



Issue Brief #5

Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims

Introduction

Across the world, an increasing number of women, men, and children embark on perilous journeys in search of safety and dignity, and risk abuse and exploitation in countries of origin, transit and destination. As recognized in the New York Declaration for refugees and migrants, some feel compelled to resort to smugglers, especially in the absence of regular migration pathways. Others become victims of trafficking in persons¹.

In the New York Declaration, states reaffirmed the importance of existing international instruments on preventing and combatting trafficking in persons and the smuggling of migrants, and committed to combat the abuses and exploitation suffered by migrants and refugees, to vigorously combat trafficking and smuggling, and to identify and support victims of trafficking².

These commitments are closely aligned with existing international normative frameworks, the Global Plan of Action to Combat Trafficking in Persons³, and the 2030 Agenda for Sustainable Development, which among other things calls for the eradication of human trafficking, modern slavery and forced labour, and to facilitate safe, orderly and regular migration⁴.

Distinguishing trafficking in persons from smuggling of migrants

Trafficking and smuggling are globally prevalent, distinct but related crimes defined in international law⁵. Yet, they are too frequently misunderstood and conflated. This confusion can lead to inadequate measures by states, courts and service providers to identify, protect and assist victims of trafficking and migrants in vulnerable situations in the context of smuggling.

Trafficking in persons	Smuggling of migrants
<ul style="list-style-type: none"> Act: Recruitment, transportation, transfer, harbouring or receipt of persons; Means: Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; Purpose: Exploitation including, but not limited to, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. 	<ul style="list-style-type: none"> The procurement of the irregular entry of a person; Into a State Party of which the person is not a national or a permanent resident; In order to obtain, directly or indirectly, a financial or other material benefit.

¹ New York Declaration for Refugees and Migrants ([A/RES/71/1](#)), para. 9

² Ibid, paras. 10, 23, 27, 29, 34-36. Also see: Annex II, para. 8 (k) and (l).

³ Global Plan of Action to Combat Trafficking in Persons ([A/RES/64/293](#)).

⁴ 2030 Sustainable Development Agenda ([A/RES/70/1](#)), SDG targets 5.2, 8.7, 10.7 and 16.2.

⁵ See the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol), supplementing the United Nations Convention against Transnational Organized Crime (UNTOC).

Some of the key differences between trafficking and smuggling include⁶:

- Human trafficking is a crime against a person. The criminal purpose is to exploit a person. Victims of trafficking are accorded a number of assistance and protection rights.
- Migrant smuggling is a crime against a state; it is not in itself a human rights violation. The criminal purpose is financial or material benefit for the smuggler. The offence may be aggravated when it is perpetrated in a way that endangers lives or safety, or entails ill-treatment of migrants. The rights to protection and assistance⁷ are linked to the circumstances endured by migrants in this context, including due to other crimes committed against them by abusive smugglers or other actors.
- Transnationality - smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims move between states or within a state's borders.
- Source of criminal income - the profits of migrant smuggling are derived from the fee for transportation or facilitation of the irregular entry in another country, while in human trafficking, profits are derived from exploitation, including for sexual exploitation, forced labour or slavery-like practices.
- Consent - trafficking victims have never consented to the intended exploitation. Consent issues can be difficult to define in situations of smuggling. While smuggling initially involves some consent of the migrant, smuggled migrants may also retract their consent en route but may be forced to continue, for example, below deck in overcrowded smuggling vessels.

There are also similarities between both crimes. A key commonality is that neither smuggled migrants nor trafficked persons are the criminal focus of the definition of either crime. Criminals may both smuggle and traffic people, employing the same routes and methods of transportation, with the work of migrant smugglers often benefiting human traffickers. Because of the unequal power relationship, smuggled migrants are particularly vulnerable to being trafficked at various points of their journey, including the starting point as well as at their destination⁸. Crucially, both crimes may endanger the lives and safety of the individuals concerned. Both smuggled migrants and trafficked people may have protection and assistance needs.

Contemporary forms of slavery

While the notion of contemporary forms of slavery is not defined in international law, it is linked to a variety of human rights violations, including traditional slavery, forced labour, debt bondage, servile forms of marriage and the exploitation of children⁹.

There is a complex link between slavery and trafficking in persons, with slavery and slavery-like practices, servitude and forced labour being exploitative purposes for which a person might be trafficked.

Some migration-related policies, such as prohibiting migrant workers from changing their employers, can inadvertently play a role in creating situations of vulnerability to exploitation, including through human trafficking, forced labour and slavery.

