

# TRAFFICKING IN PERSONS AND REFUGEE STATUS

Persons who have been trafficked across an international border, in transit or at destination, may be in need of international protection as refugees on the basis of this experience. Ensuring protection against their *refoulement* and access to procedures which can determine their refugee status is therefore critical. Despite this, victims of trafficking continue to face barriers in receiving the assistance and protection they need, not only as victims of trafficking, but also as potential refugees. This issue brief will clarify the relationship between refugee status and trafficking in persons across a number of situations and provide recommendations on what States can do to ensure that victims of trafficking have access to international protection as refugees where they need it.

## WHAT IS THE RELATIONSHIP BETWEEN THE REFUGEE DEFINITION UNDER INTERNATIONAL LAW AND TRAFFICKING IN PERSONS?

While not all victims of trafficking are refugees, depending on the circumstances, some victims of trafficking will qualify for refugee status under the 1951 Refugee Convention or regional refugee instruments. UNHCR's Guidelines on International Protection No. 7 set out when the 1951 Convention refugee definition applies to victims of trafficking and persons at risk of being trafficked. This is particularly relevant in situations where:

- a) victims who have been trafficked abroad seek international protection as a refugee in the State in which they are currently present;
- b) victims who have been trafficked inside their own country and then fled abroad seek international protection as a refugee; and

## TRAFFICKING IN SITUATIONS OF ARMED CONFLICT AND VIOLENCE AND REFUGEE STATUS

[UNHCR's Guidelines on International Protection No 12](#) provides guidance on claims for refugee status related to situations of armed conflict and violence. It highlights that such situations are a major cause of refugee movements today, and are often rooted in, motivated or driven by, ethnic, racial, religious, political, gender or social group divides. [UNHCR's Guidelines on International Protection No 1](#), on the needs of persons fleeing gender related persecution further explains that sexual and gender-based violence, human trafficking, sexual slavery and conjugal slavery/forced marriage, are common forms of persecution in many situations of armed conflict and violence.

- c) persons who, although having never been trafficked, fear becoming a victim of trafficking in their country of origin and have fled abroad in search of international protection as refugees.

Under Article 1(A) of the 1951 Refugee Convention, victims of trafficking or persons who fear being trafficked are refugees if they have a well-founded fear of persecution in their country of origin where the state is unable or unwilling to protect them. Persecution is considered to include fear of serious harm or serious human rights violations such as threats to life or freedom. That persecution must be linked to their actual or imputed race, religion, nationality, membership of a particular social group, or political opinion, also known as the five Refugee 'Convention Grounds'.

In trafficking contexts, the persecution feared by an individual or group can include, for example, exploitation on the basis of one's ethnicity or minority group or reprisals and/or re-trafficking by their traffickers in their country of origin. It can also result from severe ostracism, discrimination or punishment by State authorities or community members for having been a victim of trafficking - whether at home or abroad. This risk is particularly pertinent among those who were trafficked for sexual exploitation.

## WHAT ARE THE CHALLENGES IN PROVIDING INTERNATIONAL PROTECTION AS REFUGEES TO VICTIMS OF TRAFFICKING?

Gaining access to asylum systems is a particular challenge which victims of trafficking often face. Victims of trafficking may be unaware of their right to apply for asylum and they may not receive timely information about how they can do so. This can be especially difficult for children and women when the information about procedures for making an application for asylum are not available in a child-friendly or gender-sensitive manner. At times, language barriers, accessibility and illiteracy pose additional problems to victims of trafficking. In other cases, legislative, regulatory or policy deficits may mean that immigration authorities, courts or even NGOs, only consider identified victims of trafficking as eligible for national protection schemes specific to victims of trafficking, and not as eligible for protection as refugees, or for a subsidiary or complementary protection status. Further, asylum authorities are often

### TRAFFICKING RISKS TO REFUGEES

Refugees and asylum-seekers are particularly vulnerable to abuse and exploitation at different stages of their flight, including at their destination. They may be compelled to use smugglers as their only means to flee persecution, conflict and violence without travel or identity documents, to cross dangerous terrain and to circumvent border controls that prohibit access to asylum-seekers, exposing them to risk. Once at their destination they may encounter discrimination, restrictions on freedom of movement, inadequate or non-existent livelihood or educational opportunities, and experience limited access to humanitarian assistance or other support systems. This can push them to solicit smugglers in order to move in search of better protection and/or opportunities, or into the hands of traffickers who may prey on refugees and asylum-seekers residing in camps, reception centers or other settlements.

ill-equipped to identify victims of trafficking from among asylum-seekers and may also lack the capacity to assess the relationship between an asylum-seeker's actual or feared trafficking experience and their potential need for international protection as refugees.

