

What is Trafficking In Persons?

The offence of Trafficking In Persons (often called Human trafficking) was defined in international law in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime of 2000.

This Protocol is often referred to as the Palermo Protocol and is to be interpreted together with the UN Convention against Transnational Organised Crime.

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3:-

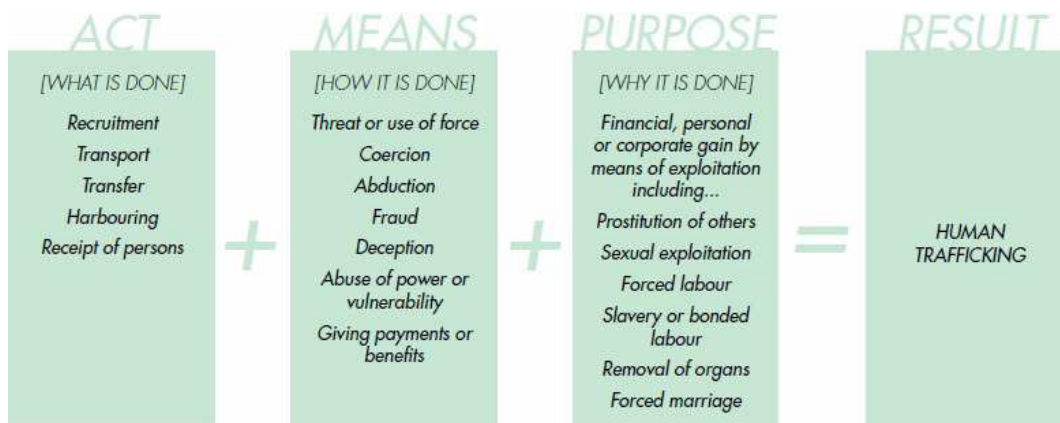
(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.



The definition of trafficking consists of three core elements:-

1. the action of trafficking,
2. the means and
3. the purpose.

If all the elements of human trafficking are present, the fact that an adult initially consented is irrelevant. It is also considered trafficking if the victim had no real or acceptable alternative but to submit to the abuse.

If the victim is a child, it is considered trafficking even if there is no threat or use of force, etc.

A key feature of the international law on human trafficking is that the **victims of trafficking are not to be prosecuted** for offences they may have committed as a result of the trafficking experience. This may refer to immigration violations, prostitution, etc.

To understand the **Action** of trafficking please read the section titled "**Activity**".

For examples of the various **Means** adopted by human traffickers, please read the section titled "**Means**".

For examples of the various forms of exploitation to which trafficking victims may be subject, please read the section titled "**Purpose**".

What Trafficking In Persons is Not!

Trafficking In Persons is a form of modern day slavery. It is a crime in numerous countries. All elements of the offence **must** be present in order to constitute human trafficking.

If there is an action to mobilise a person by means of fraud or deception for a purpose other than exploitation, human trafficking has not taken place.

Similarly, persons may be working under unfair or unsafe working conditions. However, this, in itself, does not amount to that person having been trafficked for the purpose of labour exploitation.

Human trafficking is a form of irregular migration but not all forms of irregular migration amount to human trafficking.

Human trafficking is also not the same as People Smuggling. The following bullet points and diagram highlight similarities and differences between the 2 phenomena:-

Trafficking and Smuggling: Similarities and Differences



1. People smuggling involves migrants being facilitated with entry into a State through illegal means whereas trafficking must have the threat of or use of force, coercion or deception against a victim.

2. People smuggling facilitates an individual's illegal entry into the State whereas victims of trafficking can enter into the State both legally and illegally.
3. People smuggling must take place across international borders but there is no requirement that a person must have crossed a border for trafficking to take place – it can and does take place within national borders.
4. People smuggling, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.
5. People smuggling ends with the arrival of the migrants at their destination; unlike trafficking it does not involve the ongoing exploitation of victims.
6. People smuggling can lead to trafficking if, for example, the circumstances of the smuggled persons change during the journey or upon arrival in the destination State, leading to them becoming victims of violence and exploitation.