⁶ See also ICAT, [Issue Brief #01](#), What is the difference between trafficking in persons and smuggling of migrants?, 2016

⁷ Smuggling of Migrants Protocol, Articles 4 and 16.

⁸ Reports of the Special Rapporteur on trafficking in persons, especially women and children ([A/HRC/32/41](#)) para 16 and ([A/HRC/29/38](#)) para 11.

⁹ The legal framework on slavery includes the 1926 Slavery Convention and 1956 Supplementary Convention. The mandate of the Special Rapporteur on contemporary forms of slavery has made recommendations regarding responses to the vulnerability of migrants to contemporary forms of slavery in situations of domestic servitude ([A/HRC/15/20](#)), forced labour in supply chains ([A/HRC/30/35](#)) and debt bondage ([A/HRC/33/46](#)).

Normative framework

International instruments provide the core framework for addressing trafficking in persons and smuggling of migrants, including the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol. Several other international and regional frameworks and related guidance are relevant to building comprehensive responses to trafficking and smuggling¹⁰.

Given the complexities of these crimes, sustained implementation of these frameworks requires the dedication of resources and a more comprehensive response to adequately prevent trafficking, reduce the reliance on smuggling and protect the rights of migrants.

Global patterns of trafficking in persons and contemporary forms of slavery

The majority of the cases of detected trafficking in persons involve the crossing of international borders – while some 42 per cent of detected victims are trafficked domestically. According to data collected for the 2016 Global Report on Trafficking in Persons, between 2012-2014 more than 63,000 victims of trafficking were reported in 106 countries¹¹. Yet, only a small proportion of trafficked victims are currently identified.

Over the last 10 years, the profile of detected trafficking victims has changed. Most detected victims are still adult women. Together, women and girls account for 71% of all trafficked victims detected globally. Yet, the share of children and men victims of trafficking has increased as compared to a decade ago. In 2014, children and men comprised 28 percent and 21 percent of detected victims respectively, compared to 13 percent each in 2004¹².

Trafficking for sexual exploitation remains the most detected form of trafficking but has been decreasing in recent years in terms of the share of all forms of detected trafficking, with trafficking for forced labour increasing¹³. In 2007, 59 per cent of detected victims were trafficked for the purpose of

¹⁰ These include the International Labour Organization (ILO) Conventions, such as Convention No. 105 on the Abolition of Forced Labour (1957); Convention No. 29 on Forced or Compulsory Labour (1930), the Protocol to the Forced Labour Convention (2014), and Convention No. 182 on the Worst Forms of Child Labour (1999). Furthermore, the Convention on the Rights of the Child, and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, prohibit trafficking in children for any purpose, including for exploitive and forced labour, and contain a number of provisions that underpin a child-rights approach. The Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) calls on states to address all forms of trafficking of women and girls. Also of relevance is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Refugees Convention and 1967 Protocol thereto, as well as the International Law of the Sea framework. The core human rights instruments informs the ways in which states' obligations arise under international human rights law, including to protect the rights of migrants and trafficked victims. Also see: OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002) and on *Human Rights at International Borders* (2014), and GMG *Principles and guidelines on the human rights protection of migrants in vulnerable situations*. Regional instruments such as the Council of Europe Convention on Action against Trafficking in Human Beings (2005), the European Directive 2011/36/EU and the ASEAN Convention against Trafficking in Persons, Especially Women and Children (2015) are also of relevance.

¹¹ For the 2010-2012 period, the figure was 40,000, whereas for 2007-2010, some 55,000 victims were reported. UNODC, [Global Report on Trafficking in Persons](#), 2016. On the Eastern and Central Mediterranean routes, over a third (39%) of the 22,000 migrants interviewed by IOM between 2015-2017 answered positively to one of the indicators of trafficking and other exploitative practices, with many reporting direct experiences of abuse, exploitation and practices which may amount to human trafficking.

¹² UNODC, [Global Report on Trafficking in Persons](#), 2016, pp. 6, 7 and 11.

¹³ In 2012, the ILO estimated a global figure of 20.9 million victims of forced labour of which 44% had moved either internally or internationally. Women and girls represent the greater share (55%), as compared to men and boys (45%). These estimates do not provide a disaggregated figure for trafficking in persons. In late 2017, ILO, the Walk Free Foundation, and IOM plan to release a global estimate of modern slavery. See [ILO Global Estimate](#)

sexual exploitation, whereas in 2014, the share was 54 per cent. For trafficking for forced labour, the shares were 32 per cent in 2007 and 38 per cent in 2014. Changes in the percentages of detected crimes may, however, reflect a greater willingness amongst trafficked persons to come forward, enhanced law enforcement, or changes in existing anti-trafficking responses to particular types of trafficking, rather than actual changes in trafficking practices themselves.

