



Tool 3.6 Human rights and anti-trafficking legislation

Overview

This tool presents an overview of key principles and documents relating to human rights and anti-trafficking.



For more discussion on human rights considerations, see Tool 4.1, Tool 4.2, Tool 5.15, Tool 7.5 and Tool 8.3.

Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1)

(United Nations High Commissioner for Human Rights)

The Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the United Nations High Commissioner for Human Rights provide important guidance for the criminalization of trafficking in persons and the development of a legislative framework. The relevant guidelines of that document are provided below.

Recommended principles

Criminalization, punishment and redress

12. States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct.
13. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.
14. States shall ensure that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.
15. Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.
16. States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.
17. States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.

Recommended guidelines

Guideline 4. Ensuring an adequate legal framework

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.

States should consider:

1. Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking, such as debt bondage, forced labour and enforced prostitution, should also be criminalized.
2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking, such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.
3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.
4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund.
5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.
7. Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.
8. Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support

sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked.

9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.
10. Guaranteeing that protections for witnesses are provided for in law.
11. Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.



The Recommended Principles and Guidelines on Human Rights and Human Trafficking are available at:

www.unhcr.bg/other/r_p_g_hr_ht_en.pdf

Recommended resources

Human Rights and Trafficking in Persons: a Handbook (Global Alliance against Traffic in Women)

The Global Alliance against Traffic in Women (GAATW) has created a range of resources specific to the human rights dimensions of trafficking in persons. The *Human Rights and Trafficking in Persons Handbook*, produced by GAATW with contributions from a range of non-governmental organizations and United Nations agencies, examines the human rights dimensions of trafficking in persons. It discusses international instruments and materials relevant to human rights in anti-trafficking activities in a bid to offer conceptual clarity about complex obligations of States. It also offers concrete means of incorporating human rights considerations in anti-trafficking strategies. This handbook is available in English, Polish, Russian and Spanish.



For more information about these resources visit:

www.gaatw.net/index.php?option=com_content&task=blogcategory&id=9&Itemid=78

Annotated Guide to the Complete United Nations Trafficking Protocol (Global Rights)

This guide has been designed by Global Rights to assist advocates in developing a human rights framework for national anti-trafficking laws and policies and to interpret the human rights implications of articles of the Trafficking in Persons Protocol and the Organized Crime Convention.



The annotated guide is available in several languages. The English-language version is available at:

www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723

Undocumented Migrants have Rights! An Overview of the International Human Rights Framework

(Platform for International Cooperation on Undocumented Migrants)

This March 2007 publication discusses the international human rights framework relating to undocumented migrants, including non-binding United Nations resolutions and recommendations, and also European human rights instruments for the benefit of European Union member States. Of specific relevance to the issue of trafficking in persons is discussion concerning both the explicit human rights considerations in the Trafficking in Persons Protocol and the trafficking considerations contained in human rights instruments.



This publication is available at:

www.picum.org