Human Trafficking and Refugee Protection in Mixed Migratory Flows

A UNHCR’s perspective

Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migratory Flows
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UNHCR’s interest and involvement in combating human trafficking
UNHCR’s interest

- Neither **human trafficking nor trafficked victims** as such fall within UNHCR’s mandate or the 1951 Refugee Convention.

- However, as part of a **broader international response** to human trafficking.

- UNHCR **becomes involved** where trafficking impacts on persons of concern:
  - Asylum-seekers
  - Refugees
  - Returnees
  - IDPs
  - Stateless persons
Factors that may lead to increased risk to trafficking

- Illegal migration
- Forced displacement
- Armed conflict
- Poverty
- Discrimination
- Limited humanitarian assistance
- Insecurity in country of asylum
- Gender and age
- Uncertain status or future prospects
UNHCR’s involvement

- **PREVENT** that persons of concern become trafficked

- **ENSURE** that international protection needs of trafficked persons are properly identified, assessed and recognized

- **ASSIST** States in ensuring that victims without identity documents can establish their identity and nationality - statelessness prevention

- **ENSURE** that victims not in need of international protection are referred to appropriate actors as part of a collaborative UN-inter agency response
UNHCR’s parameters

- Specific crime and a serious human rights violation
- Holistic, victims-oriented and human rights-based approach
- Criminal justice responses

- This is not sufficient for trafficked victims who fear persecution and cannot return

- International protection response is needed

- International cooperation is needed to prevent, protect and provide remedies for trafficked victims
Two separate international legal regimes

<table>
<thead>
<tr>
<th>1951 Refugee Convention</th>
<th>2003 Trafficking Protocol</th>
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<tbody>
<tr>
<td>Entered into force in 1954</td>
<td>Entered into force in 2003</td>
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<tr>
<td>Defines who is a refugee</td>
<td>Provides an internationally-recognized definition of human trafficking</td>
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<tr>
<td>Establishes juridical status of refugees</td>
<td>To prevent and to combat trafficking</td>
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<tr>
<td>Set minimum standards of treatment of refugees</td>
<td>To protect and to assist trafficked victims – full respect of their human rights</td>
</tr>
<tr>
<td>Establishes rights and obligations of refugees</td>
<td>Particular attention to women and children</td>
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<tr>
<td>Establishes States’ s obligations</td>
<td>To promote cooperation among States Parties</td>
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<tr>
<td>A Human Rights instrument</td>
<td>A Criminal Law instrument</td>
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But refugee protection and THB intersects

Article 14 of the Palermo Protocol – Saving Clause:

“(1) Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”
Direct bridge

- States’ obligation to **preserve the institution of asylum**
- **Anti-trafficking measures** need to be in compliance with International Law
- **Human rights** have to be at the centre of all anti-trafficking efforts
- **Established rights of trafficked persons** shall not be affected
- **Complementarity of protection and legal regimes**
Asylum applications by trafficked persons

- All elements of the **refugee definition** need to be satisfied:
  - Outside of country of origin
  - Well-founded fear of persecution
  - For reasons of (five specified grounds)
  - Unable or unwilling to return

- What amounts to a **well-founded fear of persecution** will depend on the **particular circumstances** of each case

- Assessment needs to be done vis-à-vis the asylum-seeker’s **country of origin**
Grant of asylum is unconditional

- Recognition of refugee status is:
  - independent of any other counter-trafficking follow up
  - determined on the merits of the case

- What does refugee status offers to a trafficked victim that qualifies as a refugee?
  - Protection against refoulement
  - Granting of asylum
  - Access to rights stipulated under the 1951 Convention
  - Access to durable solutions
  - Protection by UNHCR
Protection of Trafficked victims in need of international protection in the context of mixed migration
Challenges in State practice

- Identification of VOTs
- Addressing protection needs within criminal law systems
- Lack of access to asylum - limited refugee recognitions
- Lack of effective referral systems
- Detention in immigration facilities
- Prosecution for illegal entry, stay or work
Key Principles – anti-trafficking measures