Detection of cases of other trafficking, including forced marriage, begging, petty crime, benefit fraud, and for the purpose of organ removal, have remained at approximately 10 per cent of the global total.

Humanitarian crises, such as armed conflicts, natural disasters, and protracted civil unrest, can also lead to an increase in trafficking in persons. For example, children may be trafficked as soldiers. Also, large-scale displacement triggered by crisis may make populations vulnerable to trafficking¹⁴.

Global patterns of migrant smuggling

Trends in global patterns of migrant smuggling are difficult to assess. A range of factors such as the lack of regular migration channels, high visa fees, the often lengthy bureaucratic procedures and increasingly restrictive entry requirements, coupled with a demand for the various contributions migrants make and services they provide, may create the conditions and incentives for migrants to engage the services of smugglers.

While there is insufficient data available to estimate the global magnitude of migrant smuggling, Europol, for example, has estimated that 90% of the irregular crossing of borders into the European Union through 2015 was facilitated by smugglers¹⁵.

Smuggled migrants can be vulnerable to violence, abuse and exploitation due to the unequal power relationship with smugglers, an inability or unwillingness to seek protection from the state and the lack of options with regard to exit strategies¹⁶. They are at a high risk of victimization through other crimes, including extortion, kidnapping, sexual and gender-based violence, deprivation of food and water, and even homicide¹⁷.

Migrants may also be the victims of collusion between smugglers and local moneylenders who provide loans to pay for the journey and then claim family land or property as collateral¹⁸. In addition, they may be adversely affected by border control measures, such as dangerous interception practices at sea¹⁹.

Smuggled migrants can also be at risk of extortion and abuse by state officials, such as border authorities or police officers, who, in some instances, have facilitated migrant smuggling or at least turned a blind eye to it in exchange for a bribe or a share of the profits generated²⁰.

Reports of acts of intimidation and criminal charges against civil society organizations and volunteers who, without any material benefit, provide aid and humanitarian assistance to irregular migrants are of great concern and may leave these migrants without life-saving assistance.

[of Forced Labour](#): Results and methodology, 2012, pp. 16-17.

¹⁴ ICAT, [Issue Brief #2](#), Trafficking in Persons in Humanitarian Crises, 2017.

¹⁵ According to [Europol](#), in most cases, these services were provided by criminal groups, with criminal networks involved in migrant smuggling estimated to have had a turnover of between EUR 3-6 billion in 2015.

¹⁶ OHCHR, Situations of migrants in transit ([A/HRC/31/35](#)), paras 55-58.

¹⁷ In 2015, reports estimated that for every 1,000 passengers aboard smugglers' boats on the Andaman Sea and the Bay of Bengal, 11 or 12 died from starvation, dehydration, disease and abuse. See: UNHCR [Tracks, Abandoned at Sea](#), Stories of refugees and aid workers, 2015. Also see: IOM, [Missing Migrants Project](#), 2017.

¹⁸ IOM, Thematic Paper, Combatting trafficking in persons and contemporary forms of slavery, 2017

¹⁹ OHCHR, Promotion and protection of the human rights of migrants in the context of large movements ([A/HRC/33/67](#)), p. 21.

²⁰ UNODC, [Issue paper](#), Corruption and the smuggling of migrants, 2013.

Regular migration pathways

The lack of sufficient safe and accessible regular pathways for migration and admission, including via family reunification, labour mobility at all skills levels, and opportunities to study that are accessible to migrants, have increased the demand for services of smugglers.

For instance, with legal or practical obstacles restricting or delaying family tracing and reunification, many migrants, including children, are induced to take dangerous irregular routes and rely on smugglers to unite with their families²¹.

Adequate identification of, and protection and assistance to migrants in vulnerable situations in the context of smuggling and victims of trafficking and contemporary forms of slavery

States have made considerable progress in developing measures to protect victims of trafficking and migrants in vulnerable situations in the context of smuggling. For instance, in some cases identified victims of trafficking have access to temporary or permanent residency and work permits, safe accommodation, medical and psychological support and integration opportunities. However, trafficked persons who no longer have authorization to stay – for example, because their temporary residency permit attached to criminal proceedings has expired - are often not afforded the opportunity to apply for permission to remain²².

