



Tool 3.2 Criminalization of the offence of trafficking

Overview

This tool explains the criminalization requirements under article 5 of the Trafficking in Persons Protocol and provides examples drawn from national legislation.

The Trafficking in Persons Protocol requires the criminalization of trafficking in persons. The Organized Crime Convention requires the criminalization of the full range of conduct covered by the definition of trafficking in persons provided in article 3, paragraph 4 of the Protocol, regardless of whether it is transnational or involves an organized crime group.

Article 5 of the Trafficking in Persons Protocol requires States parties to criminalize trafficking in persons as defined in article 3 of the Protocol. In other words, it is not sufficient to criminalize some of the offences underlying human trafficking; human trafficking needs to be criminalized as such. In addition to the criminalization of trafficking, the Trafficking in Persons Protocol requires criminalization also of:

- Attempts to commit a trafficking offence
- Participation as an accomplice in such an offence
- Organizing or directing others to commit trafficking

National legislation should adopt the broad definition of trafficking prescribed in the Protocol. The legislative definition should be dynamic and flexible so as to empower the legislative framework to respond effectively to trafficking which:

- Occurs both across borders and within a country. *(Inadequate definitions only address cross-border trafficking.)*
- Is for a range of exploitative purposes. *(Inadequate definitions only address sexual exploitation, neglecting trafficking for labour exploitation and other forms of exploitation.)*
- Victimizes children, women and men. *(Inadequate definitions do not extend to adult victims of trafficking, or are not sufficiently comprehensive to protect child victims, or do not extend to male victims of trafficking.)*
- Takes place with or without the involvement of organized crime groups.

Checklist: Criminalization under the Protocol

Article 3 (a) of the Trafficking in Persons Protocol sets out the following elements:

- (a) Acts (what is done)
 - (i) Recruitment
 - (ii) Transportation
 - (iii) Transfer
 - (iv) Harboursing
 - (v) Receipt of persons

- (b) Means (how it is done)
 - (i) Use of force
 - (ii) Threat of the use of force
 - (iii) Other forms of coercion
 - (iv) Abduction
 - (v) Fraud
 - (vi) Deception
 - (vii) Abuse of power or of a position of vulnerability
 - (viii) Giving or receiving payments or benefits to achieve the consent of a person having control over another
- (c) Purpose (why it is done)
 - (i) Prostitution
 - (ii) Other forms of sexual exploitation
 - (iii) Forced labour or services
 - (iv) Slavery
 - (v) Practices similar to slavery
 - (vi) Servitude
 - (vii) Removal of organs

Recommended resources

Anti-Trafficking Assessment Tool

(UNODC Regional Centre for East Asia and the Pacific in collaboration with the United Nations Interagency Project on Human Trafficking in the Greater Mekong Subregion (UNIAP))

This tool, designed by the UNODC Regional Centre for East Asia and the Pacific and UNIAP provides checklists for use by non-legal researchers in rapidly assessing domestic legislation in relation to the requirements of the Trafficking in Persons Protocol and the Organized Crime Convention.



The Anti-Trafficking Assessment Tool is available at:
www.unodc.un.or.th/material/document/TraffickingChecklist.pdf

Bali Process Model Laws to Criminalize People Trafficking

As part of the Bali Process (see Tool 4.9), model trafficking legislation has been developed to assist States in meeting their legislative obligations under the Organized Crime Convention and the Trafficking in Persons Protocol. The model legislation is focused primarily on the prosecution of traffickers rather than the protection of victims, and therefore does not fulfil all the obligations contained in the Protocol. It may, however, be a useful starting point for States wishing to legislate against the crime of trafficking.



This model legislation and other resources are available at:
www.baliprocess.net/index.asp?PageID=2145831427

Pacific regional model law

(Pacific Island Forum Secretariat)

The Pacific Island Forum Secretariat is finalizing a model law to combat human trafficking. The model law, entitled “Counter-terrorism and transnational organized crime bill 2007” is being prepared by the Forum Secretariat’s Legal Drafting Unit. The model law is intended to be adaptable to the domestic circumstances of each Pacific island member of the Forum and is meant to complement the other model legislation prepared by the Secretariat (for example, on mutual assistance and extradition). Procedures under this model law have been designed to take into account the limited resources of small island States.



This model law will be made available to Pacific island countries. More information can be obtained at:
www.forumsec.org and www.pidcsec.org

Model Anti-Trafficking Statute

The United States Department of Justice has drawn up a model anti-trafficking statute. The model statute is intended primarily for use in the context of the United States, but can offer guidance to other States legislating against trafficking, to ensure that the definition of trafficking contained in the Trafficking in Persons Protocol is adequately reflected in domestic legislation.



