

## LEGISLATION PERTAINING TO HT

### UN Conventions / Protocols / EU Documents in support of Government Legislation

Article 4 of the Universal Declaration of Human Rights (**UDHR**) states that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms".

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### International Instruments for the elimination of Human Trafficking

- ❖ **Convention for the Suppression of the traffic in Persons and of the Exploitation of the Prostitution of Others (1949)**
  - Emphasises that HT cannot be dissociated from the exploitation of prostitution
  - Convention limited - the notion of 'victim' not stressed
  - No provision made for a 'monitoring body' between governments
  
- ❖ **Convention on the Rights of the Child (CRC) 1989**
  - Recognises the rights of children and role of adults in protection of these rights.
  - Not yet ratified by the USA and Somalia, though latter has indicated intention to do so.
  
- ❖ **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979**
  - Stipulates that "States ... shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."
  - It builds on the 1949 Convention by introducing the above and acknowledges new forms of trafficking and sexual exploitation exist and must be curbed.
  
- ❖ **United Nations Beijing Platform for Action (1995) Outcome Document of the 23rd Session on the UN General Assembly, Beijing Plus 2000**
  - Governments expressed commitments to promote gender equality and involve women in decision making at all levels.
  
- ❖ **Millennium Development Goals (MDGs)**
  - Gender perspective to be integrated into all follow up processes of UN Conferences.

- Similarly for all EU legislation, promotion of equality between men and women into all policies and programmes is a main principle for the future development and implementation of all EU Treaties since the Treaties of Amsterdam '98 and Nice 2000.

❖ **The Palermo Protocol (2000)** to Prevent, Suppress and Punish Trafficking in Persons especially in Women and Children, supplementing the UN Convention Against Transnational Organised Crime

The Protocol was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the **first global legally binding instrument** with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

- This protocol is a wide-ranging agreement, which addresses the crime of HT, especially of women and children.
- The issue of 'consent' is raised, stating that in the context of HT this is irrelevant, thereby removing from trafficked persons the 'burden of proof'.
- Governments are urged to provide protection measures for victims/survivors. For the first time the issue of 'demand' that promotes HT is addressed (Article 9.5).

❖ **UN Commission on the Status of Women (2005) CSW**

Reinforces Article 9.5 of the UN Protocol affirming that:

"Eliminating the demand for trafficked women and girls for all forms of exploitation, including for sexual exploitation, is a key element to combating trafficking". Emphasises that commercial sexual exploitation overwhelmingly affects women and girls.

❖ **Brussels Declaration on Preventing and Combating Trafficking in Human Beings – the Global Challenge for the 21<sup>st</sup> Century (2002)**

- Calls for an effective coordinated action between the origin, transit and destination countries among all the national and international players in the relevant fields.

❖ **EU Council Directive 2004/81/EC (2004)**

Residency Permits and Trafficked Persons: residency permits issued to third country nationals/victims of trafficking who cooperate with the competent authorities.

❖ **Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw (16.V.2005)**

- Recognises the definition of HT as in the UN Protocol.
- Affirms the necessity to take action against the demand for sexual exploitation – article 6

❖ **Report of UN Special Rapporteur on Trafficking in Persons, integrating the HR of women and a Gender Perspective with special focus on the Demand for Commercial Sexual Exploitation and Trafficking (2006)**

Addresses

- The interpretation of the definition of trafficking in the UN Protocol
- The meaning of demand
- Criminalising the use of prostituted persons
- Reasons against legalising prostitution and the sex industry
- HR approach to trafficking – emphasis on prosecuting perpetrators

Current Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Report 11 April 2011, addresses the Right of Access to Justice of TPs (GAATW)

❖ **EU Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims (29 March 2010)**

The EU Equality and Human Rights Commission believes that the directive would enhance protection and support for victims. It takes a victim centred approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of the implementation. The Directive, if approved, will replace current EU legislation dating from 2002.

