam victims. Financial losses could seem recoverable since the enslaved could afford the ransom.

Justice can be vindicated via public and/or private recourse—in the sense that legal accountability for the wrongdoing is duly upheld. In terms of public recourse, the prosecution might also want to sue the enslaved for the fraud. A criminal conviction can include a victim compensation order for the scam victims. But neither public prosecution nor private litigation would work, as the following analysis will demonstrate.

C. The Enslaved Are Generally Not Accountable for Their Crimes

To broaden the discussion and given the transboundary nature of the crimes, this article will highlight the relevant laws and principles that are hotly discussed internationally, many of which have strong referential uses for other jurisdictions affected by the crimes (e.g., common law jurisdictions like Hong Kong and the US).³⁹ The UK approach is particularly noteworthy for its adoption of the international Non-Punishment Principle. The impacted jurisdictions should consider the proposed adaptation of the Principle (to be discussed in Part III of this article).

*1. Criminal Immunity: The Non-Punishment Principle*⁴⁰

As the starting point, it is crucial to acknowledge that the enslaved are victims of modern slavery and human trafficking.⁴¹ They are forced to commit crimes “as they attempt to navigate the near-impossible choices displacement,

38. See Bayer, Pineda & Li, *supra* note 20.

39. See Dickson & Preputnik, *supra* note 17.

40. In this article, “immunity” is used in the same sense as “defense.”

41. Article 3 of the Palermo Protocol defines trafficking 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 . . . 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.” G.A. Res. 55/25 (Nov. 15, 2000). Similar definitions have been adopted by other international instruments, such as Art.2 of the EU Directive 2011/36/EU.

destitution, and desperation confront them with.”⁴² The English Court of Appeal forcefully stated that they “should be protected against the further stigma of a criminal conviction for an offence committed in consequence of their initial victimisation.”⁴³ The “international standards” emphasize “the Non-Punishment Principle” for victims of modern slavery and human trafficking.⁴⁴ For example, Article 26 of the Council of Europe Convention on Action Against Trafficking in Human Beings 2005 provides that each state party “shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”⁴⁵ Article 8 of the EU Directive 2011/36/EU stipulates that the authorities should be “entitled not to prosecute or impose penalties on victims of trafficking . . . for their involvement in criminal activities which they have been compelled to commit.”⁴⁶ These European conventions are enforceable in the European Court of Human Rights.⁴⁷ In this article, a corresponding full defense for compelled crime will be termed “Non-Punishment Defense.”

The Principle has a solid legal foundation because it “is not a new principle but rather draws on long-established principles common to all legal systems around concepts such as criminal responsibility and duress.”⁴⁸ Besides, the Principle “is now firmly established under European law” and “has been recognized outside Europe.”⁴⁹

As the Principle “is recognized in international law,”⁵⁰ it is not only found in European legal sources. The Principle is also stipulated in Article 4, paragraph 2 of the Protocol of 2014 to the 1930 Forced Labour Convention, which provides the exact same provision as the EU Directive 2011/36/EU quoted above.⁵¹ This Protocol has already been ratified by sixty countries, including Malaysia.⁵² But it has not yet been ratified by a number of

42. David Gadd & Rose Broad, *When Victims of Modern Slavery Became Offenders: The Unravelling of the UK's Modern Slavery Agenda*, 10 J. HUM. TRAFFICKING 302, 305 (2024).

43. *MK v. Regina* [2018] EWCA (Crim) 667 [36] (Eng.).

44. Alicia Heys, *The UK's Statutory Defence for Victims of Modern Slavery and its Narrow Understanding of Victimhood*, 87 J. CRIM. L. 237, 244 (2023).

45. Council of Europe Convention on Action Against Trafficking in Human Beings 2005, art. 26.

46. Council Directive 2011/36/EU, art. 8.

47. See, e.g., *V.C.L. v. United Kingdom*, App. Nos. 77586/12 and 74603/12 EUR. CT. H. R., (Feb. 16, 2021), <https://hudoc.echr.coe.int/fre?i=001-207927> [<https://perma.cc/SNC5-EAD7>].

48. Gallagher & Skrivankova, *supra* note 6, at 70.

49. Ryszard Wilson Piotrowicz & Liliana Sorrentino, *Human Trafficking and the Emergence of the Non-Punishment Principle*, 16 HUM. RTS. L. REV. 669, 698 (2016).

50. Heys & Niezna, *supra* note 3, at 4.

51. International Labour Organization [ILO], *Protocol of 2014 to the Forced Labour Convention, 1930*, art. 4 ¶ 2 (June 11, 2014), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029 [<https://perma.cc/ZC3M-J3HV>].

52. International Labour Organization [ILO], *Ratifications of P029 - Protocol of 2014 to the Forced Labour Convention, 1930* (Nov. 9, 2016), https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672 [<https://perma.cc/ZE9M-ZMA3>].

jurisdictions where many of the enslaved victims are based, such as China, India, and Sri Lanka.⁵³ That said, Article 14, paragraph 7 of the ASEAN Convention Against Trafficking in Persons (“ACTIP”) provides that each member state shall “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.”⁵⁴ It was noted that “seven ASEAN Member States have incorporated non-punishment provisions aligned with ACTIP.”⁵⁵ For example, the law of the Philippines “offer[s] legal protection to trafficked persons who committed unlawful acts as a direct result of, or as an incident in relation to being trafficked.”⁵⁶

Besides, the Principle is contained in the Recommended Principles and Guidelines on Human Rights and Human Trafficking where it states: “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”⁵⁷ While the Recommended Principles are “not binding”, they reinforce “the basis for the emergence of customary international law.”⁵⁸

Furthermore, the Principle can be found in bilateral agreements or memorandums meant to combat human trafficking.⁵⁹ Some agreements explicitly restrict the Principle to only exempt immigration offences of illegal entry of the territory as a result of being trafficked, but there are also agreements that more extensively cover other offenses.⁶⁰

53. See Perera & Praithongyaem, *supra* note 8.

54. ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), art. 14, ¶7 (November 21, 2015), <https://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf> [<https://perma.cc/BG8U-LYWA>].

