



HUMAN TRAFFICKING AND REFUGEE PROTECTION: UNHCR'S PERSPECTIVE

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1. The Office of the United Nations High Commissioner for Refugees (hereinafter "UNHCR" or "the Office") values the efforts and shares the legitimate interest of States in combating trafficking in persons, a crime which may entail serious violations of the human rights of its victims. UNHCR specifically draws attention to the humanitarian consequences of this crime and calls for a human rights-based approach to human trafficking which goes beyond identifying and prosecuting the perpetrators, and includes measures to address the protection needs of victims or individuals who have been or are at risk of being trafficked.

2. Further to the outline below of UNHCR's interest and activities in the area of human trafficking, UNHCR highlights the following key issues in the prevention of human trafficking and protection of its victims.

- The crime of trafficking in human beings may violate fundamental human rights of victims and sometimes the rights of their families. While UNHCR appreciates the importance placed by States on combating this crime, UNHCR urges that measures taken in this respect are implemented with due regard to victims' potential needs for international protection, respect for the principle of non-refoulement and for victims' human rights.

- Persons who have been or are at risk of being trafficked may have a well founded fear of persecution or be at risk of serious harm. States must ensure that appropriate and effective referral mechanisms are in place between authorities involved in anti trafficking activities and those responsible for granting of international protection. Such measures must ensure full compliance with the principle of non-refoulement.

- The potential need for international protection of persons who have been trafficked or are at risk of being trafficked must be taken into account. This includes assessing protection needs under the 1951 Convention Relating to the Status of Refugees as well as complementary forms of protection, including subsidiary protection as defined in the Qualification Directive of the EU.

- Special measures are needed to ensure that the specific protection needs of child victims of trafficking are addressed. Such measures should include, but not be limited to, a formal

determination of the best interest of the child and a systematic assessment of the child's international protection needs.

I. UNHCR'S INTEREST AND ACTIVITIES REGARDING HUMAN TRAFFICKING

3. UNHCR has been entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees, and for seeking permanent solutions for the problem of refugees. UNHCR's mandate *ratione personae* also includes asylum seekers, returnees, stateless persons and, under specific circumstances, internally displaced persons.

4. Neither the issue of human trafficking nor trafficking victims as such fall under UNHCR's mandate or the scope of application of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter "the 1951 Convention"). However, as part of a broader international response to human trafficking, UNHCR becomes involved where human trafficking impacts on persons of concern to the Office, in particular:

- To prevent refugees and other persons of concern (asylum seekers, returnees, stateless and internally displaced persons) from becoming victims of human trafficking, and to address the needs of persons of concern who have fallen victim thereto;
- To ensure that international protection needs of trafficking victims (or those at risk of being trafficked) which may arise as a result of their trafficking experience are properly identified, and
- To assist States in ensuring that trafficking victims who are without identity documents are able to establish their identity and nationality status in order to prevent them from being rendered stateless, and to protect stateless victims of trafficking.

5. UNHCR's interventions and activities in the area of human trafficking are based on the premise that this specific crime may entail abuses or serious threats to the human rights of the victims and that an international protection response may be called for to ensure the well-being of the persons concerned. Protection measures provided to victims of trafficking in practice are often restricted to short-term assistance and support offered within the criminal justice system to victims of crimes. This is not sufficient for trafficking victims who fear persecution or other serious human rights violations and cannot return home. Such persons need international protection as provided for in the 1951 Convention, in international human rights law or complementary forms of protection under national law. This entails most notably protection against *refoulement* and in many instances granting of asylum or another protection status.

6. UNHCR is involved in *prevention* through **awareness-raising** activities to disseminate information among refugee populations and other persons of concern to alert them to the different modalities of human trafficking and the associated risks. UNHCR has also incorporated human trafficking as a variable when assessing and monitoring the situation of refugees and other persons of concern, with a view to early **identification of risks for the**

population of concern and incorporation of preventive measures for particular vulnerable groups.

7. In relation to ensuring *protection* of victims of trafficking, the Office has been involved in **advocacy** efforts to promote asylum-sensitive anti-trafficking legislation and practice at the national level, including through participation in National Working Groups on Trafficking. Such activities have included contributions to establishing informal referral mechanisms between key actors to ensure the **protection and assistance** of trafficking victims or individuals at risk of being trafficked where required.

8. Similarly UNHCR undertakes **training and capacity building** and providing support to national asylum authorities on **refugee status determination**, including through training on the Guidelines on the “Application of Article 1A(2) of the 1951 Convention or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked”.¹

9. Furthermore the Office regularly visits holding and detention centers and conducts border-monitoring missions to evaluate the arrival of refugees within mixed migratory flows, and help ensure **identification of trafficking victims** or individuals at risk of being trafficked.

