

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".

International Instruments for the elimination of Human Trafficking

UNITED NATIONS

- ❖ **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.

❖ **United Nations global plan of action against human trafficking – 30 July 2010**

The United Nations Global Plan of Action to Combat Trafficking in Persons was adopted by the General Assembly on 30 July 2010 to urge Governments worldwide to take coordinated and consistent measures to try to defeat the scourge. The Plan calls for:

- integrating the fight against human trafficking into the United Nations' broader programmes to boost development and strengthen security around the world.
- for the setting up of a United Nations voluntary trust fund for victims of trafficking, especially women and children
- a UN Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children.

The Plan of Action - which focuses on preventing trafficking, prosecuting offenders and protecting victims - also stresses the importance of obtaining more research, data and analysis about the problem.

13 May 2013 - UN Member States appraise Global Action Plan to combat human trafficking

During a two day high-level meeting countries examined progress made on the UN Global Plan of Action to Combat Trafficking in Persons adopted in 2010. While agreeing that significant steps forward had been taken, Member States acknowledged that, to truly deliver on their mandate, they need:

- Universal ratification and implementation of UNTOC (UN Protocol on Transnational Organised Crime) and its protocol by Member States,
- Fresh contributions to the Trust Fund from governments but also other actors, and
- Comprehensive data in order to understand the nature of this global crime.

EUROPEAN UNION AND COUNCIL OF EUROPE

❖ **Brussels Declaration on Preventing and Combating Trafficking in Human Beings – the Global Challenge for the 21st 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.

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

Adopted by the European Commission on 19 June 2012.

This Strategy identifies **five priorities** the EU should focus on in order to address the issue of trafficking in human beings. It also outlines a number of actions which the European Commission proposes to implement over the next five years in concert with other actors, including Member States, European External Action Service, EU institutions, EU agencies, international organisations, third countries, civil society and the private sector. Those priorities are as follows:

- A. Identifying, protecting and assisting victims of trafficking
- B. Stepping up the prevention of trafficking in human beings
- C. Increased prosecution of traffickers
- D. Enhanced coordination and cooperation among key actors and policy coherence
- E. Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

The EU rights of victims of trafficking in human beings

Launched on 15 April by the EU Commissioner for Home Affairs, Cecilia Malmström

It sets out measures for implementing the first of the priorities of the Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. It gives an overview of the EU rights of victims of human trafficking and is designed to help authorities in EU Member States in their efforts to provide assistance and protection to the victims. It does not require legislation.

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>

Pending legislation

16 April 2013 - Criminal Law (Human Trafficking) (Amendment) Bill 2013

The Minister for Justice, Equality and Defence, Alan Shatter TD, announced the publication of the Criminal Law (Human Trafficking) (Amendment) Bill 2013, a short Bill necessary to transpose in full the criminal law provisions of an EU directive providing for the criminalisation of two additional forms of exploitation not covered by existing legislation, i.e., trafficking for the purposes of forced begging and trafficking for criminal activities.

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 - February 2008

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.

Since 2009, three other dedicated units have been set up as a response to Ireland's international obligations to provide services to victims of human trafficking:

- the Human Trafficking Investigation and Co-ordination Unit in the Garda National Immigration Bureau (GNIB),
- the Anti-Human Trafficking Team in the Health Service Executive (HSE)

- a specialised Human Trafficking legal team in the Legal Aid Board (LAB).

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. The campaign is designed to encourage the public to share any suspicions or information with the Garda Síochána, who will then investigate them accordingly.

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

Ireland has achieved TIER 1 status in the Annual US TIP Report 2013 for the fourth year in a row.

Tier 1 ranking indicates that a government has acknowledged the existence of human trafficking, made efforts to address the problem, and complies with the TVPA’s (Trafficking Victim’s Protection Act) minimum standards. Each year, governments need to demonstrate appreciable progress in combating trafficking to maintain a Tier 1 ranking.

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)

In Ireland, TORL (Turn off the Red Light), an alliance of civil society organisations, is spearheading the campaign to end prostitution and sex trafficking. Member organisations believe that the best way to combat this is to tackle the demand for prostitution by criminalising the purchase of sex.

A Joint Oireachtas Committee on Justice, Defence and Equality began hearings on submissions received in relation to the review of legislation on prostitution in Ireland on 12th December, 2012.

In its report Report, published in June 2013, the Committee recommended that provision should be made in law for a summary offence penalising the purchase of sexual services of another person by means of prostitution, or any request, agreement or attempt to do so. It should at the same time be clarified that no offence is committed by the person whose sexual services are sold, the Committee says.

This has given new impetus to the TORL campaign.