55. Meg Fitzgerald, *Protecting Forced Offenders: Applying the Non-Punishment Principle to Victims of Trafficking Into Scam Centres*, 4(2) THAI LEGAL STUD. 162, 183 (2024).

56. Felicity Gerry et al., *Human trafficking and the proposed reintroduction of the death penalty*, INT’L BAR ASS’N, <https://www.ibanet.org/article/1F1659DA-6FAD-4296-9614-38D4CF90D2B6> [<https://perma.cc/TB6G-DFMP>] (last visited Aug. 28, 2025).

57. Recommended Principles and Guidelines on Human Rights and Human Trafficking, Rep. of the United Nations High Comm’r for Hum. Rts., at 3, U.N. Doc. E/2002/68/Add. 1 (2002), <https://docs.un.org/en/E/2002/68/Add.1> [<https://perma.cc/9RMU-DLDA>].

58. Saba Demeke, *A Human Rights-Based Approach for Effective Criminal Justice Response to Human Trafficking*, 9 J. INT’L HUMANITARIAN ACTION, at 1, 4 (2024).

59. MARIKA MCADAM, IMPLEMENTATION OF THE NON-PUNISHMENT PRINCIPLE FOR VICTIMS OF HUMAN TRAFFICKING IN ASEAN MEMBER STATES 161-62 (March 2022), https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment_print_smallsize.pdf [<https://perma.cc/A7DL-JPB7>].

60. *Id.* at 2 (“some bilateral MOUs between ASEAN Member States include non-punishment provisions, though may limit protection to only some victims (e.g. women and children) or only to specified offences (e.g. immigration related offences)”), 4-5 (“In most countries in the region, the scope of protection from punishment only applies to a select list of offences, whether immigration and document-related (Brunei Darussalam, Malaysia); illegal immigration and prostitution (Lao PDR); immigration, prostitution, document or work-related offences (Thailand); or trafficking in persons offences (Myanmar). In Indonesia and the Philippines, protection from punishment is not limited to specified offences.”).

The Principle is not only found in international instruments, but also in national provisions. Incorporating the international obligations above, English law has introduced a defense under Section 45 of the Modern Slavery Act 2015 (“MSA”).⁶¹ It provides that the enslaved is not liable for certain crimes committed out of compulsion.

A number of US states have similar defenses. For example, California law provides a “defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm.”⁶² Bethany Simpson has conducted a thorough analysis of the US positions, noting that many other US states have such a defense, such as Kentucky and Wisconsin.⁶³ The defenses of different states afford a comparable extent of immunity, and Simpson’s comparison will not be repeated here. Overall, the US Congress holds the understanding that victims of trafficking should not be punished for illegal acts committed as a direct result of being trafficked.⁶⁴

Many other jurisdictions have their own Defense, which offers immunity to various extents.⁶⁵ Professor Davor Derenčinović has conducted a comparative study highlighting a number of European jurisdictions that have this Defense (again, the details of the defense will not be repeated here).⁶⁶

But even without a specific defense like the above, common law courts can still invoke the “abuse of process jurisdiction, whereby they could review the CPS’s prosecutorial decision, and, in certain cases, refuse to entertain

61. Heys, *supra* note 44, at 237-38.

62. Cal. Penal Code § 236.23(a) (West 2025); Bethany Simpson, *The Non-Criminalisation of Victims of Human Trafficking and Modern Slavery* (2023) (Ph.D. Thesis, Northumbria University Newcastle) (on file with Northumbria University Newcastle), <https://researchportal.northumbria.ac.uk/ws/portalfiles/portal/177397584/BethanySimpsonThesisUNN> [<https://perma.cc/8PZP-Y5LS>].

63. Simpson, *supra* note 62, at 225.

64. OFF. TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, *PROTECTING VICTIMS OF TRAFFICKING: THE NON-PUNISHMENT PRINCIPLE* (June 2023), <https://www.state.gov/wp-content/uploads/2023/12/Protecting-Victims-of-Trafficking-The-Non-Punishment-Principle.pdf> [<https://perma.cc/S9FX-HD2F>] (citing the US Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101).

65. See ASEAN Secretariat, *Regional Review on Laws, Policies and Practices Within ASEAN Relating to the Identification, Management and Treatment of Victims of Trafficking, Especially Women and Children* 117-118 (2016), <https://asean.org/wp-content/uploads/2021/01/Regional-Review-on-Laws-Policies-and-Practices-within-ASEAN-relating-to-the-Identification-Management-and-Treatment-of-Victims-of-Trafficking-especially-Women-and-Children-2016.pdf> [<https://perma.cc/554B-S78M>] (“The Philippines protects trafficked persons from prosecution for “crimes directly related to the acts of trafficking”, while Indonesia protects trafficked persons from punishment for all illegal acts they are forced to commit, thereby extending the protection to trafficking for forced criminality. However, application of this provision appears to be restricted to cases in which a conviction of the trafficker has been secured.”).

66. Davor Derenčinović, *Comparative Perspectives On Non-Punishment Of Victims Of Trafficking In Human Beings*, 63 ANNALES XLVI 3 (2014), https://transcrim.pravo.unizg.hr/wp-content/uploads/2016/01/Prof.dr._sc._Davor-Derenčinovic-Comparative-Perspectives-On-Non-Punishment-of-Victims-of-Trafficking-in-Human-Beings.pdf [<https://perma.cc/8YBT-7LSQ>].

proceedings.”⁶⁷ The courts will consider whether the modern slavery is a “colourable excuse for criminality which is unconnected to and does not arise from their victimisation.”⁶⁸ The “dominant force of compulsion” must be “sufficient to reduce the Applicant’s criminality or culpability.”⁶⁹ The third relevant defense would be the common law defense of duress, and the English Court of Appeal has explained this succinctly in the context of trafficking:

The defences of duress and/or necessity (‘duress of circumstances’) may be in question where an offence has been committed by a trafficked victim whose case is that she was coerced into committing it . . . Duress is a defence (except to murder and attempted murder) if the offence has been committed as the direct (not indirect) result of a threat of death or serious injury aimed at the defendant or someone sufficiently close to him.⁷⁰

Outside common law systems, duress is also a commonly available ground in civil law jurisdictions.⁷¹ For example, the Criminal Law of the People’s Republic of China differentiates between the defense of necessity and mitigation by reason of duress.⁷² Necessity is a complete defense to liability, applicable when an act of damage is needed to prevent immediate danger. By comparison, duress is not a defense, but rather a partial mitigation or full exemption of sentence, applicable when the offense is coerced.⁷³

An additional safeguard lies with the prosecution. For example, the UK prosecution guidance will consider whether public interests would call for a prosecution.⁷⁴ The same holds true in many other jurisdictions, such as

67. Regina v. CS [2021] EWCA (Crim) 134 [45] (quoting The Crown v. DS [2020] EWCA (Crim) 285 [6]) (Eng.).

68. L. v. R [2013] EWCA (Crim) 991 [33] (Eng.).

69. Regina v. GS [2018] EWCA (Crim) 1824 [76] (Eng.).

70. LM v. The Queen [2010] EWCA (Crim) 2327 [8] (Eng.); MK v. Regin [2018] EWCA (Crim) 667 [38] (Eng.). (“duress is narrower in scope than the defence provided by section 45, but it bears some similarities” and they can be run in parallel).

71. See, e.g., Josephina S.R. Manifold, *What is the law on duress under international criminal law (ICL)? Is it a defence (full or partial)? If not, what effect does it have in mitigating culpability?*, WAR CRIMES MEMORANDA 1, 3 (2008); Laws of the People’s Republic of China (promulgated by the NPC Standing Comm. Legis. Aff. Comm’n., in English, Mar. 14, 1997, effective Oct. 1, 1997) art. 28.

72. Laws of the People’s Republic of China (promulgated by the NPC Standing Comm. Legis. Aff. Comm’n., in English, Mar. 14, 1997, effective Oct. 1, 1997) arts. 21, 28 (necessity and duress respectively).

73. Bo Wang, *Complicity Liability: English And Chinese Approaches Compared*, 8 J. INT’L COMP. L. REV. 175, 189 (2021) (“In Chinese law . . . duress is not a defence, so the coerced party will be liable for what he did unless the defence of necessity applies.”).

74. Crown Prosecution Servs., *Modern Slavery and human trafficking: offences and defences, including the section 45 defence*, (July 22, 2025) <https://www.cps.gov.uk/legal-guidance/modern-slavery-and-human-trafficking-offences-and-defences-including-section-45> [https://perma.cc/35HA-L8K3].

Belgium.⁷⁵

2. Immunity for Civil Liability

The civil liability of modern slaves or trafficked persons has rarely been explored. The Principle mentioned above, in general, applies only to the criminal context.

There are a few exceptions that have extended the Principle to the civil context.⁷⁶ For example, the relevant Qatar law provides that “the victim shall not be subject to criminal or civil liability of any of trafficking in human beings’ crimes when such a crime is initiated or directly associated with such person as being a victim.”⁷⁷ Yet, it still depends on if “any of trafficking in human beings’ crimes” can be construed to include the resulting scams.⁷⁸

Even without expanding the Principle for the civil context, the existence of a civil immunity is arguable. The notion of *respondeat superior* (let the master respond) can be traced to the context of slaves, which provides that the master is responsible for the acts of their slaves.⁷⁹

In addition, the historical precedent was that a slave could not be sued in court.⁸⁰ This was because the slave was deemed personal property with no legal capacity.⁸¹ In Allan Beaver’s words, “a slave . . . is a piece of property owned

75. Piotrowicz & Sorrentino, *supra* note 49, at 22.

76. United Nations Office on Drugs & Crime, E4J University Module Series: Trafficking in Persons & Smuggling of Migrants: *The principle of non-criminalization of victims* (Aug. 22, 2025), <https://www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/principle-of-non-criminalization-of-victims.html> [<https://perma.cc/3RRA-FLRW>] (Article 21 of Egyptian Law No. 64 of 2010 regarding Combating Human Trafficking provides that “victim(s) shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was related to being a victim.”).

77. *Id.* (quoting Article 4 of Qatar Law No. 15 of 2011 on Combating Human Trafficking).

78. *Id.* (quoting portion of Article 4 of Qatar Law No. 15 of 2011 on Combating Human Trafficking).

79. Robert Luskin, *Caring About Corporate “Due Care”: Why Criminal Respondeat Superior Liability Outreaches Its Justification*, 57 AM. CRIM. L. REV. 303, 306 (2020); Christine W. Young, *Respondeat Superior: A Clarification and Broadening of the Current Scope of Employment Test*, 30 SANTA CLARA L. REV. 599, 600 (1990) (“[L]iability was imputed” where a person “was the owner of an animal or slave which caused the harm.”).

80. Paul Finkelman, *Northern Labor Law and Southern Slave Law: The Application of the Fellow Servant Rule to Slaves*, 11(2) NAT’L BLACK L. J. 212, 226 (1989) (“[S]laves could not be sued; therefore, even theoretically, injured parties would have no way of seeking compensation for their losses if they were hurt because of a slave’s negligence.”); *Creswell’s Ex’r v. Walker*, 37 Ala. 229, 234 (Ala. 1861) (Supreme Court of Alabama affirmed that “a slave cannot sue or be sued.”); *Wilson v. George*, 2 Del. Cas. 413, 422 (Del. 1818) (Delaware’s highest court held that a slave “cannot sue or be sued.”).

