

Trafficking: A Human Rights Approach

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Human Rights
Commission
Te Kāhui Tika Tangata

Human Rights are about:

- **Dignity**

- **Equality**

- **Security**

for all human beings everywhere

Human Rights are:

- **Inherent** – belong to all of us
because of our common humanity
- **Inalienable** – people cannot give them up
or be deprived of them
- **Universal** – apply to everyone
without discrimination



ADSHEL

Article 1:

Everyone
is born
free and
equal in
dignity
and rights.



ADSHEL

Human Rights deal with:

- Relationships among and between individuals, groups and the State
- They are about how we live together – our responsibilities to each other.
- In particular, they set a basis for the relationship between the individual and the State, between the governed and those who govern, at every level of society.

Trafficking in People

Root causes:

- **Poverty**
 - **Social Injustice**
 - **Discrimination**

Trafficking in People

- **Violations** of human rights are both a cause and a consequence of trafficking
- Trafficking involves some of the worst forms of human rights **abuses**
- International human rights obligations set out **States' responsibilities** to prevent and combat trafficking
- Human rights must be at the **core** of any credible anti-trafficking strategies
- Strategies must be developed and implemented from the **perspective** of those most vulnerable to trafficking.

Early human rights treaties

- **Trafficking addressed in some of the earliest 20th century human rights treaties:**
 - Slavery Convention 1926
(from League of Nations' temporary Slavery Commission)
 - ILO 29 Forced Labour Convention 1930
 - UN Trafficking Convention 1949
 - Supplementary Slavery Convention 1956 –
added debt bondage, serfdom, servile marriage and child servitude

Linked to a wide range of human rights violations

■ Including:

- Slavery, servitude, forced labour & debt bondage
- Forced marriage
- Racial discrimination
- Trafficking and exploitation of children (CROC)
- Trafficking as a form of violence against women and as sex-based discrimination (CEDAW)

Trafficking definition

- **Concept** of trafficking recognised in international law for a long time
- Till recently, trafficking only **explicitly** included in two major human rights treaties (CROC and CEDAW)
- First-ever **treaty-based definition** in the Trafficking Protocol, December 2000
- Widespread acceptance since then (e.g. the 2005 European Convention)

Increased focus & clarity within the last decade

UN Convention Against Transnational Organised Crime 2000

- Supplemented by three binding Protocols which target specific areas and manifestations of organised crime
 1. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol)

Trafficking in Persons definition

■ 3 Elements

- **An action** - recruiting, transporting, transferring, harbouring or receiving a person
- **A means** - using a threat, force, coercion, abduction, fraud, deception; abusing power or a position of vulnerability; giving or receiving payments or benefits to gain consent from someone who has control over another person
- **For the purpose of exploitation** – exploitation of the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

Trafficking definition summary

For adults:

All three elements must be present
(action + means + for the purpose of exploitation)

For child victims of trafficking:

- It is NOT necessary to show that any means (e.g: force or deception) was used
- A child recruited or transported for exploitation is a victim of trafficking

Other Key Conventions

Convention on the Elimination of all forms of Discrimination Against Women 1979

- **Article 6** – take all appropriate legislative and other measures to “suppress all forms of traffic in woman and exploitation of the prostitution of women”

Convention on the Rights of the Child 1989

- **Article 11** (combat illicit transfer and non-return of children abroad)
- **Article 21** (protections around inter-country adoptions)
- **Article 32** (regulation of child labour)
- **Article 33** (prevent use of children in the illicit production and trafficking of drugs)
- **Article 34** (protect children from sexual exploitation and abuse)
- **Article 35** (prevent abduction, sale of or traffic in children)
- **Article 36** (protect against exploitation)

ILO Conventions

ILO 105 - Abolition of Forced Labour Convention 1957

- **Article 1** - prohibits forced labour as a means of racial, social, national or religious discrimination, political coercion, labour discipline, to punish strikers or for economic development
- **Article 2** – requires taking effective measures to secure immediate and complete abolition of forced or compulsory labour

