

Workshop 2

Trafficking in persons and smuggling of migrants;

Successes and Challenges in criminalization, mutual legal assistance and in the effective protection of witnesses and trafficking victims

Opening remarks: Cross-cutting issues

Excellencies.

Distinguished delegates,

Ladies and Gentlemen,

This workshop today addresses two, often interlinked, issues which have human rights at their heart: the trafficking of persons and the smuggling of migrants.

Factors shaping the vulnerability of individuals to trafficking include human rights violations, inequality, poverty, and insecurity. Migrants who have turned to smugglers are often those who have no other choice. Their movement is frequently compelled by persecution and conflict, or by discrimination, entrenched poverty, environmental degradation, lack of access to decent work, adequate healthcare, education or housing.

Trafficking in human beings and smuggling often happens in dark shady places. But the scenes of crowded boats sinking at sea are the best demonstration of the desperation of people to flee persecution or poverty and tell stories of misery and deception. While the legal framework may differ, what is common is the need for a rights based response that protect against further victimization and abuse.

OHCHR has long been advocating for a human-rights based approach to trafficking, as detailed in its recommended principles and guidelines on human rights and human trafficking. In order to assist in the search for solutions and to provide practical assistance to States in the complex policy domain of smuggling, the Office of the High Commissioner for Human Rights has also drawn up a set of Recommended Principles and Guidelines on Human Rights at International Borders. These Guidelines set out a range of related measures, such as resourcing and training border guards, investigating and prosecuting corruption, extortion, and exploitation by border personnel and private actors, and putting in place legislation to ensure that proportionate sanctions are imposed on migrant smugglers for any offences or human rights abuse committed by them.

Both sets of guidelines aim to ensure that legislation and other instruments designed to combat trafficking and smuggling not only focus on the trafficker or smuggler but also adequately identify victims and address their rights. As we have learned from other policy areas, from responding to the illicit drug trade, to countering terrorism, a disproportionate and overly-narrow focus on enforcement, without due attention to the complexity of the issue, its causes, and the humanity of its actors, will not lead to solutions.

We must also be mindful of the fact that the exploitation associated with trafficking and at times smuggling is favoured or promoted by illicit financial gains and other practices that are not respectful of the rights of individuals. Trafficking and smuggling feed into a global market that seeks cheap, unregulated and exploitable labour and the goods and services that

such labour can produce. A human rights based approach requires looking at the actions and omissions of States which contribute to the creation of conditions that allow other actors to profit from exploitative situations, such as inadequate and discriminatory laws and policies related to migration, employment and welfare.

Also, amidst growing attention to the actions of smugglers and traffickers, and the rush to harsher enforcement measures, excessive measures are being used resulting in unlawful detention, the criminalisation of people who are assisting migrants for humanitarian reasons and to restrictions to individual rights, such as freedom of movement. These by themselves are created a host of issues for the receiving States that often overshadow positive practices and tarnish their overall approach.

Excellencies, Ladies and Gentlemen,

OHCHR deeply value the cooperation and partnership with UNODC, the OSCE and other partners in promoting human-rights based responses to trafficking and smuggling. We look forward to continuing to work with our partners to promote and support research and exchange of good practices on successful, rights-based anti-smuggling and anti-trafficking measures. This is crucial to ensure that policies are not based on flawed assumptions.

IF THERE IS TIME TO ADD:

These include that if only the walls are built high enough, or the sea crossing is made difficult enough, or all the smugglers are put out of business, then migrants will stop wanting or needing to move. This is simply not true; stopping rescuing migrants at sea has not led to less migration or less smuggling, it has in fact led to more deaths of migrants at sea. Similarly, the assumption that there currently exist enough regular channels for migrants to be able to take up jobs or reunite with their families in an orderly queue is flawed. Indeed, in the absence of sufficient regular migration channels, border control policies that seek to end migratory movement at any cost have themselves been responsible for drawing in highly organised smuggling and trafficking networks, attracted by the profits that can be made in evading these controls.

This panel represents an opportunity to discuss progress and obstacles on some crucial aspects, including criminalization, prosecution, protection of witnesses and remedies and assistance for victims. In all these areas, evidence from around the world suggests the emergence, feasibility and positive impact of approaches that are rights-based in purpose and effect.

I look forward to the discussion.