81. Compare Satvinder S. Juss, *How the Law Came to Support Slavery*, NEW L. J. 7, 7 (Oct. 2, 2020) (noting English courts analogized slaves with personal property), and Victor C.D. Mtubani, *African Slaves and English Law*, 3 BOTS. J. AFR. STUD. 71 (1983) (noting English case law deeming slaves as “chattels”), with Samantha D. E. Tucker, *No Way to Treat Man’s Best Friends: The Uncounted Injuries of Animal Cruelty Victims*, 19 ANIMAL L. R. 152, 177 (2012) (“[I]n terms of civil acts a ‘slave, not being a person, has no legal mind, no will which the law can recognize.’”).

by his master. Therefore, as property cannot owe obligations a slave cannot.”⁸² This is known as “legal dehumanization.”⁸³ Looking further back, Roman law held that slaves “lacked full legal personhood.”⁸⁴ The “incapacity of slaves is strongly accentuated. They could not be in any way concerned.”⁸⁵ “The person primarily liable to be sued on the slave’s delict is his *dominus*.”⁸⁶ It is their master who bears “noxal liability.”⁸⁷

D. Not Necessarily a Blameless, “Ideal” Victim?

Gallagher and Skrivankova argued that, in order to duly recognize the victimization of the trafficked and enslaved persons, it is crucial for law enforcement to see “the crime behind the crime.”⁸⁸ In other words, they make the valid point that the ultimate culpability should lie with the masterminds and organizers of the crimes. However, the shortcoming of this view—in this context—is that the enslaved victims are not entirely blameless.

The notion of “ideal victim” suggests that “for society to recognize an individual as a victim, they must be *blameless* and weak.”⁸⁹ Official reports indicate that no tourists have been kidnapped into a scam factory for enslavement.⁹⁰ Instead, the victims were job applicants who fell into enslavement upon arrival.⁹¹

There is some arguable fault on their part. They were enticed by the unusually high remuneration, despite media warnings as to the legitimacy of

82. Allan Beever, *Kant on the Law of Marriage*, 18(3) KANTIAN REV. 339, 350 (2013).

83. Evan M. Gelobter, *Codified Chains: The Role of Louisiana’s Civil Code and Supreme Court in Regulating Slavery*, 5 LSU L. J. SOC. JUST. & POL’Y 108 (2025).

84. Maija Aalto-Heinilä & Juha Karhu, *Animals, Slaves, and Beyond*, 44 REVUS: J. CONST. THEORY & PHIL. (2021).

85. W. W. BUCKLAND, *THE ROMAN LAW OF SLAVERY* 83 (1908); cf. Nicholas Bozyk, *The Slave in Roman Law: Persona (person) or Res (thing)?*, https://warwick.ac.uk/fac/arts/classics/research/undergrads/the_slave_in_roman_law_-_persona_person_or_res_thing_final.pdf [<https://perma.cc/9MYD-QZ7F>] (Slaves did “not have the capacity to appear in court, except as defendants in criminal trials.”).

86. *Id.* at 101.

87. *Id.* at 112-13.

88. Gallagher & Skrivankova, *supra* note 6, at 73.

89. Heys, *supra* note 44, at 250 (emphasis added).

90. Ezra Cheung, *At least 38 Hong Kong victims in growing human-trafficking trend*, SCMP (Aug. 22, 2022), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3189841/least-38-hong-kong-victims-growing-human-trafficking> [<https://perma.cc/RW3X-R9QE>]; Daryl Lim, *Are Chinese tourists targeted by scam syndicates in Southeast Asia?*, THINKCHINA (Oct. 26, 2023), <https://www.thinkchina.sg/society/big-read-are-chinese-tourists-targeted-scam-syndicates-southeast-asia> [<https://perma.cc/M2W5-68RX>] (reporting a rescuer’s observation that he has “never encountered a case where a tourist was kidnapped from the street and taken to a scam hub.”).

91. Campbell, *supra* note 24.

these jobs.⁹² The unreasonably high pay would have raised a reasonable person's suspicions. Arguably, the enslaved voluntarily and recklessly assumed the risky work. It would be unfair to shift the consequences of such gambles to the scam victims.

Even more concerning, certain victims knowingly accepted illegal employment, once again motivated by the promise of high pay.⁹³ A recent report reveals that a young man worked for an illegal online gambling company in Malaysia.⁹⁴ The corporate holiday trip to Thailand turned out to be a sale of the employees as slaves to a scam factory.⁹⁵ In another incident, the enslaved originally applied for positions in the illegal smuggling of gold—again a façade.⁹⁶

The worst incidents would be voluntary participation as scammers—and this actually happens, reportedly, something not uncommon.⁹⁷ In 2025, a Filipino woman who voluntarily went into one of the most notorious scam rooms told VOA and requested that her name not be used: “It’s in the news everywhere, social media, it’s impossible for them not to be aware.”⁹⁸ Arguably, the illegal job applicants bear legal responsibility for any further criminal acts. A strong analogy could be made with the law of criminal enterprise, where the

92. *Id.* (reporting the enslaved victim was offered a job with a pay that was seven times higher than comparable work); Fazleena Aziz, *Lured by fake Hong Kong job offer*, STAR (Jan. 19, 2024), <https://www.thestar.com.my/news/nation/2024/01/19/lured-by-fake-hong-kong-job-offer> [https://perma.cc/Z8YL-SFMQ] (the compensation was USD \$4,000 for a four-day work period); Chong Siaw Chan, *Individuals who rescue victims of job scams show how it is being done*, MALAY MAIL (Jun. 18, 2023), <https://www.malaymail.com/news/malaysia/2023/06/18/individuals-who-rescue-victims-of-job-scams-show-how-it-is-being-done/74860> [https://perma.cc/5P3Q-RQ2B]; Rashvinjeet S Bedi, *IN FOCUS: When lucrative overseas job offers turn into nightmare scams for these Malaysians*, CNA (Sept. 17, 2022), <https://www.channelnewsasia.com/asia/malaysia-overseas-job-scam-victims-cambodia-myanmar-laos-thailand-tortured-2940326> [https://perma.cc/FXD5-AVPS].