ILO Convention 182 - Worst Forms of Child Labour 1999

- **Article 3** - definition includes slavery, sale, trafficking, debt bondage, serfdom, and forced or compulsory labour including for armed conflict

Regional Conventions

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002

Signed by member states of the
South East Asian Association
for Regional Co-operation



Principles and Guidelines

Recommended Principles and Guidelines on Human Rights and Human Trafficking

- published in 2002 by UN High Commissioner for Human Rights
- provide practical human rights-based policy guidance

Primacy of Human Rights

Set out in the first 3 principles

- place the human rights of trafficked persons at the centre of all efforts
- States have responsibilities under international law to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons
- Anti-trafficking measures should not adversely affect the human rights and dignity of persons

Obligations

- **Criminalise trafficking** (Article 5 of the Protocol)
- **Quickly and accurately identify victims** of trafficking (Guideline 2)
- **Investigate and prosecute** trafficking with due diligence (Guideline 2)
- **Provide victims with support and protection** (Article 6, detailed in Principle 8)
- **Provide special protection for child victims** including girls (CROC Articles 32-39 and Principle 10)
- **Prevent trafficking** (Articles 2, 9, 11 and 12 and Principles 2, 4, 5 and 6 and Guideline 7)
- **Cooperate internationally** (Articles 2, 9, 10 and 13 and Guideline 11)

Role of National Human Rights Institutions

Institutions of the State but not
of government

Constitutional or statutory bodies

With broad human rights mandate

Role of NHRIs

*NHRIs, particularly in the Asia Pacific Region,
are a under-utilised resource
in the fight against trafficking
in the Asia Pacific region*

Former UN High Commissioner for Human Rights,
Mary Robinson

APF Advisory Council of Jurists' recommendations

Encourage governments to:

- **Ratify** the Trafficking Protocol
- Ensure laws are **in line** with international standards and **properly enforced**
- Ensure victims are **protected**
- **Run** education and training programmes
 - for border control and law enforcement officials, labour inspectors, the judiciary and other relevant government officials and politicians

Advisory Council of Jurists' recommendations cont'd

- **Advise governments** about gaps and weakness in domestic legislation and policies and national plans of action to address trafficking
- **Research and analyse trafficking**, in partnership with NGOs, UN Agencies, governments and others
- **Receive and act upon trafficking complaints** and enquiries
- **Co-operate with other NHRIs** particularly through the Asia Pacific Forum across the Asia Pacific
 - share information and research data, develop programmes and projects and seek funding for regional initiatives through UN agencies and the business community

Work done by NHRIs in this region

- Joint projects between countries to stop trafficking across their borders (Nepal/India, Malaysia/Indonesia, Malaysia/Philippines)
- NZ Commission worked with NZ & Thai officials and NGOs to return Thai sex workers safely, and more recently NZ officials to ensure Sikh labourers able to return from Niue to India
- Australian Commission chairs a National Roundtable on People Trafficking which in 2009 produced:
 - Guidelines for NGOs working in this area
 - *Know Your Rights* publication for trafficked persons

NZ Experience

- No evidence that trafficking is a major issue in NZ
- No room for complacency
- Like others in the room, personal experiences have raised concerns about the likelihood of trafficking
- Possible trafficking over the last 15 years
 - hospitality industry (chefs and restaurant staff)
 - horticulture
 - Thai sex workers held in debt bondage - the Commission's well-publicised Pink Sticker campaign 1999- 2001
- All of us must be prepared to deal with instances of trafficking in accordance with international best practice

Related Issues

- Welcome NZ's *Plan of Action to Prevent People Trafficking*
- Tackle separate, but related, issues:
 - exploitation of children through prostitution, particularly in South Auckland
 - NZ's non-ratification of two major international treaties protecting migrant workers (ILO 143 and 1990 UN Convention)
 - NZ's foreign affairs, trade and aid policies must incorporate robust human rights principles and approach

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