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Introduction to **Trafficking in Persons and the Smuggling of Migrants**

TRAINING MODULE FOR POLICE OFFICERS
OF THE UNITED NATIONS MULTIDIMENSIONAL
INTEGRATED STABILIZATION MISSION IN MALI

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Introduction to Trafficking in Persons and the Smuggling of Migrants

Training module for police officers of the United Nations
Multidimensional Integrated Stabilization Mission in Mali



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LEARNING OUTCOMES

Upon completion of this module, police officers of the United Nations Multidimensional Integrated Stabilization Mission in Mali will be able to:

- Understand the main concepts and elements of trafficking in persons and the smuggling of migrants
- Distinguish situations of trafficking in persons from situations of smuggling of migrants
- Recall the main manifestations of trafficking in persons and the smuggling of migrants in Mali
- Understand the protection and assistance needs of trafficking victims and smuggled migrants
- Explain the roles and responsibilities of the United Nations police in responding to trafficking in persons and the smuggling of migrants



1. Introduction: the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali

Trafficking in persons and the smuggling of migrants often manifest themselves as transnational organized criminal activities, which, in areas affected by conflict, can prolong conflict, foster insecurity and instability, intensify the impact of conflict on the civilian population and undermine development.¹ Trafficking in persons, in particular, has recently taken forms of extreme brutality and gravity in conflict settings, as armed and terrorist groups such as Islamic State in Iraq and the Levant, Boko Haram in the Lake Chad Basin region and the Lord's Resistance Army in the Democratic Republic of the Congo and other States of the region have repeatedly engaged in acts of trafficking involving severe forms of exploitation against civilian populations. United Nations peacekeeping operations, a central element of the international community's peace and security toolbox, play a key role in the response to transnational organized crime, particularly as they are increasingly deployed to complex environments characterized by weak State capacity and fragile rule of law. Any response to trafficking in persons and the smuggling of migrants as forms of organized crime and in conflict settings must also address the particular protection and assistance needs of civilians who are the object of such criminal activities, namely, trafficked persons and smuggled migrants.

The Security Council addressed the issue of trafficking in persons in conflict situations in successive meetings on 16 December 2015, 20 December 2016, 15 March 2017 and 21 November 2017, and unanimously adopted two resolutions that contain provisions relating to the mandates of peacekeeping missions.

Resolution 2331 (2016), the first Security Council resolution to address trafficking in persons, contains elements relating to the prevention of and response to trafficking in persons in the activities of peacekeeping operations. In particular, in its resolution 2331 (2016), the Security Council:

- Recognized the connection between trafficking in persons, sexual violence and terrorism and other transnational organized criminal activities, which can prolong and exacerbate conflict and instability or intensify its impact on civilian populations.
- Recognized that trafficking in persons entails the violation or abuse of human rights and underscored that certain acts associated with trafficking in persons in the context of armed conflict may constitute war crimes.

¹ Security Council resolution 2331 (2016), sixth preambular paragraph and paragraph 1.

- Invited the Secretary-General to integrate, when relevant, the issue of trafficking in persons in the context of armed conflict and post-conflict situations in all its forms as a factor in conflict prevention strategies, conflict analysis, integrated missions' assessment and planning, peacebuilding support and humanitarian response.
- Requested that relevant mission and thematic reporting to the Security Council include information relating to trafficking in persons in the context of armed conflict, and recommendations to address it.
- Requested that the Secretary-General take steps to improve the collection of data on, and the monitoring and analysis of, trafficking in persons in the context of armed conflict, in order to better identify and prevent its incidence.

Resolution 2388 (2017), adopted by the Security Council on 21 November 2017, contains additional elements relating to the work of peacekeeping missions. In the resolution, the Security Council:

- Requested the Secretary-General to ensure that assessments of country situations conducted, upon the Security Council's request, on peacekeeping and political missions include, where relevant, anti-trafficking research and expertise.
- Requested the Secretary-General, in consultation with Member States, to ensure, where appropriate, that training of relevant personnel of special political and peacekeeping missions include, on the basis of a preliminary assessment and also taking into account the protection and assistance needs of the victims of trafficking in persons, specific information enabling them, within their mandates, to identify, confirm, respond to and report on situations of trafficking in persons.