93. *See, e.g.*, Humanity Research Consultancy, *Responses to Trafficking in Persons for Forced Criminality in the Thai Context*, WINROCK INT’L 11 (Oct. 2024), https://winrock.org/wp-content/uploads/2024/10/HRC-FC-report_Final-10.2024.pdf [https://perma.cc/H5XM-WWL8] (noting online job advertisement that explicitly asks for “grey” workers); Fitzgerald, *supra* note 55, at 191; Lim, *supra* note 90 (reporting that “99% of kidnapping cases have to do with the grey industry [businesses bordering on illegality]. Many victims and kidnappers know each other.”).

94. Dimsum Daily Newsroom, *Malaysian firm lures 30 employees on holiday, then sells them into Myanmar scams*, DIMSUM DAILY (Oct. 27, 2024), <https://www.dimsumdaily.hk/malaysian-firm-lures-30-employees-on-holiday-then-sells-them-into-myanmar-scams/>. [https://perma.cc/N274-VUPQ].

95. *Id.*

96. Dimsum Daily Newsroom, *Hong Kong man recalls terrifying escape from Myanmar’s dark scam park*, DIMSUM DAILY (Dec. 16, 2024), <https://www.dimsumdaily.hk/hong-kong-man-recalls-terrifying-escape-from-myanmars-dark-scam-park/> [https://perma.cc/Z6HA-4YNE].

97. *See* Lim, *supra* note 90.

98. Duangdee, *supra* note 23; *See also* Fitzgerald, *supra* note 55, at 191-92 (Suggesting that there are people who voluntarily sign up for the “opportunity to make a lot of money quickly by working in a scam centre abroad.” Fitzgerald further highlighted an additional category of people who were “previously trafficked into a scam centre but [were] rescued during a police raid. After struggling to find legitimate work and facing financial difficulties, [they] decided to return to the scam centre, fully aware of the nature of the work.”).

participants are held accountable for any foreseeable crimes committed by members of the group.⁹⁹

Under the “gang exception,” the defense of duress is not available “where the defendant voluntarily associated with people engaged in criminality.”¹⁰⁰

Meg Fitzgerald argued that the Principle should be applied liberally to the KK Park context to recognize their victimization.¹⁰¹ The problem with this view is that the job scams are avoidable, and the voluntary enrollment for these high-paying jobs conceivably constitutes a reckless act. Arguably, the victimization basis alone fails to adequately justify full immunity.

E. But the Non-Punishment Defense Would Still Protect Non-Ideal Victims

Despite the existence of any arguable fault on the part of the enslaved, the Defense, like s.45, would still shield them from criminal liability. Unlike the defense of duress, its applicability is not negated by the person’s own fault.¹⁰² It applies when “a reasonable person in the same situation . . . and having the person’s relevant characteristics would have no realistic alternative to doing that act.”¹⁰³ The Defense provides immunity to “status offences,” which means crimes committed while being a trafficked or enslaved victim.¹⁰⁴ Even though they are not ideal victims, they still qualify for status and blanket immunity.

The facts of the KK Park saga apparently will satisfy the no-realistic-alternative threshold under s.45 given there were “torture and even weekly murders” for failing to comply.¹⁰⁵ Another report mentions “beatings, electrocutions, . . . sexual assault, rape, and having their organs forcibly harvested.”¹⁰⁶ The level of compulsion is serious enough to “extinguish” their

99. Elinor Fry & Elies van Slidregt, *Conspiracy/Joint Criminal Enterprise*, OXFORD BIBLIOGRAPHIES (Nov. 23, 2021), <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0096.xml?rskey=cN4h4m&result=1&q=Elinor+Fry+%26+Elies+van+Slidregt%2C+International+Law+Conspiracy%2FJoint+Criminal+Enterprise#firstMatch>. [https://perma.cc/2AK6-FQH9].

100. Crown Prosecution Servs., *supra* note 74; LM v R. [2010] EWCA (Crim.) 2327 [8] (Eng.), <https://www.bailii.org/ew/cases/EWCA/Crim/2010/2327.html> [https://perma.cc/8VSL-DEFS] (Duress will not “be established if the defendant has voluntarily associated with people in circumstances which amount to laying himself open to the compulsion to commit offences.”).

101. Fitzgerald, *supra* note 55, at 193 (Taking the view that “society should allocate all of the blame to the trafficker and none to the victim.”).

102. See Crown Prosecution Servs., *supra* note 74 (the gang exception); see also R v. GS [2018] EWCA (Crim) 1824 [76] (U.K.).

103. MSA 2015, c.30, §45(1)(d) (U.K.), <https://www.legislation.gov.uk/ukpga/2015/30/section/45>. [https://perma.cc/CS5C-B43C].

104. Marija Jovanovic, *The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance*, 1 J. TRAFFICKING & HUM. EXPLOITATION 41,70 (2017), <http://humantraffickingsearch.org/wp-content/uploads/2017/06/1001296261.pdf>. [https://perma.cc/MCF5-VWF5].

105. See Bayer, Pineda & Li, *supra* note 20.

106. See Campbell, *supra* note 24.

culpability.¹⁰⁷

III. ADAPTING THE NON-PUNISHMENT PRINCIPLE FOR THE KK PARK SAGA: REINSTATING ACCOUNTABILITY WITH DUE MITIGATION

This article proposes that there should be *some* legal accountability on the part of the enslaved, whilst heavily discounting their sentence to reflect their victimization.¹⁰⁸ Proper accountability is justifiable *for the KK context* because it balances the three policy goals.

Reinstating accountability does not mean undermining the protection of the enslaved victims. Holding them accountable addresses their “true pressures,” for example, by reminding them not to take suspicious jobs even in a dire financial situation. Inadequate accountability has many implications to the disadvantage of the enslaved. This Part will first explain the legal permissibility of adapting the Principle and then raise the grounds for justifying imposing accountability.

