

Action Sheet 8: Human Trafficking

Key message

1. Trafficking in persons, the primary objective of which is to gain profit through the exploitation of human beings, is a violation of human rights and is prohibited by international law. All States have an obligation to combat trafficking and to protect and assist victims of trafficking. This action sheet aims to give an overview of the heightened vulnerability to trafficking among IDPs and the necessity of a comprehensive anti-trafficking strategy which includes both preventive and protective measures.

What is trafficking?

2. Trafficking refers to the recruitment, transportation, transfer, harbouring or receipt of persons by improper means, such as the threat or use of force or other forms of coercion, abduction, fraud, deception, or abuse of power for the purpose of exploitation.¹ Trafficking in the context of the sex trade is well-documented and primarily affects women and children who may be forced into prostitution and other forms of sexual exploitation. Trafficking is not, however, limited to the sex trade or to women. It includes any form of exploitation of others such as forced labour or services, slavery or practices similar to slavery, servitude, and the forced removal of organs.
3. Trafficking is distinct from smuggling, which refers to the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border². The main differences are that:
 - Smuggling takes place with the consent of the smuggled migrant, while trafficking victims either have never consented or their initial consent has been rendered meaningless owing to coercion, deception or abuse at the hands of the traffickers.
 - Smuggling usually ends with the arrival of the migrant at their destination, whereas trafficking involves the ongoing exploitation of the victim(s) to generate illicit profits for the traffickers.
 - Smuggling is always transnational, whereas trafficking can take place within as well as across a country's border.

Trafficking in the context of internal displacement

4. Forced displacement puts people into situations of extreme vulnerability by weakening or completely destroying family support structures, community bonds, and self-protection mechanisms which might otherwise serve as a buffer to the risk of trafficking. Because internally displaced persons, both in emergency settings and in protracted displacement situations, often lack access to education, livelihoods and opportunities for self-reliance, they may be particularly vulnerable to traffickers who appear to offer life-saving access to employment opportunities. Furthermore, IDPs desperate to access international protection as refugees can easily fall prey to traffickers who claim to offer a route to safety.
5. Traffickers may specifically target displaced families and surrounding communities in order to exploit their vulnerability. In some cases, displaced or impoverished families may fall prey to traffickers who promise to take care of and provide their children with education or skills training, but ultimately exploit them for the purposes of prostitution, forced labour or irregular adoption. Children of displaced families may also be at particular risk of forced recruitment by armed forces and groups.

The protection implications of trafficking

6. Trafficking often takes place in dangerous and/or degrading conditions involving a range of human rights violations and abuses. Inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, and the deprivation of medical treatment. Victims of trafficking are often intimidated by and completely dependent on their traffickers, who may keep them confined, isolated and without the means of seeking assistance or protection from the authorities. In many cases, such risks are

¹ Art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ("Trafficking in Persons Protocol"), which supplements the UN Convention against Transnational Organized Crime (A/RES/55/25 of 15 Nov 2000). In addition, children under 18 are not considered to be in a position to give an informed consent and any recruitment, transfer, harbouring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used.

² Smuggling is the subject of another Protocol to the Convention against Transnational Organized Crime, i.e. the Protocol against the Smuggling of Migrants by Land, Sea and Air.

further compounded by the fact that the victims may fear arrest and prosecution for offenses such as illegal prostitution or association with armed groups. Where victims have been trafficked into another country they may also fear arrest for illegal entry and face possible deportation to their home countries, where their lives may be at risk owing to lack of livelihood opportunities, ongoing conflict and displacement, or threats of retaliation at the hands of their traffickers. In addition, victims of sexual exploitation may also fear ostracism, discrimination or punishment by the family, local community or the authorities upon return.

Individuals and groups at particular risk

7. Unaccompanied internally displaced children, child heads of households, single – especially female – heads of households, young girls and former victims/survivors of trafficking are some groups which may be at heightened risk of being trafficked. Children may be trafficked for child-specific forms of exploitation, such as illegal adoption, child prostitution, child pornography, and recruitment as child soldiers. Other forms of exploitation to which children are particularly vulnerable are domestic service, agricultural work, mining, forced marriage, and begging.