The model statute is available at:
www.usdoj.gov/olp/pdf/model_state_regulation.pdf

State Model Law on Protection for Victims of Human Trafficking (Global Rights)

In 2005, Global Rights published a guide for States legislating against trafficking. It is modelled heavily on the United States Federal Victims of Trafficking and Violence Protection Act 2000 but may be useful for States which wish to ensure that legislative responses at the local level are in line with national legislation.



The guide is available at:

[www.globalrights.org/site/DocServer/StateModelLaw_9.05.pdf?
docID=3123](http://www.globalrights.org/site/DocServer/StateModelLaw_9.05.pdf?docID=3123)

Legislationline

(Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe)

Legislationline is a free internet-based legislative database published and maintained by the OSCE Office for Democratic Institutions and Human Rights. Its purpose is to assist lawmakers in OSCE participating States by providing them with sample domestic legislation and international standards on selected issues. The database is intended to be a tool, not an exhaustive archive. Legislation can be accessed via country and thematic scroll-down menus which users can refer to when drafting legislation in their own domestic context. Legislationline contains legislation in all the official OSCE languages. The site also contains links to international treaties, conventions and an extensive collection of European and domestic norms, documents, conventions and other relevant materials.



www.legislationline.org

Promising practice

Australia

In 2005, Australia amended its Criminal Code Act 1995 to provide for offences relating to trafficking in persons. The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 No. 96 is available at:
www.austlii.edu.au/au/legis/cth/num_act/ccaipoa2005473/

Belize

In force since 2003, the Trafficking in Persons (Prohibition) Act criminalizes human trafficking in domestic law for the first time and seeks to give effect to the Trafficking in Persons Protocol.

Canada

Canadian Bill C-49 was enacted on 25 November 2005. This bill added sections 279.01 to 279.04 to the Canadian Criminal Code to create three new offences relating to trafficking in persons. In addition to the Criminal Code, section 118 of the Immigration and Refugee Protection Act explicitly prohibits trafficking. More information about the anti-trafficking legislative framework of Canada is available at:

www.parl.gc.ca/information/library/PRBpubs/prb0624-e.htm#bdomestic

Colombia

Colombian Law 985/2005 was drafted with the support of UNODC. Of particular importance is an amendment to article 188A of Law 599/2000 to harmonize the Criminal Code with the definition of human trafficking contained in article 3 of the Trafficking in Persons Protocol. Article 3 of Colombian Law No. 985/2005 reads:

Article 3. Human trafficking. Article 188A of Law 599 of 2000, supplemented by Law 747 of 2002 and amended by Law 890 of 2004, will be as follows:

Article 188 A. Human Trafficking. He who captures, transports, accommodates or receives a person, within the national territory or towards another country, for purposes of exploitation, will incur a prison sentence of thirteen (13) to twenty-three (23) years and a fine of eight hundred (800) to one thousand five hundred (1,500) current minimum monthly legal salaries.

For the purposes of this article, by exploitation will be understood the obtainment of economic or any other type of benefit for oneself or others, through the exploitation of prostitution or other forms of sexual exploitation, forced work or service, slavery or practices similar to slavery, the exploitation of the begging of others, servile matrimony, the extraction of organs, sexual tourism or other forms of exploitation.

The consent given by the victim to any form of exploitation defined in this article will not constitute a cause for exoneration from penal responsibility.

Law 985/2005 also lays down provisions concerning the Inter-institutional Committee for the Fight against Trafficking in Persons and establishes the National Anti-trafficking Strategy as public policy. In addition, the law establishes administrative measures to implement the National Strategy (based on recommendations submitted by UNODC and the Ministry of the Interior and Justice) and introduces an amendment with regard to the crime of trafficking to make it easier to prosecute traffickers; as a result of this amendment it is no longer necessary to obtain consent from adult or child victims to proceed with penal action, prosecution and punishment. The law contains key sections on prevention, victim protection and assistance, strengthening actions against trafficking in persons, the Inter-institutional Committee for the Fight against Trafficking in Persons, as well as on a national information system to combat trafficking to assist with policy formation and the monitoring of its implementation.

Costa Rica

Article 172 on trafficking in persons of Law No. 7899 against the Sexual Exploitation of Children and article 7 of the Costa Rican Criminal Code prohibit trafficking in persons.