A. The Non-Punishment Principle Is Legally Adaptable

Although the Principle affords a *prima facie* defense for the enslaved victims, it is crucial to put it into context. Experts have agreed that there is “a discretion about how to apply the principle.”¹⁰⁹ Outside the KK Park context, many scholars have advocated for modifying or expanding the Principle to ensure that the “true pressures” of specific contexts are duly reflected.¹¹⁰ Gallagher and Skrivankova emphasized that:

It is important to note that the principle of non-prosecution/non-punishment for status offenses *does not grant victims of trafficking blanket immunity* for any and all crimes they may have committed before, during or after their trafficking experience . . . it is necessary for national criminal justice authorities to make a full and fair assessment of the situation and to consider, for example, *whether the fact of trafficking is a mitigating, rather than an exculpatory factor*.¹¹¹

As a matter of concept, it is important to distinguish between the Principle and the commonly associated non-prosecution principle,¹¹² which are often

107. R v. L(C) [2013] EWCA (Crim) 991 [33] (Eng. & Wales), *aff'd*, R. v. G.S. [2018] EWCA (Crim) 1824 at [76] (Eng. & Wales).

108. See, e.g., Nicola Wake, *Human Trafficking and Modern Day Slavery: When Victims Kill*, 9 CRIM. L. REV. 658 (2017).

109. Piotrowicz & Sorrentino, *supra* note 49, at 30.

110. See, e.g., Heys, *supra* note 44, at 248.

111. Gallagher & Skrivankova, *supra* note 6, at 72 (emphasis added).

112. Jovanovic, *supra* note 104, at 71.

discussed together.¹¹³ However, they are actually different, because the former is a broader term and does not preclude the initiation of prosecution (though it can entail non-prosecution), but simply that the defendant could be afforded a full or partial defense and/or mitigation in sentence, depending on the circumstances.¹¹⁴ Jovanovic succinctly described the notion of non-punishment as a “sliding scale,”¹¹⁵ quoting the English Court of Appeal’s explanation:

We cannot be prescriptive. *In some cases* the facts will indeed show that he was under levels of compulsion which mean that in reality culpability was extinguished . . . *In other cases*, more likely in the case of a defendant who is no longer a child, culpability may be diminished but nevertheless be significant. For these individuals *prosecution may well be appropriate*, with due allowance to be made in the sentencing decision for their diminished culpability. *In yet other cases*, the fact that the defendant was a victim of trafficking will provide no more than a colourable excuse for criminality which is unconnected to and does not arise from their victimisation. In such cases an abuse of process submission would fail.¹¹⁶

Accordingly, the broad and adaptable nature of non-punishment arguably has resulted in approaches adopted by different states, such as non-prosecution, stay of proceedings, leniency in sentencing, and even post-conviction record cancellation.¹¹⁷ Accordingly, there is ample legal room for this article to propose reinstating accountability on the part of the enslaved/trafficked victims.

B. From Public Understanding to Growing Discontent

One worrying trend is the decline in public support for the enslaved and even rising public disdain.¹¹⁸ This is arguably caused by (1) the disastrous impact and prevalence of the scams and (2) the perception that the enslaved are victims of their own greed. There is some psychological fatigue in public support when the issue has been prolonged since the pandemic. When serious crimes are involved, the public may question whether “the victim is truly weak

113. *See, e.g.*, the quote in the main text of *supra* note 111; Piotrowicz & Sorrentino, *supra* note 49, at 6-7.

114. Jovanovic, *supra* note 104, at 71-72.

115. *Id.* at 72.

116. *R v. L(C)* [2013] EWCA (Crim) 991 [33] (Eng.) (emphasis added).

117. The Inter-Agency Coordination Group against Trafficking in Persons (ICAT), *Issue Brief: Non-Punishment of Victims of Trafficking*, ICAT 8 (2020), https://icat.un.org/sites/g/files/tmzbd1461/files/publications/19-10800_icat_issue_brief_8_ebook_final.pdf [https://perma.cc/3394-JPPH].

118. This is observable from the public comments section where many suggest that the enslaved victims do not deserve sympathy, for carelessly falling into enslavement: *See, e.g.*, HK01 INVESTIGATION, *Resurgence of Hongkongers Trafficked to Scam Factories in Myawaddy, Myanmar*, YOUTUBE (Dec. 16, 2024), https://www.youtube.com/watch?v=wZFW_f00b7Q [https://perma.cc/DN4Q-NEC5] (in Chinese).

and passive.”¹¹⁹ Accordingly, such a victim is “more likely to be *understood* . . . as a perpetrator.”¹²⁰

The “blame the victim” phenomenon affects not just the enslaved, but also the scam victims for being foolish. This is discernible from public discourse, for example, with one reporting themed as, “We’re not dumb. They’re just too good.”¹²¹ The widespread stigma arguably fuels public rage.

Without adequate public support, the result might be weakened crackdowns, media attention, and public condemnations. The stigma could deter people from speaking out about their experiences, which hinders investigations.¹²²

*C. Scams with Devastating Consequences on Par with the
Excluded Crimes in Sch.4 MSA*

A Defense usually does not apply to all types of crimes. Schedule 4 of the MSA 2015 lists crimes that cannot be justified under the Principle.¹²³ Under that list, fraud is immune from prosecution.¹²⁴ But other jurisdictions have their own lists of excusable offenses in which fraud remains punishable, for example, in Thailand.¹²⁵

Homicide and bodily harm crimes are not excused by s.45 MSA 2025, which implies that one life is not worth more than another. Yet the scams have caused suicides.¹²⁶ The scammers can likely predict the disastrous consequences when such huge sums of money and trust are involved.¹²⁷ These acts cannot be said to be the kind of “prosaic” crimes that Piotrowicz and Sorrentino contemplated, so letting them slide will arguably defeat the premise of the Principle.¹²⁸ “Trafficked persons are bound by the law just as much as any other

119. Heys, *supra* note 44, at 250.

120. *Id.*

121. CNA INSIDER, *I Was Scammed Of \$77k - Here's What You Need To Learn From My Story*, YOUTUBE (Oct. 20, 2022), https://www.youtube.com/watch?v=LOPz4_rvviE [<https://perma.cc/28EQ-9YBE>].