Key legal principles

8. Trafficking is prohibited by international law and criminalized in the national legislation of a growing number of states. Trafficking, which is generally considered to amount to a form of slavery, constitutes a violation of a range of human rights, most notably the right to freedom from slavery and slave-like practices³; to personal liberty and security; to freedom from torture and other cruel, inhuman or degrading treatment or punishment; and to freedom of movement. It may also nullify or impair a number of other rights, such as the right to respect for the family, the right to an adequate standard of living; to the highest attainable standards of health, and to favorable working conditions, including just compensation and reasonable working hours. Trafficking also violates a number of international legal principles relating to the protection of children from forced labour and social and economic exploitation and abuse.⁴
9. Trafficking is also specifically prohibited by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ("*Trafficking in Persons Protocol*"), which supplements the UN Convention against Transnational Organized Crime. The Protocol, which seeks to "prevent and combat" trafficking in persons and facilitate international cooperation against such trafficking, defines criminal activities relating to trafficking, guide States as to how best to combat them, and provides guidance on some aspects of victim protection.
10. International humanitarian law similarly prohibits slavery and the slave trade in all its forms as well as a number of other acts which are victims of trafficking are often subjected to, including torture, cruel or inhuman treatment and outrage upon personal dignity; rape and others forms of sexual violence; uncompensated or abusive labour; and arbitrary deprivation of liberty.⁵ Depending on the circumstances, trafficking may constitute a crime against humanity and, in armed conflict, a war crime.⁶

Role and responsibilities of the State

11. All States have a responsibility to act with due diligence to prevent trafficking, to investigate and punish traffickers, and to protect, assist and provide redress to victims of traffickers. The human rights of trafficked persons should be at the centre of all such efforts. The role and responsibility of the State in this regard is

³ The prohibition against slavery and slave-like practices is a peremptory norm of international law and a rule of customary international law. It is also widely prohibited in treaty law, including, at the international level, in: Art. 4 UDHR; Art. 8 ICCPR; Art. 10, 19, 21 and 32 of ICESCR; Art. 6 of CEDAW; Art. 11 of CMW; in the 1926 Slavery Convention and its Protocol; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and ILO Conventions No. 29 (Forced Labour), No. 105 (Abolition of Forced Labour); No. 182 (Worst Forms of Child Labour), and No. 138 (Minimum Age Convention). See also GA Res 57/176 of 18 Dec 2002 on Trafficking in Women and Girls. At the regional level it is similarly prohibited in Art. 5 AfCHPR and Art. 4 of its Protocol on the Rights of Women in Africa; Art. 6 of AmCHR; in Art. 11(a) of the Cairo Declaration on Human Rights in Islam; Art. 31 of ArCHR and Art. 4 of ECHR.

⁴ See e.g. Art. 10(3) of ICESCR; Arts. 11, 19, 32, 34, 36 and 39 of the CRC and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; ILO Conventions No. 138 (Minimum Age Convention) and No. 182 (Worst Forms of Child Labour Convention). See also, at the regional level, Arts. 24 and 29 of ACRWC; and the Inter-American Convention on International Traffic in Minors.

⁵ See e.g. Rules 90, 93 94, 95 and 99 of Customary International Law, Volume I: Rules (ICRC, 2005) as well as Common Art. 3 of the Geneva Conventions, Art. 4(2)(f) of AP II; and Arts. 75 and 76 of AP I.

