

Action Sheet 7

Human Trafficking



Key message

Trafficking in persons is a serious violation of human rights. It is prohibited by international law and, in most cases, national law. All States have an obligation to combat trafficking and protect and assist its victims. Conflict and displacement can heighten the risk of trafficking. Humanitarian actors may play an important role in supporting counter-trafficking efforts through preventive and protective measures.

1. What is trafficking?

Trafficking in persons 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 are forced into prostitution and other forms of sexual exploitation. However, trafficking is not limited to the sex trade or to women. It includes various forms of exploitation of others, such as forced labour or services, slavery or practices similar to slavery, servitude, and the forced removal of organs.

Trafficking is distinct from smuggling, which refers to the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border.² 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 because of 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 borders.

2. Trafficking in the context of internal displacement

Forced displacement can increase the risk of trafficking by weakening or destroying family support structures, community bonds, and self-protection mechanisms that might otherwise serve as a buffer to trafficking. Because internally displaced persons often lack documentation and have limited access to education, livelihoods and self-reliance opportunities, they may be particularly vulnerable to traffickers who appear to offer life-saving access to employment opportunities. IDPs who fear for their lives and wish to seek protection abroad, for instance as refugees, can also fall prey to traffickers who claim to offer a route to safety.

¹ For a comprehensive and legally accurate definition of trafficking please see 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). Note that as children under 18 are not considered to be in a position to give informed consent and any recruitment, transfer, harbouring or receipt of children for the purpose of exploitation is considered 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.

Traffickers specifically target impoverished communities, including the internally displaced, in order to exploit their vulnerability. Poor and displaced families may entrust the care of their children to traffickers who promise to provide them with education or skills training, but ultimately exploit them for the purposes of prostitution, forced labour or irregular adoption.

Unaccompanied or separated children and children of displaced families, both girls and boys, may also be at particular risk of forced recruitment by armed forces or groups. Often, these risks are further compounded by an inadequate legal framework, weak law enforcement capacity, weak border control, lack of respect for human rights, and domestic violence and abuse, in particular against women and children.

3. The protection implications of trafficking

Trafficking generally takes place in dangerous and degrading conditions and involves a range of human rights violations and abuses. Inherent in trafficking 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 dependent upon and intimidated by their traffickers, who frequently confiscate their identity documents and keep them confined and isolated, thus limiting their ability to seek assistance or protection from the authorities. Victims may also fear arrest and prosecution for activities they are forced to engage in, such as prostitution or association with armed groups. Where victims have been trafficked into another country, they may fear arrest for illegal entry and face possible deportation to their home countries. Back at home, their lives might be at risk because of ongoing conflict and displacement or threats of retaliation from the traffickers. In addition, victims of sexual exploitation might also feel shame and fear to be ostracized, discriminated against or punished by their family, community or the authorities.

4. Individuals and groups at particular risk

Unaccompanied internally displaced children, child heads-of-households, single (especially female) heads-of-households, young girls, and former victims/survivors of trafficking are particularly vulnerable to the risks of trafficking.

Children are often trafficked for child-specific forms of exploitation, such as illegal adoption, child labour, child prostitution, child pornography, and forced recruitment into armed forces or groups. Other forms of exploitation to which children are often exposed include domestic service, agricultural work, mining, forced and early marriage, and begging. It is important to note that any recruitment, transfer, harbouring or receipt of children for the purpose of exploitation is considered a form of trafficking regardless of the means used.



5. Key legal principles

Trafficking is prohibited by **international (and regional) human rights law** and criminalized in the national legislation of a growing number of states. It is generally considered to amount to a form of slavery, and 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

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 of UDHR; Art. 8 of ICCPR; Arts. 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 of 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.

movement. It also infringes 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 standard 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

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, guides States on ways to combat them, and provides guidance on some aspects of victim protection.

Trafficking is criminalized in the national legislation of a growing number of states, including through national criminal and labour law codes.