**LEGISLATION - 3-PRONGED APPROACH: Prosecution / Protection / Prevention**

Prosecute the traffickers and buyers / Protect the trafficked person / Prevent, by tackling demand and raising awareness in public and private sectors that may, wittingly or unwittingly, be complicit in HT.

**Judicial Protection that States should grant to victims of HT**

*Cf. Human Traffic Human Rights: Redefining Victim Protection*, published by Anti-Slavery International, 2002

Joint efforts of States, intergovernmental and non-governmental organisations can effectively contribute to alert public opinion on the scourge of human trafficking and to sensitise the society on the abuses that the victims endure. A coherent juridical framework based upon the respect for human rights, systematised and concerted cooperation between different actors and the political will to combine prevention, protection and prosecution measures, are core elements to support millions of human beings as they recover their dignity.

## Situation in Ireland

Ireland signed the Palermo Protocol on 13 Dec. 2000 and ratified it on 17 June 2010.

Ireland signed the Council of Europe Convention on Action against Trafficking in Human Beings on 13 April 2007 and ratified it on 15 July 2010.

Ireland is a party to the Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims.

### Anti-Human Trafficking Measures

A number of measures have been introduced in Ireland to combat human trafficking including:

1. the enactment of legislation
2. the establishment of an Interdepartmental Group
3. the establishment of the Anti-Human Trafficking Unit

#### 1. Legislation

The Criminal Law (Human Trafficking) Act 2008 – effective since 7 June, 2008 – makes it an offence to sell or offer for sale or to purchase or offer to purchase any person for any purpose. Penalties of up to life imprisonment apply in respect of these offences. It is also an offence for a person to solicit a trafficked person for the purposes of prostitution.

In addition, the Immigration, Residence and Protection Bill will provide for a recovery and reflection period of 45 days (to be amended to 60 days at report stage) and periods of temporary residency.

Details of an interim administrative framework effective from 7 June, 2008 reflecting these provisions can be found on the Irish Naturalisation and Immigration Service website (INIS).

<http://www.inis.gov.ie/en/JELR/Pages/WP09000005>

### Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, not a legal interpretation of immigration legislation, 13 Nov. 2008

#### 2. Interdepartmental Group

This was established by the Minister for Justice and Equality to draw up a National Action Plan and recommend the most appropriate and effective responses to tackle trafficking.

The Group is supported by five interdisciplinary working groups dealing with issues related to:

- Development of a National Referral Mechanism
- Awareness Raising and Training
- Child Trafficking
- Labour Exploitation
- Sexual Exploitation

### 3. Anti-Human Trafficking Unit

The Unit is also responsible for the implementation of the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland. The National Action Plan focuses on:

- Prevention and Awareness Raising
- Prosecution of Traffickers
- Protection of Victims
- Child Trafficking

The Plan, which was published by the Minister for Justice and Equality on 10 June, 2009, sets out the structures to facilitate ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. **The main aim of the National Action Plan is to ensure that Ireland's response to trafficking in human beings is appropriate to the nature and scale of the problem and in line with international best practice.** The Unit maintains close links with the Garda National Immigration Bureau (GNIB), which is actively involved in the fight against the trafficking of human beings into and within Ireland. A continuous professional development training course for members of the Garda Síochána has been developed with the assistance of the International Organisation for Migration (IOM) and is designed to provide the necessary skills to identify victims of trafficking and provide a range of specialist investigative techniques. The Unit has organised, in conjunction with IOM, for the delivery of Awareness Raising Training covering legislation, the difference between trafficking & smuggling and the indicators of trafficking. This course has been delivered to in excess of 100 persons from various organisations, including labour inspectors from the National Employment Rights Authority (NERA), inspectors from the Private Security Authority (PSA), HSE personnel, and staff of INIS, ORAC, Victims of Crime Office, the Crime Victim's Helpline, Department of Enterprise, Trade and Employment, and the Department of Social and Family Affairs.

