



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**

Nassau, 22-23 May 2013

**Maria Bances del Rey
Senior Regional Protection Officer
UNHCR Regional Office for the US and the Caribbean**



**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

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

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 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

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



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