Most United Nations peacekeeping operations are not specifically mandated to address trafficking in persons or the smuggling of migrants. However, missions with mandates that include the protection of civilians or monitoring, investigating and reporting on violations and abuses of human rights could address trafficking in persons in the context of their mandate, as trafficking entails the violation and abuse of human rights² and poses serious challenges to the protection of civilian populations.

Furthermore, missions with mandates that include supporting national efforts to restore the rule of law and rebuild the security sector, when deployed in areas where trafficking in persons and/or the smuggling of migrants are prevalent, would be expected to address such forms of organized crime as part of their activities.

²Security Council resolution 2331 (2016), eighth preambular paragraph.

THE RELEVANCE OF TRAFFICKING IN PERSONS AND THE SMUGGLING OF MIGRANTS TO THE MANDATE OF THE UNITED NATIONS MULTIDIMENSIONAL INTEGRATED STABILIZATION MISSION IN MALI

The mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), as defined in Security Council resolution 2480 (2019), explicitly addresses trafficking in persons and the smuggling of migrants. The priority tasks in the context of the Mission's support for the implementation of the Agreement on Peace and Reconciliation in Mali include the following:

To support the implementation of the reconciliation and justice measures of the Agreement, especially in its part V, by continuing its current activities, including with respect to supporting the operations of the International Commission of Inquiry, in consultation with the parties; to support the work of the Truth, Justice and Reconciliation Commission; to support the effectiveness of justice and corrections officials in the north and centre of the country and associated interim authorities; and to provide technical support to Malian judicial institutions regarding the detention, investigation and prosecution of individuals suspected of, and sentencing of those found responsible for, terrorism-related crimes, mass atrocities and transnational organized crime activities (including trafficking in persons, arms, drugs and natural resources, and the smuggling of migrants), which risk destabilizing the peace process (Security Council resolution 2480 (2019), para. 28 (a) (iii)).

In addition to the task relating to the provision of technical support to Malian institutions to respond to, among other crimes, trafficking in persons and the smuggling of migrants, the mandate of MINUSMA also contains the following related tasks:

- To monitor, help investigate, and report publicly and regularly to the Security Council on, violations of international humanitarian law and violations and abuses of human rights, including all forms of sexual and gender-based violence and violations and abuses committed against women and children throughout Mali, and to contribute to efforts to prevent such violations and abuses (Security Council resolution 2480 (2019), para. 28 (e) (ii))
- To provide specific protection for women and children affected by armed conflict, including through protection advisers, child protection advisers and women's protection advisers, as well as consultations with women's organizations, and address the needs of victims of sexual and gender-based violence in armed conflict (Security Council resolution 2480 (2019), para. 28 (c) (iii))

In addition, in its resolution 2374 (2017), the Security Council established a sanctions regime for Mali containing criteria for designating which individuals or entities are subject to sanctions, which included those acting for or on behalf of, or at the direction of, or otherwise supporting or financing, individuals and entities that have engaged in hostilities in violation of the Agreement, or that have taken actions that obstruct, or obstruct by prolonged delay, or threaten, the implementation of the Agreement, including through the proceeds of organized

crime, including the production of and trafficking in narcotic drugs and their precursors originating in or transiting through Mali, trafficking in persons and the smuggling of migrants, the smuggling of and trafficking in arms, and trafficking in cultural property.

In the same resolution, the Security Council encouraged the timely exchange of information between MINUSMA and the Panel of Experts established pursuant to resolution 2374 (2017) to support the work of the sanctions Committee concerning Mali, and requested MINUSMA to assist the Committee and the Panel of Experts, within its mandate and capabilities. The measures and designation criteria set out in resolution 2374 (2017) were renewed by the Council in its resolution 2432 (2018).

In view of those mandated tasks, the police component of MINUSMA needs to ensure that countering trafficking in persons and the smuggling of migrants is integrated into its work, including in its monitoring, reporting and advisory tasks, as well as in its activities in support of the host country.

The present training module is intended for MINUSMA police officers and is aimed at equipping them to better address situations of trafficking in persons and the smuggling of migrants in the discharge of their duties.