⁶ See e.g. Articles 7(1)(c), 7(1)(g), 7(2)(c) and 8(2)(xxii) of the Statute of the International Criminal Court which define "enslavement", "sexual slavery" and "enforced prostitution" as crimes against humanity and war crimes.

further outlined in the Trafficking in Persons Protocol as well as in the Recommended Principles and Guidelines on Human Rights and Human Trafficking⁷. These include, among others things:

- Enact domestic laws to **criminalize trafficking activities**.
- Ensure that their laws offer victims of trafficking in persons the possibility of obtaining **compensation for damage suffered**.
- Take steps to **protect and assist trafficked persons**, including ensuring confidentiality and providing some protection against offenders to victims who assist in legal proceedings. The Protocol also encourages States to provide social benefits such as housing, medical care, counseling, and legal assistance, with attention to the age, gender and specific needs of trafficking victims.
- Establish **comprehensive policies, programmes, and other measures** to prevent and combat trafficking and protect victims from revictimization. These measures include **research, mass media campaigns, social and economic initiatives** as well as measures to alleviate factors that makes persons vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity.
- **Cooperate** with other signatory states; take multilateral and bilateral action; and work with non-governmental and other elements of society to address trafficking.
- **Implement security and border controls** to detect and prevent trafficking. State parties are obliged to ensure that their own border controls are effective and take measures to prevent the misuse of passports and other travel or identification documents.
- **Facilitate and accept the return** of victims who are nationals or have the right of permanent residence, with due regard for their safety.
- Take measures to **discourage the demand for services** that fosters the exploitive element of trafficking and provides its major source of illicit revenue.
- Take measures to **protect victims from being trafficked again** and other forms of revictimization.

Role and responsibility of human rights and humanitarian actors

12. The *UNODC Toolkit to Combat Trafficking in Persons*,⁸ combined with the Office of the High Commissioner for Human Rights *Recommended Principles and Guidelines on Human Rights and Human Trafficking*⁹ provide guidance to humanitarian workers, governments, NGOs and others aiming to prevent and respond to human trafficking. All strategies, policies and programmes should be based on and be in accordance with these principles and guidelines. The following table gives some examples of suggested activities:

| In our work we can... | |
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| Assessment | <ul style="list-style-type: none"> ▪ Ensure that protection assessments address the risk of trafficking within a given community. This may include assessing: <ul style="list-style-type: none"> (i) the risk of trafficking taking place; (ii) any factors that increase exposure to trafficking; (iii) the individuals most at risk; (iv) any existing coping mechanism and ways to prevent and respond to incidents of trafficking. |
| Community mobilization | <ul style="list-style-type: none"> ▪ Sensitize the community to the risks of trafficking as well as the suffering of those that have been victims of trafficking, for instance by facilitating and encouraging discussions and dialogue and supporting community groups which can help raise awareness of the issue. ▪ Support the development of community networks or groups that can monitor and help prevent incidents of trafficking, assist in the recovery and reintegration of victims of trafficking. |
| Referral and response mechanisms | <ul style="list-style-type: none"> ▪ Coordinate with relevant actors to ensure the establishment and maintenance of effective referral and response mechanisms at the local and national levels, including in camps and settlements. |
| Material assistance | <ul style="list-style-type: none"> ▪ Ensure that victims of trafficking have access to necessary material support (shelter, food and non-food items) and as well as to needed services (health-care, psycho-social counseling, education and skills-training). Such support should take into account any special needs arising as a result of the victim's age, gender or other factors. |
| Training | <ul style="list-style-type: none"> ▪ Provide training on human rights and related issues, such as prevention and response to trafficking, to relevant actors, such as IDP communities, law enforcement agencies, the judiciary, NGOs, UN and peacekeeping forces, where these are deployed. |
| Legal review | <ul style="list-style-type: none"> ▪ Review national legislation and assess whether and to what extent it prevents and adequately responds to risks of trafficking, including as regards the recovery and reintegration of victims |

⁷ Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR, E/2002/68/Add. 1, 20 May 2002).

⁸ Toolkit to Combat Trafficking in Persons (UN Office on Drugs and Crime, 2006). See the reference section for weblink.

⁹ Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR, E/2002/68/Add. 1, 20 May 2002). See reference list for weblink.