Croatia

The Criminal Code of Croatia was amended in October 2004 to criminalize trafficking, the definition of which goes beyond that provided in the Trafficking in Persons Protocol to not only penalize traffickers, but also clients of trafficked persons if they knew the victims had been trafficked.

Czech Republic

The Criminal Code of the Czech Republic was amended in November 2004 to expand the definition of trafficking to encompass all forms of trafficking, including the exploitation of labour, and internal trafficking.

Denmark

Section 262 a of the Danish Penal Code explicitly criminalizes human trafficking. It reads: “a person who by an act of recruiting, transporting, transferring, housing or subsequently receiving another person shall be guilty of trafficking in human beings and shall be liable to a term of imprisonment of no more than eight years”.

El Salvador

Legislative Decree 456 of 7 October 2004 contains article 367-B, which states that

He who acts by himself or as a member of a national or international organization with the purpose of obtaining an economic profit, recruits, transports, transfers, harbours or intercepts people in or out of the national territory to carry out any kind of sexual exploitation, submit them to forced labour or services, any practice similar to slavery or for organ extraction, fraudulent adoptions or forced marriages will be sentenced to from four to eight years in prison.

Gambia

The Trafficking in Persons Bill 2007 was enacted by the National Assembly of Gambia on 6 September 2007. The Act establishes the National Agency against Trafficking in Persons, which will be responsible for the administration and monitoring of implementation of the Act. It establishes a minimum of 15 years in jail or a life term, in addition to a fine, on conviction for the offence of trafficking.

Georgia

Amendments made to the Georgian Criminal Code in 2006 have increased the sanctions for the offence of trafficking. Both trafficking of adults and of children is addressed by the Code, which draws no distinction between trafficking for sexual or labour exploitation. The Criminal Code exempts victims of trafficking from criminal liability for illegal border crossings (art. 344) and for involvement with forged documents (art. 362).

In addition to these amendments to the Georgian Criminal Code, Parliament adopted the Law on Combating Trafficking in Persons in June 2006, based on international standards. The Law creates a State fund for victim protection and assistance, elaborates on shelter standards and creates the Coordination Council for Combating Trafficking in Persons. The Law also discusses the creation of a database of trafficking information and the creation of standards and rules for victim identification.

More information about these legislative efforts is available at:
www.stopvaw.org/Measures_and_Actions_Taken_by_Georgia_against_Trafficking_in_Persons_-_2006.html

Guatemala

Article 194 of the Penal Code, on trafficking in persons, as amended by Decree No. 14-2005 of the Congress of the Republic on 3 February 2005 states:

Those who, using any means, induce, promote, facilitate, finance, collaborate in or participate in the seizure, transportation, transfer, harbouring or receiving of one or more persons by means of threats, the use of force or other forms of coercion, kidnapping, fraud, deceit, abuse of power, plagiarism, abduction or any situation of vulnerability or in which payments or benefits are made or accepted to obtain the consent of or a person with authority over another for the purposes of exploitation, prostitution, pornography or any other form of sexual exploitation will be punished with a sentence of from six to twelve years of imprisonment.

Various circumstances are cited which increase the applicable penalty.

Israel

In 2006, Israel amended its trafficking legislation to cover all forms of trafficking. The Prohibition of Trafficking in Persons (Legislative Amendments) Law 5766-2006 of 29 October 2006 defines trafficking as “transaction in persons” and adds article 377A, Trafficking in persons, to the Penal Law:

Anyone who carries on a transaction in a person for one of the following purposes or in so acting places the person in danger of one of the following, shall be liable to sixteen years’ imprisonment:

1. Removing an organ from the person’s body;
2. Giving birth to a child and taking the child away;
3. Subjecting the person to slavery;
4. Subjecting the person to forced labour;
5. Instigating the person to commit an act of prostitution;
6. Instigating the person to take part in an obscene publication or obscene display;
7. Committing a sexual offence against the person.

The Prohibition of Trafficking in Persons (Legislative Amendments) Law 5766-2006 is available at:

www.hotline.org.il/english/pdf/Trafficking_in_Persons_Law_eng.pdf

Italy

In 2003, the Italian Parliament approved Law No. 228 entitled “Measures against trafficking in human beings”, amending articles 600 to 602 of the Criminal Code. New article 601 of the Criminal Code defines trafficking in human beings as follows:

Whosoever commits trafficking in persons who are in the conditions referred to in article 600 or, with the aim of committing crimes referred to in the first paragraph of the same article, induces any of the aforesaid persons through deception, or forces such person through violence, threats, abuse of authority or by profiting from a situation of physical or psychological inferiority or from a situation of necessity, or by promising or giving sums of money or other advantages to those having authority over the person, to enter, to stay in or to leave the territory of the State or to migrate within it, is subject to punishment by a prison sentence of between eight and twenty years.