Information relating to trafficking in persons and the smuggling of migrants is relevant to the work of the following MINUSMA organizational units and personnel:

- The Gender Unit, given the gender-related aspects of such crimes and their impact on both male and female victims, and also because trafficking in persons is frequently a manifestation of violence against women.
- Child Protection Advisers, as protecting children may encompass protecting them from the particular forms of trafficking in persons that target children.
- The Human Rights Division, as trafficking in persons entails the violation and abuse of human rights, and therefore addressing severe instances of trafficking in persons and the smuggling of migrants would contribute to promoting and protecting the human rights of victims.

Reports and information on trafficking in persons collected by the police component of MINUSMA should therefore be shared, through the appropriate channels described below, with other relevant MINUSMA actors.

2. The definition of trafficking in persons and the smuggling of migrants in international law: elements of the offences

The internationally agreed definitions of trafficking in persons and the smuggling of migrants are set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime. The States parties to those Protocols are required to criminalize trafficking in persons and the smuggling of migrants in their domestic legislation, and to adopt a series of other measures in accordance with the provisions of the Protocols.

The Protocols supplement the United Nations Convention against Transnational Organized Crime, which was signed in Palermo, Italy, in 2000. The Organized Crime Convention is aimed at promoting international cooperation against transnational organized crime. To that end, it contains provisions on international law enforcement cooperation, international cooperation in judicial matters and cooperation for the purpose of confiscating the proceeds of crime, which apply to the offences established in accordance with the two Protocols. The Convention entered into force in 2003 and had 190 States parties as at 1 September 2019. The Trafficking in Persons Protocol and the Smuggling of Migrants Protocol entered into force in 2003 and 2004, respectively, and as at 1 September 2019 they had 174 and 149 States parties, respectively. Mali became a party to the Trafficking in Persons Protocol in 2002 and to the Smuggling of Migrants Protocol in 2002. All of the countries neighbouring Mali (Algeria, Burkina Faso, Côte d'Ivoire, Guinea, Mauritania, the Niger, Nigeria and Senegal) are also parties to both Protocols.

In addition to the two Protocols, other instruments of international law that are relevant to trafficking in persons and the smuggling of migrants, in particular in conflict or post-conflict situations, include the following:

International human rights law

- International Covenant on Civil and Political Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000); and on the involvement of children in armed conflict (2000).

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Slavery Convention (1926)

International humanitarian law

- The four Geneva Conventions of 1949, the fourth of which relates in particular to the protection of civilians, including those in occupied territories
- Protocols I and II additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international and non-international armed conflicts (1977)
- Rome Statute of the International Criminal Court (1998)

International Labour Organization Conventions

- The Forced Labour Convention, 1930 (No. 29), its Protocol (2014), and its Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

International refugee law

- Convention relating to the Status of Refugees (1951)
- Protocol relating to the Status of Refugees (1967)
- Organization for African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

A. THE DEFINITION OF TRAFFICKING IN PERSONS

The Trafficking in Persons Protocol defines trafficking in persons as follows³:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

³Art. 3 (a) of the Trafficking in Persons Protocol.

According to this definition, trafficking in persons has three constituent elements:

- An act (what is done)
- The means (how it is done)
- The exploitative purpose (why it is done)

The definition is meant to provide a basis for consistency, consensus and common understanding around the world with regard to the phenomenon of trafficking in persons. Under the Protocol, States parties are required to criminalize the conduct defined in article 3 of the Protocol in their domestic legislation. However, the legislation does not need to adopt the exact wording of the definition used in the Protocol.

The elements of trafficking in persons

According to the Trafficking in Persons Protocol, the crime of trafficking in persons consists of a combination of the three constituent elements. The individual elements, taken separately, do not suffice to substantiate trafficking in persons. However, in some cases, individual elements of the trafficking offence will constitute criminal offences independently.

For example, the abduction of children, even when not committed for the purpose of their exploitation, is punishable by many local laws. When associated with armed conflict, it also constitutes one of the six grave violations identified and condemned by the Security Council as affecting children in situations of armed conflict.⁴

When approaching trafficking in persons from a criminal justice perspective, it is common to distinguish between the material elements and the mental element of the offence.