It can be difficult and resource-intensive to identify victims of trafficking, smuggled migrants with protection needs (such as migrants who have suffered violence or trauma), and other potential victims of abuse and exploitation. Research suggests that a proportion of victims of abuse and exploitation avoid seeking protection and assistance because, for example, they fear deportation on account of their irregular status. Similarly, the services available are still too often dependent on factors such as age, sex, nationality, migration status, type of exploitation, location of exploitation and who identified the victim.

It is therefore crucial that states increase their capacity to properly identify and subsequently protect and assist victims. In many countries, this will require increasing identification and referral capacities among a wide variety of front-line responders to migrants, notably at locations where there are large numbers of migrants such as reception and detention centers.

A number of entities, including the Global Migration Group (GMG), have developed guidance designed to assist states and other stakeholders to protect migrants facing situations of vulnerability, including in situations of abuse experienced when resorting to the use of smugglers or exploitative facilitators²³.

Mainstreaming child protection and gender responsive measures

Strong national child protection and social protection systems in origin, transit and destination countries can contribute to effectively prevent, identify, refer and address related cases of child violence, abuse and exploitation, including trafficking in children. Social outreach work to provide assistance to and monitor children who are in situations of particular vulnerability along migratory routes and at destination, including those who are unaccompanied, can assist in early identification and prevention of any further harm²⁴.

²¹ UNHCR, [Family reunification in Europe](#), 2015.

²² See: Report of the Special Rapporteur on trafficking in persons ([A/HRC/29/38](#)), para. 28.

²³ See: GMG Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations ([A/HRC/34/31](#)); GMG, [Exploitation and abuse of international migrants, particularly those in an irregular situation: A human rights approach](#), 2013; UNHCR, [‘Migrants in vulnerable situations’: UNHCR’s perspective](#), 2017.

²⁴ Gaps in the child protection system can expose children to the risk of exploitation. UNICEF France and UNICEF

Greater attention is also needed on the gender dimension of trafficking and migration, especially given that women migrants account for almost half of global migrant workers and more than half of detected victims of trafficking²⁵. Women are commonly concentrated in low skilled and low paid jobs that fall under unregulated and informal sectors, and usually have little or no labour and legal protection, which puts them at greater risk of abuse such as sexual exploitation and forced labour.

Men are highly susceptible to certain forms of trafficking, such as for forced labour. Yet, they are less likely to be identified and receive protection and assistance services.

Demand and the role of the private sector

In an increasingly globalized economy, the demand for cheap labour and services in countries of destination, particularly in informal or poorly regulated labour markets, coupled with a lack of opportunities for labour mobility, significantly contributes to the exploitation of migrants, and creates favorable conditions for trafficking and smuggling networks to thrive²⁶.

Exploitation of migrant workers often begins even before the migration process, when recruitment intermediaries charge fees, deceive job seekers about the conditions of employment, or even operate negligently. When migrants have paid high recruitment fees and incurred costs in order to secure employment, they may arrive at the workplace mired in debt and have few options if they are exploited. This is even more likely when a worker's migration status ties them to a specific employer or they have migrated irregularly. Companies have a particular responsibility to ensure that not only they but also their suppliers engage in ethical recruitment and fair employment practices. States have an obligation to ensure companies in their jurisdiction respect labour rights.

Non-criminalization of humanitarian actors and smuggled migrants

The Smuggling of Migrants Protocol criminalizes only those acts of smuggling of another person that are carried out for a financial or other material gain. Thus it is not a basis for criminally prosecuting persons who facilitate the irregular border crossing of migrants or refugees for humanitarian reasons or on the basis of close family ties, as opposed to profit or material gain²⁷. The Protocol further provides that states shall adopt measures to establish as aggravating circumstances actions that endanger the lives or safety of migrants, or entail their ill-treatment.

The Protocol also provides that smuggled migrants shall not be liable to criminal prosecution for having been smuggled, and that those whose lives or safety are endangered should be afforded assistance and protection. The Protocol also indicates that nothing in the instrument shall prevent states from taking measures against a person whose conduct constitutes an offence under its domestic law. Yet, measures to criminalize irregular migration may be counterproductive as they may not have any impact on

UK, [Neither Safe nor Sound](#): Unaccompanied children on the coastline of the English Channel and the North Sea, 2016, p. 85. Also see: UNICEF, UNHCR, IRC, [The way forward to strengthened policies and practices for unaccompanied and separated children in Europe](#), 2017.