122. Jia Qu et al., *Fear and Perceived Risk of Cyber Fraud Victimization among Chinese University Students*, 82 CRIME, L. & SOC. CHANGE 543, 545 (2024) (“Cyber fraud caused financial losses and psychological trauma (such as despair and depression) to not only the victims but also impaired public trust in the government’s capability to protect public safety. As some victims were afraid of being blamed and shamed for their victimization experience (e.g., deemed as gullible, negligent, or even greedy), they were reluctant to report the crime to the police.”).

123. Jovanovic, *supra* note 104, at 65.

124. *Id.*

125. Fitzgerald, *supra* note 55, at 183 (Notably, the non-punishment defense under Thai law is narrower and “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.”).

126. Rebane & Watson, *supra* note 26; Poppy McPherson & Tom Wilson, *Crypto scam: Inside the billion-dollar ‘pig-butcher’ industry*, REUTERS (Nov. 23, 2023), <https://www.reuters.com/investigates/special-report/fintech-crypto-fraud-thailand/> [<https://perma.cc/Z7TD-BGFG>].

127. See Lynch, *supra* note 25.

128. Piotrowicz & Sorrentino, *supra* note 49, at 5.

victim of crime or indeed any other individual.”¹²⁹

This reveals another shortcoming of an *untailored* Defense, that its applicability usually depends on the crime—i.e. fraud—instead of its actual consequences. Proper accountability is needed *for the KK context*; the Defense should be waived based on the implications.

*D. Reinstating Accountability for this Context Is in Line
with the Goal of the Principle*

Part III(A) has already explained the *legal nature* of the Principle and Defense that its application depends on the circumstances.¹³⁰ In other words, the proposed accountability is in line with its legal character, and this sub-part argues that reinstating accountability is also consistent with the Principle’s *objectives*.

The Principle seeks to prevent punishing the trafficked victims “for being trafficked.”¹³¹ The Organization for Security and Co-operation in Europe (OSCE) commented that the “rationale for non-punishment of victims of trafficking is that, whilst on the face of it a victim may have committed an offence, such as irregular crossing of a State frontier or theft, the reality is that the trafficked person acts *without real autonomy*.”¹³²

The proposed accountability is not trying to punish the victims “for being trafficked,” but instead to hold them liable for their reckless act of signing up for suspicious jobs. At the same time, they have no “real autonomy” at the time of trafficking and slavery, but it was their autonomous decision to take up the risky jobs. Therefore, there is no contravention of the Principle.

In terms of the objectives of the Principle, the OSCE has further elaborated:

The punishment of victims of trafficking for crimes directly related to their trafficking is a violation of their fundamental dignity. It constitutes a serious *denial of reality* and of justice. . . . [I]t fails to recognize trafficked persons as victims and witnesses of those serious crimes and exacerbates their victimization and/or trauma by imposing on such persons State-imposed, unjust punishment. . . . This practice furthermore promotes trafficking in human beings by failing to confront the real offenders, by dissuading trafficked victims from giving evidence against their traffickers and by enabling traffickers to exert even further control over their victims by threatening exposure to

129. *Id.* at 6.

130. *See supra* Part III(A).

131. *Id.*

132. Organization for Security and Co-operation in Europe (OSCE), *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (2013), para. 31, <https://www.osce.org/files/f/documents/6/6/101002.pdf> [<https://perma.cc/7M39-XEU3>].

punishment by the State.¹³³

The OSCE's quote frames the enslaved/trafficked victims as *completely* faultless and having no autonomy at all.¹³⁴ If this is the case, then full immunity is justifiable. However, this is not the reality in the KK Park context, where the cause of the problems and calamitous crimes originates from the reckless act that would have been avoidable. The OCSE's quote has raised many considerations, such as diverting focus away from the ultimate mastermind behind the crimes. But it would be wrong to mix and confuse the separate considerations of what happened *before* the slavery/trafficking and the crimes committed *during* the slavery. The blameworthiness of pre-slavery/trafficking recklessness is unaffected by the considerations during/after slavery and trafficking.

E. Personal Accountability Helps Prevent Enslavement: Avoiding Suspicious Jobs in the First Place

"It is often said, 'when it is too good to be true, it probably is.'"¹³⁵ Personal accountability for crimes helps prevent enslavement by deterring one from applying for suspicious jobs.

Reckless behavior should be deterred. For example, the United States District Court for the Northern District of Illinois has captured the moral culpability of recklessness, which denotes "a course of action which . . . shows an utter indifference to or a conscious disregard for a person's own safety and the safety of others."¹³⁶ Besides, the blameworthiness of reckless behavior is reinforced by the common law crime of "culpable and reckless conduct" under Scottish law:

Culpable and reckless conduct involved exposing persons to a significant risk to life or health. Reckless conduct was criminal if there was danger to the lieges, either foreseeable or actual, or if the conduct had caused actual injury but a high degree of recklessness was needed going beyond carelessness or negligence. *What was required was an utter disregard of the consequences of this conduct, with total indifference to the safety of the public.*¹³⁷

The last sentence of the above quote reflects exactly the conduct to be deterred when the resulting scams spread harm to the public.

To avoid confusion, the point this article is making is *not* that the Principle should be dis-applied to incentivize the resistance of criminal demands,

133. *Id.* at para. 4 (emphasis added).

134. *Id.*

135. *Chan v. Wan* [2024] SGHC(A) 23 [Sing.].

136. *Resolution Trust Corp. v. Franz*, 909 F. Supp. 1128, 1141 (N.D. Ill. 1995).

137. *Stewart v. Payne* [2016] HCJAC 122 [19] (Scot.) (emphasis added).

comparable to the context of *Nuremberg* defense for war crimes.¹³⁸ This is the wrong goal, which ignores the dire situation in the enslavement scam camps. The goal of a tailored Defense should be about the *prevention of slavery in the first place*, not the *post-enslavement* prevention of scams.