The material element of trafficking in persons

In the definition of trafficking persons contained in the Trafficking in Persons Protocol, and in national laws that adhere to that definition, the material element comprises two parts.

First part of the material element of trafficking in persons (what is done)

The conduct must include any one of the following acts:

- Recruitment of persons
- Transportation of persons
- Transfer of persons
- Harboursing of persons
- Receipt of persons

⁴Security Council resolution 1261 (1999).

Second part of the material element of trafficking in persons (how it is done)

The conduct must include one of the following means:

- Threat or use of force or other forms of coercion
- Abduction
- Fraud
- Deception
- Abuse of power or of a position of vulnerability
- Giving or receiving of benefits to achieve the consent of a person having control over another person

Means such as the threat or use of force, other forms of coercion, or abduction are typically easier to detect, identify and prove. However, trafficking in persons may also involve the use of more “subtle” means, such as deception or the abuse of a position of vulnerability, which may call for closer scrutiny of the situation to determine whether they have occurred.

The concept of abuse of a position of vulnerability, in particular, poses challenges to jurisdictions and practitioners around the world. The UNODC “Guidance note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime” describes the abuse of a position of vulnerability as follows:

Abuse of a position of vulnerability occurs when an individual’s personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim’s situation. In determining whether the victim’s belief that he or she has no real or acceptable option is reasonable, the personal characteristics and circumstances of the victim should be taken into account.

The mental element of trafficking in persons: the intention to exploit the victim

The mental element reflects the state of mind, or the intention, of the person engaging in the prohibited conduct. To establish that trafficking in persons has occurred, the perpetrator must have committed the material acts with the intention of exploiting the victim. The concept of exploitation is therefore central to the definition of trafficking in persons.

The Trafficking in Persons Protocol does not define the term “exploitation” per se, but provides a non-exhaustive list of forms of exploitation to be included, at a minimum, in domestic legislation, namely:

- The exploitation of the prostitution of others or other forms of sexual exploitation

- Forced labour or services
- Slavery or practices similar to slavery
- Servitude
- The removal of organs

Some of the forms of exploitation listed in the Protocol are defined in other international instruments.

“Forced labour”, for example, is defined in the Forced Labour Convention, 1930 (No. 29) as all work or service which is exacted from any person under the menace of penalty and for which the person has not offered herself or himself voluntarily.⁵

“Slavery” is defined in the Slavery Convention as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery of 1956 identifies debt bondage, servile forms of marriage and the sale of children for exploitation as practices similar to slavery.

The other forms of exploitation listed in article 3 of the Trafficking in Persons Protocol are not defined in international law. Sexual exploitation, for example, has no agreed definition in international law and is not addressed in human rights law except in the context of children. The “sexual exploitation of children”, as prohibited under the Convention on the Rights of the Child, means: (a) the inducement or coercion to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; or (c) the exploitative use of children in pornographic performances and materials.

Although the list of forms of exploitation in article 3 of the Protocol is non-exhaustive, it nevertheless captures most forms of exploitation encountered in conflict and post-conflict situations. However, certain forms of exploitation that are specific to the context of conflict have emerged. Such forms, identified through research on exploitative practices in conflict settings, include the following:

- Sexual exploitation of women by members of armed and terrorist groups
- Exploitation of children by armed groups as fighters or in support roles
- Removal of organs to treat wounded fighters or to finance war
- Enslavement as a tactic used by terrorists to suppress ethnic minorities

⁵Under this definition, “work or service” includes all types of work, whether legal or illegal. All persons, regardless of age, gender, ethnicity, migration or any other status, are included under the definition. The “menace of penalty” is understood to include both physical and/or psychological forms of coercion, such as denial of wages or debt bondage. Finally, the expression “the person has not offered himself voluntarily” refers to the fact that the person has not given free and informed consent or is not free to retract the consent that he or she had given previously.