²⁵ Women account for 44.3 per cent of all migrant workers. See [ILO global estimates on migrant workers](#): Results and methodology, 2015, pp. 5-6. Also see: UNODC, [Global Report on Trafficking in Persons](#), 2016.

²⁶ See, Report of the Special Rapporteur on the human rights of migrants on proposals for the development of the global compact on migration ([A/71/285](#)), para. 13.

²⁷ UNODC, The Concept of "Financial or Other Material Benefit" in the Smuggling of Migrants Protocol, 2017. In this regard, the [Travaux Préparatoires](#) of the Smuggling of Migrants Protocol indicate that the reference to "a financial or other material benefit" as an element of the definition "was included in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations", pp. 469 and 689

migrant smuggling and can further stigmatize and marginalize migrants, thereby creating the conditions that increase xenophobia against migrants²⁸.

Ways forward - recommendations

While the international community has long condemned the abuses and exploitation suffered by migrants, and many states have considerably strengthened their efforts to prevent and prosecute trafficking in persons, contemporary forms of slavery and smuggling of migrants, and to identify, protect and assist affected migrants, much more remains to be done.

The following represent a non-exhaustive list of principled, practical and action-oriented commitments, in line with the New York Declaration for Refugees and Migrants, the 2030 Agenda for Sustainable Development and existing frameworks, which could be made by states and other stakeholders within the global compact for safe, orderly and regular migration:

Identifying, protecting and assisting migrants in vulnerable situations in the context of smuggling and victims of trafficking and contemporary forms of slavery:

- Establish and effectively implement national legal frameworks to protect and assist migrants in vulnerable situations in the context of smuggling and victims of trafficking in persons and contemporary forms of slavery, irrespective of their migration status, in compliance with international law and drawing upon the guidance provided in the GMG Principles and Guidelines on the human rights protection of migrants in vulnerable situations.
- Establish national mechanisms to adequately identify vulnerabilities and protection needs and ensure referrals, including to legal, medical and psychological services that are gender and age sensitive.
- Establish “firewalls” between immigration enforcement, criminal justice and service providers, to ensure that migrant victims of abuse and exploitation can access justice and assistance.

Enhancing responses to migrant smuggling:

- Open or diversify effective and accessible regular migration channels including timely family reunification, labour mobility at all skills levels, education opportunities, and humanitarian admission schemes. Strengthen information dissemination about these pathways.
- Review national legal and policy frameworks to ensure:
 - legislation and enforcement target the activities of organized criminal groups acting for profit, and do not criminalize those who support migrants for humanitarian or familial reasons or migrants resorting to smugglers or who are compelled to smuggle others.
 - prioritizing responses to aggravated smuggling, which endangers the lives or safety of migrants or entails ill-treatment, including for their exploitation.

Enhancing responses to trafficking in persons and contemporary forms of slavery:

- Ensure that victims of trafficking and contemporary forms of slavery are not punished for offences committed as a direct consequence of having been victims of these crimes.

²⁸ In the New York Declaration, states agreed to consider reviewing policies that criminalize cross-border movements, para. 33.

- Ensure that protection and assistance to victims of trafficking and contemporary forms of slavery are not made conditional upon cooperation with the authorities against suspected criminals.
- Expand entitlements of victims of trafficking and contemporary forms of slavery to remedies, including compensation, provision of temporary or permanent residency and work permits in the country of transit or destination.

Capacity-building

- Strengthen capacity of front line actors, criminal justice practitioners, labour inspectors, asylum authorities, social service providers, medical personnel, law enforcement and border authorities as relevant to:
 - more effectively prevent, identify and respond to exploitation and abuse in the context of smuggling, trafficking and contemporary forms of slavery with particular attention to gender and age required responses.
 - more effectively combat and prosecute the crimes of migrant smuggling and trafficking in persons through provision of technical assistance in areas such as international law and practice, intelligence gathering, risk analysis, investigative skills and interviewing.

Increasing knowledge and cooperation:

- Enhance collection, sharing, and analysis of disaggregated data, including on the modus operandi and economic models and conditions driving smuggling and trafficking networks, the number of migrant victims of trafficking in persons and other crimes, the factors that entice and allow criminals to target migrants, and the impacts of anti-trafficking and counter-smuggling measures.
- Set up bilateral and multilateral mechanisms among judicial authorities, law enforcement, border control agencies and other relevant actors to share information, coordinate operational activities, and support investigation and prosecution efforts to tackle transnational organized crime.