*F. Accountability Prevents the Criminal Syndicate from
Exploiting Full Immunity*

The English Court of Appeal has warned that “apparent ease with which defendants can set up a defense under the section will result in their controllers being encouraged, rather than discouraged, to continue their exploitation, and through them commit offences.”¹³⁹

The Defense rationalizes obedience to criminal orders (which has no legal consequence), whereas disobedience leads to torture. Would reinstating personal accountability make the dilemma even worse: choosing between legal sanction or torture? This question misses the point, because the objective of imposing accountability concerns slavery prevention in the first place.

G. Heavy Discount in Liability to Reflect Victimization

The English Court of Appeal acknowledged there “will be cases where a decision to prosecute will be justified but due allowance can be made for mitigating factors at the sentencing stage.”¹⁴⁰ This corresponds to the very nature of the Principle—that it is *not a blanket immunity*.¹⁴¹ It is necessary to assess “whether the fact of trafficking is a mitigating, rather than an exculpatory factor.”¹⁴²

A discount recognizes their victimization. At the same time, the residual culpability reminds them they should take part of the blame for falling into *avoidable* job scams, and the harm flowing from the fraud.

However, the force for applying the Principle for this KK park context would be inadequate if the focus lies only on the victimization, because, as argued above, they bear some responsibility for the incident. Therefore, it is crucial to have an additional ground to justify the discount in liability, which will be explained in the next section.

138. Jessica Liang, *Defending the Emergence of the Superior Orders Defense in the Contemporary Context*, 2 GOETTINGEN J. INT'L L. 871, 872 (2010), <https://nasjournal.org/gojil/article/view/1944/1972> [<https://perma.cc/S7XY-R9YQ>].

139. *MK v. Regina* [2018] EWCA (Crim) 667 [39] (Eng.).

140. *Regina v. GS* [2018] EWCA (Crim) 1824 [76] (Eng.).

141. Gallagher & Skrivankova, *supra* note 6, at 72.

142. *Id.* at 72.

*H. Sharing Self-Incriminating Experience: Reward
for Relinquishing Legal Privilege*

Legally, there is no obligation to make self-incriminating statements, and there is no immunity if one does so. But after their escape, some escapees nevertheless share their traumatizing experience.¹⁴³

Speaking out evinces the remorse the enslaved suffered. Their insider information helps law enforcement, allows mass media to report on the situation, and raises public awareness to avoid similar traps. But for their self-identification, the scam victims would not have known the real identities of the pseudonymous scammers.

The redemptive nature of such confession seems under-appreciated by the public. This brave act should be judicially acknowledged via a fair discount in liability. From another perspective, the Defense actually overshadows their laudable divulgence because the Defense is premised on recognizing their victimization, instead of acknowledging the former. The problem is that when the public is already doubting their status as an “ideal victim,” a victimization-based defense only feels even more arbitrary. Yet, one who forgoes their legal privilege in making self-incriminating statements *for the public good* might be deemed worthier of support.

CONCLUSION

The KK scam factory saga remains a potent and prolonged challenge affecting Asia and beyond. This article explores how the law could help address trafficking, enslavement, and scams. Applying the international law¹⁴⁴ Non-Punishment Principle would be inadequate in this context, as it would underserve the three policy goals.

First, the Defense, like s.45 MSA 2015, does not depend on whether the victims bear some blame for falling into human trafficking and enslavement. It does not incentivize the avoidance of risky, suspicious jobs.

Second, another shortcoming of a Non-Punishment Defense is that its applicability looks at the crime—i.e., fraud—instead of its devastating consequences, like contributing to the suicides of scam victims. The Defense should reinstate proper accountability and be waivable based on the consequences.

Third, the Defense actually overshadows the victims’ laudable divulgence of their traumatized enslavement, because the Defense is premised on recognizing their victimization, instead of acknowledging the former. The problem with this is that, when the public is already doubting their status as “ideal victims”, a victimization-based defense only feels even more arbitrary.

143. Eileen Ng, *Malaysian dad pleads help for scam victims after son died*, ASSOCIATED PRESS (Sep. 21, 2022, 6:24 AM), <https://apnews.com/article/health-covid-myanmar-malaysia-thailand-7b4ce998d2925c4b782dc8b3f10bea1> [https://perma.cc/H5KH-N59M].

144. Heys & Niezna, *supra* note 3, at 4.

Yet, one who forgoes their legal privilege in providing self-incriminating information *for public good* (e.g. media warning, investigation, etc.), would be deemed worthier of support.

Heys rightly points out that it is difficult for the legal framework to handle “the blurred lines of a defendant occupying the simultaneous position of being both a victim and a perpetrator.”¹⁴⁵ But the KK Park saga shows that the victim-vs-perpetrator identity is a sliding scale depending on the circumstances and public perception.

Accordingly, the application of the Principle should be adjusted for the KK Park context. The primary legal goal should be the prevention *of slavery*—not the post-enslavement prevention of scams—because enslavement occurs from *avoidable* job scams. Prevention could be achieved by reinstating personal accountability for the scams, which would deter taking risky jobs.

The English Court of Appeal in *R v. GS* usefully acknowledges that there are circumstances where it is more suitable to mitigate the sentence, instead of a full defense.¹⁴⁶ The Defense in the KK Park context would warrant a heavy discount to fairly reflect the slavery victimization and privilege-waiving disclosure.

From another perspective, it is essential for the Defense to take into account the *pre-slavery*/trafficking reckless act on the part of the enslaved. It is an entirely separate issue from the *subsequent* wrongdoing and coercion exerted by the traffickers. The chain of causation should date earlier back in time: (1) the enslaved victims recklessly signed up for risky and suspicious jobs, (2) which only thereby fell into trafficking and slavery and (3) chose to conform with the criminal demands. An unadopted application of the Principle to consider only the circumstances *during* the slavery/trafficking (i.e. the coercion to commit crimes) would fail to fully reflect the actual culpability, fail to establish proper accountability for deterrence, and fail to do justice to the stakeholders involved.

145. Heys, *supra* note 44, at 250.

146. See Gallagher & Skrivankova, *supra* note 6.