The sentence is increased by one third to one half if the offences referred to in the first paragraph are committed against minors under 18 years or for the exploitation of prostitution or the purposes of organ removal.

Available at:

www.unicri.it/wwd/trafficking/nigeria/docs/dr_italy_eng.pdf

Jamaica

In 2007, the Jamaican Senate passed the Trafficking in Persons Act of 2007 in order to give domestic effect to the Trafficking in Persons Protocol. The Act came into effect in March 2007 and is particularly intended to protect the rights of children.

Kosovo

Section 2.1 of UNMIK Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo states: “Any person who engages or attempts to engage in trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of two to twelve years’ imprisonment”. This provision thus also covers attempts to commit trafficking. The law further criminalizes the organization of a group of persons for the purpose of committing trafficking and facilitation of the commission of trafficking by negligence (sects. 2.3 and 2.4).

Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo is available at: www.antitrafficking-kosovo.org/en/pdf/Attachment2.pdf

Kyrgyzstan

Until August 2003, the Criminal Code of Kyrgyzstan prohibited the purchase or sale of children and the recruitment of people for sexual or other types of exploitation. In August 2003, article 124 of that Criminal Code was amended to provide for a specific offence of trade in humans, which generally follows the definition of trafficking in persons contained in the Trafficking in Persons Protocol. Additionally, new article 346-1 of the Code, which criminalizes the organization of illegal migration, can also be used to prosecute traffickers. In 2005, the Law on Prevention and Combating Trafficking in Persons was adopted; it criminalizes human trafficking for both sexual exploitation and forced labour.

Lao People's Democratic Republic

In the Lao People's Democratic Republic, the Law on Development and Protection of Women was enacted in October 2004, making the trafficking of women or children an offence. In addition, the Penal Code contains a general offence of trading in persons, which applies regardless of the sex of the victim. In the light of the fact that the Code previously did not define "trade", the Government of the Lao People's Democratic Republic presented a revised draft of the Code to Parliament, attaching the trafficking definition from the Trafficking in Persons Protocol to the Penal Code. The Law on Development and Protection of Women and the relevant sections of the Lao Penal Code are available at:

www.no-trafficking.org/content/laws_agreement/lao%20pdr.htm

Mexico

On 2 October 2007, the Mexican Congress passed legislation to increase the capacity of the Mexican courts and police to combat trafficking in persons.

Moldova

Although the Moldovan Parliament only ratified the Organized Crime Convention and the Trafficking in Persons Protocol in 2005, the Criminal Code and the Criminal Procedure Code of Moldova have included human trafficking as a distinct criminal offence since July 2003. In September 2005, the revised National Plan of Action to Prevent and Combat Trafficking in Human Beings entered into force and three months later, in December 2005, the Law to Prevent and Combat Trafficking in Human Beings was also enacted. The law is aligned with obligations under the Trafficking in Persons Protocol and provides a strong normative basis for setting standards concerning protection services for victims. The OSCE report *Trafficking in Human Beings in Moldova – Normative Acts* contains the text of Law. It is available at: www.osce.org/documents/mm/2006/06/19678_en.pdf

Mozambique

In July 2007, the Government of Mozambique approved a new law which criminalizes the offence of human trafficking and attaches long sentences to its commission.

Myanmar

The Union of Myanmar State Peace and Development Council Law No. 5/2005 (Anti-Trafficking in Persons Law) addresses trafficking in persons.

Netherlands

After the ratification by the Netherlands of the Trafficking in Persons Protocol, the Criminal Code of the Netherlands was amended such that section 273a of the Criminal Code extends the trafficking definition to all forms of exploitation, including forced labour.

Nigeria

Prior to the ratification of the Organized Crime Convention and the Trafficking in Persons Protocol and the Migrants Protocol, Nigerian law, including the Penal Code, the Criminal

Code, the Labour Act and the Immigration Act, had criminalized various offences relating to human trafficking, but the legislation was widely seen as ineffective. In 2003, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 was adopted. The Act effectively criminalizes human trafficking to reflect the definition contained in the Trafficking in Persons Protocol. This Act was amended in December 2005 to increase penalties for traffickers.

The Act can be found at:
www.naptip.gov.ng/infocent.htm

Pakistan

The Prevention and Control of Human Trafficking Ordinance, 2002, which is aimed at preventing and combating human trafficking, defines human trafficking as:

“obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person’s subsequent transportation out of or into Pakistan by any means whatsoever”.