International humanitarian law similarly prohibits slavery and the slave trade in all its forms as well as a number of other acts to which victims of trafficking are often subjected, 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

6. The responsibilities of the State

All States have a responsibility to prevent trafficking, to investigate and prosecute traffickers, and to protect, assist and provide adequate redress to the victims. Respect for human rights and the best interests of the victims should be at the centre of all such efforts. The role and responsibilities of the State are further outlined in the Trafficking in Persons Protocol as well as in the Recommended Principles and Guidelines on Human Rights and Human Trafficking.⁷ States that should, for instance:

- Take all **appropriate national, bilateral and multilateral measures** to prevent trafficking for any purpose or in any form, in particular of children.
- Enact domestic laws to **criminalize trafficking** and ensure the prompt **investigation and prosecution** of traffickers. Efforts must be made to ensure confidentiality and provide adequate protection to victims and witnesses who assist with legal proceedings.
- Provide **protection and assistance to trafficked persons** and ensure that they receive just compensation for the harm suffered. The Protocol also encourages States to provide access to social benefits, such as housing, medical care, counseling, and legal assistance, paying attention to age and gender and the specific needs of the victims.
- Develop comprehensive **policies and programmes** to prevent and combat trafficking and protect victims from re-victimization. This can include research, mass media campaigns, social and economic initiatives, and measures to address risk factors to trafficking, such as poverty, discrimination, and lack of equal opportunities.

⁴ See Art. 10(3) of ICESCR; Arts. 11, 19, 32, 34, 36 and 39 of 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 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 Additional Protocol II; and Arts. 75 and 76 of Additional Protocol 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.

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

- **Cooperate** with other states, non-governmental organizations and other elements of society to address trafficking.
- **Implement security and border controls** to detect and prevent trafficking. States should ensure that their own border controls are effective and take measures to prevent the misuse of passports and other travel or identification documents.
- Take measures to **discourage the demand for services** that fosters the exploitive element of trafficking and provides its major source of illicit revenue.

7. The role of human rights and humanitarian actors

While primary responsibility for combating trafficking rests with the State, human rights and humanitarian actors also play an important role. A comprehensive and well-coordinated counter-trafficking strategy, involving all relevant sectors and actors, including the authorities, should thus form part of the protection response in most humanitarian settings. The *UNODC Toolkit to Combat Trafficking in Persons*,⁸ together with *Recommended Principles and Guidelines on Human Rights and Human Trafficking*,⁹ provide useful guidance in this regard. The table below also gives some ideas about possible activities.



In our work we can ...	
Assessment <i>(see Part III.1)</i> 	<ul style="list-style-type: none"> • Ensure that protection assessments identify existing risks of trafficking within a given community as well as any factors that can increase exposure to trafficking; the individuals most at risk; the adequacy of the national response; existing formal and informal coping mechanisms, and ways to support these.
Information and community mobilization <i>(see Parts IV.10 and IV.6)</i> 	<ul style="list-style-type: none"> • Raise awareness in the community about the risks associated with trafficking. This can, for instance, be done by facilitating public discussion and dialogue, by supporting community groups working on the issue, and engaging in public information activities together with other partners. • Support community-based groups and networks that can monitor the threat of trafficking, take action to prevent it, and support the recovery and reintegration of victims.
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.
Interim care and support <i>(see Part IV.11)</i> 	<ul style="list-style-type: none"> • Ensure that victims of trafficking are safe and are given access to appropriate care and services (health-care, psycho-social and legal counseling, education and skills-training) as well as necessary material support (safe and appropriate shelter, food and non-food items). Such support should take into account age, gender and any specific needs. • Alternative care arrangements may need to be found for unaccompanied children: under no circumstances should child victims of trafficking be detained or accommodated in detention facilities.
Training	<ul style="list-style-type: none"> • Provide training on human rights and on prevention and response to trafficking, to relevant actors, such as IDP communities, law enforcement agencies, the judiciary, NGOs, and UN and peacekeeping forces, where these are deployed. This should include guidance on confidentiality and on working with child victims of trafficking.

⁸ Toolkit to Combat Trafficking in Persons, UN Office on Drugs and Crime, 2006.

⁹ Recommended Principles and Guidelines on Human Rights and Human Trafficking, OHCHR, 2002 (E/2002/68/Add. 1).