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| | <p>of trafficking. As appropriate advocate with national authorities for improvements in legislation, policy or practice in this field.</p> <ul style="list-style-type: none"> ▪ Ensure that all relevant actors, including those working on GBV prevention and response, are familiar with relevant national laws and regulations relating to trafficking. National labour legislation may also provide extensive recourse in situations of forced and compulsory labour. |
| Legal Aid | <ul style="list-style-type: none"> ▪ Ensure that victims of trafficking have access to legal advice and assistance. This may include both victims that wish to seek remedies or payment of legally due wages as well as victims that have been charged with offenses (such as illegal prostitution). |
| Livelihood | <ul style="list-style-type: none"> ▪ Work with the community to identify livelihood and income-generating opportunities and strengthen self-reliance to provide an alternative to the risks of trafficking. Pay particular attention to groups at risk, such as separated and unaccompanied children, single (female) headed households, and those that have already been victims of trafficking. |
| Victim and witness protection | <ul style="list-style-type: none"> ▪ Encourage national authorities to develop adequate witness protection measures for the benefit of any victims who cooperate in criminal prosecutions – such protection may need to be extended to other family members. |
| Family tracing and reunification | <ul style="list-style-type: none"> ▪ Work with relevant partners, such as ICRC and UNICEF, to ensure that separated or unaccompanied children are identified, registered and documented, that best interest determination is conducted, and that family tracing and reunification takes place. |

Key Partners

13. **In addition to the internally displaced and their communities** important actors include:
- At the **national level**, actors include: law enforcement agencies, Ministries of Justice, Labour and Social Services, and local NGOs and civil society.
 - At the **regional level**, actors include: the Asia Regional Initiative against Trafficking in Women and Children, the Association of Southeast Asian Nations’ Declaration against Trafficking in Persons Particularly Women and Children, the Asia-Europe Meeting’s Action Plan to Combat against Trafficking in Persons, Especially Women and Children; the Council of European Union’s Brussels Declaration on Preventing and Combating Trafficking in Human Beings, the Economic Community of West African States’ Initial Plan of Action against Trafficking in Persons; and the Regional Conference (in the Americas) on Migration (formerly known as the “Puebla Process”).
 - At the **international level**, actors include: UNODC, ILO, UNICEF, OHCHR, IOM, various international NGOs, and peace-keeping forces where these exist.

References

Tools and guidelines

- **Recommended Principles and Guidelines** on Human Rights and Human Trafficking (OHCHR, E/2002/68/Add.1, 20 May 2002). Available at www.ohchr.org/english/about/publications/docs/trafficking.doc.
- **Toolkit to Combat Trafficking in Persons** (UN Office on Drugs and Crime, 2006). Available in Arabic, English, French, Russian, and Spanish, at http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf
- Guidelines on the **Protection of Child Victims of Trafficking** (UNICEF). Available at http://www.unicef.org/ceecis/UNICEF_Child_Trafficking146-198.pdf
- Reference Guide on **Protecting the Rights of Child Victims of Trafficking** in Europe (UNICEF). Available at http://www.unicef.org/ceecis/protection_4440.html
- WHO **Ethical and Safety Recommendations for Interviewing Trafficked Women** (WHO, 2003)
- **Handbook on Direct Assistance for Victims of Trafficking (IOM)**. Available at <http://www.iom.int/jahia/page8.html>
- Guidelines on the **application of Art 1A(2) of the 1951 Convention and/or 1967 Protocol, relating to the Status of Refugees to the victims of trafficking and persons at risk of being trafficked** (UNHCR, HCR/GIP/06/07, 7 April 2006)

Websites

- United Nations for Drug and Crime (UNODC) – www.unodc.org
- International Organisation for Migration (IOM) – www.iom.int
- United Nations Children Fund (UNICEF) – www.unicef.org
- Special Rapporteur of the Human Rights Council on trafficking in persons , especially in women and children - www.ohchr.org/english/issues/trafficking/index.htm