The Ordinance is available at:
www.fia.gov.pk/pchto2002.htm

Peru

In January 2007, the Peruvian Congress passed Law 28950 on trafficking in persons. The law criminalizes all forms of trafficking and attaches adequately severe penalties to them, in accordance with the Trafficking in Persons Protocol. Law 28950 is available (in Spanish) at: www.mininter.gob.pe/cnddhh/pdfs/LEY%2028950.pdf

Sierra Leone

The President of Sierra Leone signed the Anti-Human Trafficking Act on 12 August 2005. The Act defines human trafficking as an offence, criminalizes trafficking in persons in all its forms and renders consent and a victim’s past sexual behaviour irrelevant.

The Act is available at:
www.sierra-leone.org/Laws/2005-7p.pdf

Russian Federation

Federal Law No. 162-Φ3 “On introducing changes and additions to the Criminal Code of the Russian Federation” entered into effect in Russia on 16 December 2003. With the adoption of this law, the term “trafficking in persons” was given legal definition.

According to the Criminal Code as amended by this Law, trafficking in persons is “the buying and selling of a person or other actions committed for the purpose of his exploitation in the form of recruitment, transportation, transfer, harbouring or receipt”. The Law

differentiates the criminal liability for trafficking in persons; depending on the gravity of the crime (committed with regard to two or more persons, with the use or threat of force, etc.), the punishment might be up to 15 years of imprisonment.

The amended Criminal Code envisages criminal liability for trafficking in persons (art. 127-1), the use of slave labour (art. 127-2), the involvement of minors in engaging in prostitution (art. 240, para. 3), the organization of engaging in prostitution (art. 241) and the manufacture and distribution of materials or objects with pornographic depictions of minors (art. 242-1).

More information about the legislative response of the Russian Federation to human trafficking is available at:

http://no2slavery.ru/eng/facts_and_documents/r_legislation/

Tajikistan

Previously, laws in Tajikistan only criminalized the recruitment of people for exploitation and involving of people in prostitution through violence, threats or fraud. In August 2003, Tajikistan adopted comprehensive legislation in accordance with the trafficking definition contained in the Trafficking in Persons Protocol. This involved amending the Criminal Code of Tajikistan to specifically criminalize the offence of trafficking.

The legislation is available at:

www.legislationline.org/upload/legislations/6e/57/156afe39fcc820af8679ffecd1c4.pdf

United Arab Emirates

In the United Arab Emirates, a comprehensive anti-trafficking law was passed on 11 November 2006. The law imposes high penalties of up to life imprisonment for human trafficking, which it defines as recruiting, moving, deporting or hosting individuals through the use of threat, force, deception or enticement with the aim of exploitation. Although there have not been prosecutions under this law as yet, training has been conducted for investigating officers and the Committee to Combat Human Trafficking has been established.

United States

The United States Code, as amended by the Victims of Trafficking and Violence Protection Act of 2000, establishes the following activities as criminal offences of trafficking:

Section 1590

Trafficking with respect to peonage, slavery, involuntary servitude, or forced labour

Whoever knowingly recruits, harbors, transports, provides or obtains by any means, a person for labour or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both.

Section 1591*Sex trafficking of children or by force, fraud or coercion*

Whoever knowingly

(1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides or obtains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that force, fraud or coercion described in subsection (c) (2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

This law distinguishes between sex trafficking and other forms of trafficking. Sex trafficking is a criminal offence only if it is carried out by force, fraud or coercion, or if the victim is a minor (in the latter case, no force, fraud or coercion is required). If a case of sex trafficking involves peonage (i.e. debt bondage), slavery, involuntary servitude or forced labour, it can also be prosecuted.

Section 1590 provides for imprisonment up to a maximum of 20 years. Under aggravating circumstances (if death results from trafficking or if the act includes kidnapping, attempted kidnapping, aggravated sexual abuse, an attempt to commit aggravated sexual abuse or an attempt to kill), imprisonment may be for any term of years or life. Sex trafficking according to section 1591 leads to imprisonment for up to a maximum of 20 years in the case of sex trafficking of a minor who is between 14 and 18 years old. If the victim is younger than 14 or if the crime involves force, fraud or coercion, imprisonment can be for any term of years or life. Both provisions also provide for fines—together with, or instead of, imprisonment.

The Victims of Trafficking and Violence Protection Act 2000 is available at: www.state.gov/g/tip/laws/