Legal review	<ul style="list-style-type: none"> Review national legislation and its enforcement and assess to what extent it prevents and adequately responds to risks of trafficking, including as regards the recovery and reintegration of victims of trafficking. As appropriate, advocate with national authorities for improvements in legislation, policy or practice in this field. 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 might also provide extensive recourse in situations of forced and compulsory labour.
Legal aid <i>(see Part IV.5)</i> 	<ul style="list-style-type: none"> Ensure that victims of trafficking have access to affordable and adequate legal counseling and assistance. This includes both those victims that wish to seek compensation or payment of legally due wages, and those that have been charged with offences, such as illegal prostitution.
Livelihoods <i>(see Part V.15)</i> 	<ul style="list-style-type: none"> Work with the community to identify livelihood and income-generating opportunities to strengthen self-reliance and reduce the risk of trafficking. Pay particular attention to groups at risk, such as separated and unaccompanied children, single- (female) headed-households, and prior victims of trafficking. This can, for instance, include ensuring full and equal access to education for children and adolescents.
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 might need to be extended to other family members.
Family tracing and reunification <i>(see Part V.8)</i> 	<ul style="list-style-type: none"> Work with relevant partners, such as ICRC and UNICEF, to ensure that separated or unaccompanied children are rapidly identified, registered and documented, that best interests determination is conducted, and that family tracing and reunification takes place or alternative care arrangements are made, as appropriate.
<p>Do you have suggestions about other activities? If so, share them with us at hqidphb@unhcr.org</p>	



8. Key actors

A number of actors play an important role in combating trafficking and providing assistance to victims/survivors:

- At the **national level**: internally displaced and host communities; law enforcement agencies, Ministries of Justice, Labour and Social Services, and local NGOs and civil society.
- At the **international level**: UNODC, ILO, UNICEF, IOM, UNHCR, OHCHR, various international NGOs, and peacekeeping forces, where present.
- In addition, at the **regional level**, a number of consortiums and initiatives have been created including: in **Asia**, 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; in **Africa**, the Economic Community of West African States' Initial Plan of Action against Trafficking in Persons; in **the Americas**, the Regional Conference on Migration (formerly known as the "Puebla Process"); and in **Europe**, the Organization for Security and Co-Operation in Europe (OSCE) and its Action Plan to Combat Trafficking of Human Beings, Office for Democratic Institutions and Human Rights (ODIHR), and the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings



References

- *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF. http://www.unicef.org/ceecis/UNICEF_Child_Trafficking146-198.pdf
- *Handbook on Direct Assistance for Victims of Trafficking*, IOM. <http://www.iom.int/jahia/page8.html>
- *Toolkit to Combat Trafficking in Persons*, UN Office on Drugs and Crime, 2006. www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf (in 5 languages)
- *Ethical and Safety Recommendations for Interviewing Trafficked Women*, WHO, 2003. www.who.int
- *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, OHCHR, E/2002/68/Add.1, 20 May 2002. www.ohchr.org/english/about/publications/docs/trafficking.doc.
- *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF. Available at http://www.unicef.org/ceecis/protection_4440.html
- *OSCE Action Plan to Combat Trafficking in Human Beings* (Permanent Council Decision No. 557 and No. 685) www.osce.org/cthb/13408.html
- *Child-friendly Standards and Guidelines for the Recovery and Integration of Trafficked Children*, ILO 2006. www.ilo.org
- *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. www.refworld.org



Useful websites

- United Nations for Drug and Crime (UNODC): www.unodc.org
- International Organization for Migration (IOM): www.iom.int
- United Nations Children Fund (UNICEF): www.unicef.org
- International Labour Organization (ILO): www.ilo.org
- United Nations High Commissioner for Human Rights (OHCHR): www.ohchr.org
- United Nations High Commissioner for Refugees (UNHCR): www.unhcr.org
- Organization for Security and Co-operation in Europe (OSCE): www.osce.org. See also the OSCE Office for Democratic Institutions and Human Rights (ODIHR): www.osce.org/odihr and OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings www.osce.org/cthb
- Special Rapporteur of the Human Rights Council on trafficking in persons, especially in women and children: www.ohchr.org/english/issues/trafficking/index.htm