10. As to *durable solutions*, local integration of refugee victims of trafficking can be particularly challenging because of the traumatizing experiences people have had. Certain trafficking victims continue to be under threat in their first country of asylum. UNHCR has worked to find a resettlement solution in such situations to ensure that victims and their families obtain effective protection.

III. CONCRETE RECOMMENDATIONS TO STATES TO STRENGTHEN THE PROTECTION AND ASSISTANCE OF TRAFFICKING VICTIMS

11. UNHCR welcomes the substantive regional initiatives in Europe on prevention and protection in the area of human trafficking. The Council of Europe Convention on Action against Trafficking in Human Beings² has advanced regional standard-setting by providing clear benchmarks for ratification. Similarly, the Organization for Security and Co-operation in Europe (OSCE)’s handbook on National Referral Mechanisms³ provides practical support to States engaged in ensuring effective referral. In 2002, the European Union adopted an important Framework Decision on the subject⁴ aimed at strengthening the cooperation among EU Member States. These regional developments have supported national efforts to ensure *inter alia* the protection of victims of trafficking in human beings, some of whom fall under UNHCR’s mandate.

12. In this respect, UNHCR reiterates the importance of ensuring that international protection needs are fully assessed, in accordance with the 1951 Convention, for persons identified as victims of trafficking. In a forthcoming study commissioned by UNHCR entitled “The Identification and Referral of Victims of Trafficking to Procedures for Determining International Protection Needs”, a number of gaps in State practice have been highlighted in

relation to ensuring complementarity between international protection systems and systems for the protection of victims of trafficking.⁵ The following recommendations to States reflect some of the findings of this study, as well as findings derived from UNHCR's work to ensure international protection for victims of trafficking at national level. Based on UNHCR's refugee protection mandate, they aim to help European countries consider and develop ways to strengthen the protection of and assistance to trafficking victims in Europe and support prevention efforts in countries of origin and transit:

- **Legal and institutional frameworks** for combating human trafficking and to protect and assist victims of this crime should be strengthened. This includes high level inter-departmental integration of the issue, implementation of National Action Plans and working groups with broad representation of relevant government agencies, and international and national organizations.
- **Training programs should be strengthened for national asylum authorities and organizations working with victims of trafficking**, including in regard to interpreting the refugee definition in an age- and gender-sensitive manner, and the criteria that give rise to the recognition of refugee or other protection status to trafficking victims (or needs of individuals at risk of being trafficked). Indicators of international protection for victims of trafficking should also be included.
- All necessary measures should be adopted to ensure **participation** of governmental institutions, including national asylum authorities, international organizations and civil society organizations where appropriate, in the **general assessment of protection needs of trafficking victims**. This can help determine, from a technical and humanitarian perspective, which protection measure is most suitable for each individual case and ensure appropriate referral mechanisms are in place where parallel protection regimes exist.
- Modules on International Refugee Law should be included in **national professional training programs on human trafficking** for relevant national authorities (migration, police, prosecutors, judges, etc.) to ensure that international protection needs are identified and addressed appropriately, including the principle of *non-refoulement* and non-penalization of refugees.
- **Specific safeguards for the protection of boy and girl victims of trafficking** should be established including: (a) a formal determination of the best interest of the child; (b) the adoption of child-specific protection measures, such as the appointment of guardians; (c) the gathering of information on the role parents might have played in the trafficking situation of their children; (d) issues of tracing and family reunification, and (e) the observance of specific safeguards in cases of the repatriation of unaccompanied or separated children.
- **Questions on pre-trafficking displacement patterns** should be included in data collection and research initiatives in order to identify priority interventions in

countries of displacement. Such interventions could include information campaigns, legal migration counseling and return assistance.

- **Protection should be available for persons displaced**, including in countries of origin and transit, through projects to build protection capacities and the strategic use of resettlement. This is important, considering that persons already displaced may be at increased risk of becoming victims of trafficking when, for instance, livelihoods are disrupted, or if basic needs and human rights are unmet.
- The number of refugee **resettlement places available** for victims of trafficking should be increased, and selection criteria consider the particular protection needs of victims or individuals who have been or are at risk of being trafficked.

UNHCR
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¹ Guidelines on the "Application of Article 1A(2) of the 1951 Convention or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked" Document available at: <http://www.unhcr.org/publ/PUBL/443b626b2.pdf>

² Council of Europe Convention on Action against Trafficking in Human Beings Online: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG>

³ National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook, OSCE and ODIHR, 2004 Online: http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf

⁴ COUNCIL FRAMEWORK DECISION of 19 July 2002 on combating trafficking in human beings (2002/629/JHA). Online:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>

⁵ Bhabha, J and Alfiev, C (unpublished text, June 2009)