Two particular issues regarding trafficking in persons: trafficking in children and consent

Trafficking in children

Under the Trafficking in Persons Protocol, when the victim of trafficking is under 18 years of age, the existence of the means element is not required to establish that trafficking in persons has occurred. It is sufficient that any of the acts included in the definition (the recruitment, transportation, transfer, harbouring or receipt of persons) is committed for the purpose of exploiting the child victim.

Children are considered to be victims of trafficking when they are recruited, transported, transferred, harboured or received in order to be exploited, regardless of the means used for that purpose.

Consent

The Trafficking in Persons Protocol explicitly stipulates that the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth in the definition of trafficking in persons have been used.⁶ This provision reflects the simple fact that no one can freely consent to being exploited. Experience has shown that, in some cases of trafficking in persons, the perpetrators argued that the victims had consented to, or had not opposed, the exploitative acts they had been subjected to. But when the traffickers use improper means such as threats, force, deception or fraud to achieve their exploitative goals, any expression or manifestation of consent by the victim should not be taken into consideration.

CASE STUDY

A group of women are being harboured by an armed militia following their abduction. The armed militia intends to sexually exploit the women in prostitution, and threatens to attack their village and harm their community if they resist. The women, fearing the consequences for their community, decide to obey and to not resist their sexual abuse and exploitation.

Question: Should these women be considered victims of trafficking in persons?

Answer: Yes, because the apparent “consent” of the women to their exploitation is nullified by the threats made against them by the armed militia.

Relationship between war crimes, crimes against humanity, genocide and trafficking in persons

War crimes, crimes against humanity and genocide are serious international crimes that States are obliged to prevent and that fall within the jurisdiction of the International Criminal Court. They are also referred to as atrocity crimes, and are defined in the Rome Statute of the International

⁶ Art. 3 (b) of the Trafficking in Persons Protocol.

Criminal Court. Certain acts committed in the context of trafficking in persons may potentially reach the gravity of atrocity crimes.

War crimes can be understood as grave breaches or serious violations of international humanitarian law for which perpetrators bear individual criminal responsibility under international law. Certain acts or offences associated with trafficking in the context of armed conflict may constitute war crimes.

Crimes against humanity include acts of murder, extermination, enslavement, deportation or forcible transfer, imprisonment or severe deprivation of physical liberty, torture, rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence of comparable gravity, committed as part of a widespread or systematic attack directed against a civilian population. An act associated with trafficking in persons may amount to a crime against humanity if the conditions are fulfilled.

Genocide is a crime committed against members of a national, ethnic, racial or religious group who are targeted because of their membership in that group. Certain acts associated with conflict-related trafficking in persons (such as the sexual enslavement of members of particular ethnic minority groups) may, in some extreme situations, constitute genocide.

B. THE DEFINITION OF THE SMUGGLING OF MIGRANTS

The Smuggling of Migrants Protocol defines the smuggling of migrants as follows:

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

The Smuggling of Migrants Protocol requires States parties to criminalize the offence of smuggling of migrants, which comprises three elements:

- Procuring the illegal entry of another person
- Into another State
- For the purpose of financial or material benefit

It is evident that the purpose of the Smuggling of Migrants Protocol is not to criminalize or manage migration, but to criminalize the actions of those that facilitate irregular border crossings for profit. The key element among the three is the intention to obtain financial or material benefit: the offence of smuggling of migrants as defined in the Protocol relates to acts carried out for profit; it does not concern acts carried out for humanitarian reasons or for other reasons that do not involve financial or material gain.

Moreover, the target of the Smuggling of Migrants Protocol, and of the offences established in accordance with it, are the smugglers, in particular the organized criminal groups engaging in the smuggling of migrants. Furthermore, the target of investigations into and prosecutions of the

smuggling of migrants as defined in the Protocol is not the migrants themselves. Accordingly, migrants cannot be charged for having been smuggled,⁷ that is, they cannot be prosecuted as accomplices to their own smuggling. States may, however, hold migrants accountable for other offences, such as the illegal entry into their territories.

Although the Smuggling of Migrants Protocol refers expressly to “migrants”, the persons who are the subject of the smuggling of migrants may include refugees and asylum seekers, i.e., persons who resort to smugglers in order to escape conflict, persecution or other violations and abuses of human rights. Indeed, refugees and asylum seekers may turn to the services of smuggling networks because they are otherwise unable to flee and seek safety. At the same time, refugees and asylum seekers moving irregularly are particularly vulnerable to being trafficked.