#### **Blue Blindfold Campaign**

Ireland participates in a European initiative known as the G6 Human Trafficking Initiative, which includes the UK, Poland, Italy, Spain and the Netherlands along with Interpol, Europol and Eurojust. These six countries agreed to run awareness-raising campaigns in their countries to raise awareness of the problem of human trafficking with the public and law-enforcement agencies. The Irish campaign commenced with a joint press launch by the Minister for Justice and Equality and the Garda Commissioner on 21 October, 2008. The key theme of the campaign is 'Don't Close your Eyes to Human Trafficking', and the image of the blue blindfold represents the risk of people having their eyes closed and being unaware of the crime that may be going on around them. Given the nature of the crime, victims may be reluctant and frightened to come forward. In order to combat this form of modern-day slavery, both the public and the authorities need to be vigilant and aware that the crime may exist in our communities, not just down alleys. The campaign is designed to encourage the public to share any suspicions or information with the Garda Síochána, who will then investigate them accordingly.

### **Document: Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking**

<http://www.inis.gov.ie/en/INIS/Victim%20of%20Human%20Trafficking%20-%20notice%20Nov%202008.pdf/Files/Victim%20of%20Human%20Trafficking%20-%20notice%20Nov%202008.pdf>

### **To what extent is Ireland meeting all the requirements of the international instruments?**

Anti-Slavery International sets out the following points in *Human Traffic Human Rights*, 2002.

- States should adopt legislation setting out a criminal offence of trafficking that covers trafficking for all purposes as part of a comprehensive anti-trafficking legislation;
  - States should ensure that trafficked persons are not punished for any offence under national laws related to their situation of having been trafficked such as prostitution and immigration violations;
  - States should provide the right to a reflection delay and residency status for a reasonable term;
  - States should ensure an appropriate range of measures and different levels of protection to victims and witnesses both informal (e.g. access to police, police escorts), and formal (e.g. secure housing, change of identity);
  - States should review the need for aid and the possibility of introducing measures to minimize additional trauma caused to trafficked victims who testify against alleged traffickers;
  - States should provide immediate access to basic support and assistance measures, including shelters and access to training and employment opportunities;
  - States should provide trafficked persons with access to free, independent legal advice to allow them to exercise their legal rights;
  - Law enforcement officials should pursue trafficked persons' claims to compensation and, at the same time, should enact and / or enforce laws regarding immediate seizure and confiscation of assets from traffickers;
  - Authorities should not remove trafficked persons to a country of origin where there is reasonable suspicion they may suffer from harm while, in returning trafficked persons who want to go home, immigration and police services should provide them with contact information for a law enforcement office in the country of origin that they can contact if a trafficker threatens them.

### **For Legislation in other countries, cf. Anti-Slavery International 2002**

[http://www.antislavery.org/includes/documents/cm\\_docs/2009/h/hum\\_traff\\_hum\\_rights\\_redef\\_vic\\_protect\\_final\\_full.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/h/hum_traff_hum_rights_redef_vic_protect_final_full.pdf)

Legislation not always specifically against HT, but part of immigration and prostitution laws. A reflection period is usually allowed with temporary residence permits granted if the survivor is prepared to testify against the trafficker. Italy is an exception in that it grants a renewable 6-month residence permit.

### **The Prostitution Debate – to criminalise or legalise?**

#### **Prostitution and Sex Trafficking Undeniably Linked**

Quote: “For the most part prostitution, as actually practised in the world, usually does satisfy the elements of trafficking.” (UN Rapporteur on HT, 2006)

- Prostitution is not an industry - sanitising it by referring to sex sector, sexual entrepreneurs, clients and consumers masks the harsh reality.
- ‘Demand’ aspect will continue until legislation changes.

- In countries where prostitution is legalised and regulated (8 European countries), sexual exploitation is legitimised.
- Legalising prostitution more likely to protect the 'consumer' or procurer rather than the person prostituted.
- It enables traffickers to bring women and girls legitimately into these countries for sexual exploitation.