These challenges are in addition to:

- a) the fear that many victims of trafficking have of stigmatisation, deportation by the authorities or retaliation by their traffickers, should they report that they have been, or are being, trafficked; and
- b) the frequent lack of systems which systematically identify victims of trafficking from among migrant and refugee populations.

**Article 14 of the United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children** makes clear that implementation of the Protocol must respect international human rights and refugee law. This means that efforts to combat trafficking in persons should not affect an individual's right to access asylum, nor should assistance be conditional on appearing as a witness in a trafficking court case, for example. When a victim of trafficking is able to apply for asylum, caution should also be taken against linking the merits of the asylum claim with a victim's participation in legal proceedings against their traffickers.

## WHAT SOLUTIONS ARE AVAILABLE TO VICTIMS OF TRAFFICKING WHO ARE REFUGEES?

Finding solutions for refugee victims of trafficking is important both for their recovery and to restoring their rights. This may be achieved through voluntary repatriation to their country of origin, local integration in a host country or by resettlement or humanitarian admission to a third country, but are not limited to these.

Voluntary repatriation should only be considered where a person expresses a clear and informed willingness to return and is able to do so in a safe, dignified and sustainable manner. Care must be taken to ensure protection against *refoulement*. Voluntary

repatriation will not be suitable where there is a risk that a person would be re-trafficked on return, or where their return would not be safe and sustainable.

Where refugee victims of trafficking have the possibility to integrate into their host communities, States and local organisations should support their access to services such as health services (including for mental health), trauma counselling, education, housing, vocational training and job placements in a gender sensitive and culturally appropriate manner.

Pathways to a third country including resettlement and humanitarian admission are important solutions for refugees who are victims of trafficking and who may be unable to recover in their country of refuge from the torture or trauma they previously experienced, who face a continued threat by traffickers there, or who continue to experience the harmful consequences of severe stigmatisation as a known victim of trafficking in their host community.

### WHAT IS ICAT?

The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) is a policy forum mandated by the UN General Assembly to improve coordination among UN agencies and other relevant international organizations to facilitate a holistic and comprehensive approach to preventing and combating trafficking in persons. ICAT was formally established in March 2007, pursuant to the United Nations General Assembly Resolution 61/180. ICAT consists of 16 UN members and two Partner organizations, ICMPD and the OSCE. The members of the ICAT Working Group are the ILO, IOM, OHCHR, UNICEF, UNHCR, UNODC and UNWOMEN (joined December 2016).

### WHAT STATES CAN DO

To ensure that international protection as a refugee is available to victims of trafficking who need it, asylum authorities must be able to identify links between trafficking and refugee protection needs.

National procedures for protecting victims of trafficking, children, and asylum-seekers should be linked and referral systems in place to ensure that the best available assistance and solutions are found in every case.

States should provide child-friendly, gender-sensitive, accessible and widely available information on how to report trafficking and on how to apply for asylum, including on what support services and protection are available if they do.

States have a responsibility to prevent refugees and asylum-seekers in their jurisdiction from falling victim to trafficking in the first place. This can be done by:

- ▶ taking steps to protect the places where refugees and asylum-seekers reside;
- ▶ having fair and efficient asylum procedures in place;
- ▶ training relevant stakeholders on the risks of trafficking to these populations – including on how to identify victims of trafficking from among them; and
- ▶ making available appropriate livelihood and educational opportunities to eliminate the need for negative coping mechanisms and mitigate against the risk of exploitation.

Finally, States are urged to:

- ▶ ensure access to their territory to refugees fleeing persecution, conflict and violence to avoid them resorting to smugglers/traffickers;
- ▶ provide effective protection and assistance in countries of asylum so that refugees are not motivated to move onward, potentially by resorting to smugglers/traffickers; and
- ▶ provide more targeted and safe legal migration and admission pathways to reduce the need for dangerous and irregular movement in the first place.