- Human Rights-based and protection-sensitive approach
- Holistic and victim-oriented approach
- Nexus between asylum and trafficking
- Age, gender and child-sensitive approach
- PoC and VoTs as rights holders
- Established rights of PoC shall not be affected
- Vulnerability needs
- State responsibility to protect, assist and prosecute
## Complementary rights

<table>
<thead>
<tr>
<th>Refugees - IRL</th>
<th>VOT- IL and Trafficking Protocol</th>
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<tbody>
<tr>
<td>Non-refoulement/expulsion</td>
<td>Identification of VOT/children VOTs</td>
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<tr>
<td>Right to seek asylum</td>
<td>Access to asylum procedures and processes</td>
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<tr>
<td>No punishment for illegal entry</td>
<td>Referral to competent authorities for protection and assistance</td>
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<tr>
<td>Access to social welfare</td>
<td>Access to remedies</td>
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<tr>
<td>Access to travel documents</td>
<td>No application of penalties to VOTs or prosecution for status-related offences</td>
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<tr>
<td>Freedom of movement</td>
<td>Non-coercion in the provision of care and support to VOTs</td>
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<td>Access to courts</td>
<td>Right to remain during legal proceedings</td>
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<td>Durable solutions</td>
<td>Safe and voluntary return</td>
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Key protection issues – mixed flows

- Protection-sensitive entry systems
- Identification
- Reception
- Referral
- Differentiated procedures
- Non-discrimination
- Provision of information
- Entitlement to specific rights
- Confidentiality and privacy
- Durable solutions
Age-sensitive procedures include:

- Priority basis
- Best interest determination
- Referral to women/child protection services
- Benefit of the doubt when assessing age
- Avoid detention
- No return without best interest determination
- Child-friendly environment (safe location)
- Respect for their privacy
- Family tracing and reunification
UNHCR’s role in assisting States to address the protection needs of victims of trafficking
UNHCR’s areas of intervention

- Prevention
- Protection
- Inter-agency collaboration
- Searching durable solutions
Prevention

- Awareness-raising activities among displaced populations
- Monitoring and assessing situation of persons of concern
- UNHCR’s Activities to Reduce Vulnerability to Trafficking
  - Registration and identity documents
  - Best interests assessments and determinations
  - Family tracing and family reunification
  - Efforts to achieve gender equity & women empowerment
  - Prevention and response to SGBV
  - Participatory assessments
Protection

- Promote asylum-sensitive anti-trafficking national legal and institutional frameworks
  - Developing legislation and policies
  - Developing National Action Plans, National Committees
  - Establishing identification, screening, and referral mechanisms
  - Participating to inter-agency and multi-stakeholders mechanisms
  - Ensuring access to protection and assistance services
  - Promoting accession to international and regional instruments
  - Monitoring detention centers and borders
  - Promoting access to justice and remedies
  - Promoting criminalization of trafficking, smuggling and related crimes

- Training and capacity-building activities
  - Supporting national asylum systems - RSD procedures
  - Developing indicators for the identification of victims
Inter-agency co-operation

- National initiatives

- Examples of partnership and collaboration
  - UNHCR - IOM SOPs for the identification and assistance of victims
  - EU, ECOWAS, UNODC
  - 10PP of Action – Costa Rica Conference
  - Regional processes – Asia, Mexico, ECOWAS

- UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT)

- UN and Regional Human Rights bodies
Find durable and long-term solutions

- **Refugees**
  - Voluntary repatriation
  - Resettlement
  - Local Integration

- **Non-refugees**
  - Integration in host country
  - Return
  - Protective relocation
  - Migratory options
Resource materials
Resource materials

- UNHCR Refworld Trafficking Feature
  http://www.refworld.org/thb.html

- Selected Background Documents - Conference Materials
  https://www.dropbox.com/sh/slj2mr051yxog5n/vPD2PBZwAN/Conference%20Agenda%2C%20Concept%20Note%20and%20Plenary%20Guidelines
Way forward

- Plenary discussions Outline

- How would you address the challenges you face in identifying, protecting and assisting trafficked victims affected by mixed migration?

- What concrete recommendations would you make in this regard?
THANK YOU