The Smuggling of Migrants Protocol, like the Trafficking in Persons Protocol, requires States parties to criminalize offences established in accordance with article 3 of the Protocol, when committed intentionally.

However, as described below, the provisions of the Protocols do not affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law, the Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967. This means, for example, that smuggled persons who qualify as refugees in the country of transit or destination should be granted the protection to which they are entitled under the applicable international instruments.

CASE STUDY

John, who lives in a country bordering Mali, fears that he will face persecution in his country owing to his religious beliefs. John asks a friend to help him cross the border into Mali, where he believes he will be safe. John's friend agrees to help him. He hides John in his van and crosses the border at night. When they reach Bamako, John exits the van.

Question: Do you think that John's friend should be prosecuted for the smuggling of migrants as defined in the Smuggling of Migrants Protocol?

Answer: No, because John's friend did not obtain any benefit by helping John.

⁷Art. 5 and art. 6, para. 4, of the Smuggling of Migrants Protocol.

3. The legislation of Mali on trafficking in persons and the smuggling of migrants

The law in Mali relevant to trafficking in persons and the smuggling of migrants is Act No. 2012-023 of 12 July 2012, on combating trafficking in persons and related acts. The definition of the offence of trafficking in persons in Act No. 2012-023 is identical to the definition provided in the Trafficking in Persons Protocol. Act No. 2012-023 also addresses the organized exploitation of begging as a practice similar to trafficking in persons, and provides the definition thereof.

Act No. 2012-023 establishes a sentence of 5 to 10 years of imprisonment as punishment for the offence of trafficking in persons. In cases involving aggravating circumstances, the penalty is increased to 10 to 20 years of imprisonment, or even life imprisonment if the trafficking involves the removal of organs or results in the death of the victim or his or her mutilation or permanent disability. The sentence for exploitation of begging ranges between 2 and 5 years.

In addition, in 2011, Mali established the National Committee for the Coordination of Measures to Combat Trafficking in Persons and Related Acts. The Committee is mandated to coordinate action in Mali against trafficking in persons in the areas of prevention, prosecution and the protection of victims, and is naturally the main focal point among national authorities on issues related to trafficking in persons. Mali has also adopted a national action plan to combat trafficking in persons (2018–2022) to guide anti-trafficking action in the country.

Act No. 2012-023 also criminalizes the smuggling of migrants. The legislation of Mali addresses the smuggling of migrants as a practice related to trafficking in persons, which may create confusion among practitioners who are not familiar with the two offences.

In article 3 of Act No. 2012-023, the smuggling of migrants is defined as “the organization by a person or group of persons of the transportation by land, air, sea or river, harbouring or transit of irregular migrants in order to obtain, directly or indirectly, a financial, material or other benefit”.

The smuggling of migrants in Mali is punishable by imprisonment of 5 to 10 years, or 10 to 20 years if the smuggled person is less than 15 years old.

The Government of Mali started a legislative revision process at the end of 2017 to strengthen the current legal framework related to trafficking in persons and the smuggling of migrants and to align it better with international standards and the current context in Mali. As at 31 August 2019, Act No. 2012-023 had not been amended or modified.

QUESTION

Compare the definition of the smuggling of migrants in the law of Mali with the definition provided in the Smuggling of Migrants Protocol. Do you note any differences?



4. Distinguishing between trafficking in persons and the smuggling of migrants

Trafficking in persons and the smuggling of migrants are distinct crimes that are often confused. It is important to distinguish between the two, as the consequences of conflating them can be significant. As described below, victims of trafficking in persons are entitled to a number of protection and assistance measures that are specific to their status as victims of trafficking. Their access to such protection and assistance can only be ensured when the trafficking offence in question is correctly identified.

Furthermore, cases involving trafficking in persons frequently warrant much more severe criminal sanctions than those involving the smuggling of migrants.

Finally, Security Council resolutions 2331 (2016) and 2388 (2017) specifically address trafficking in persons but not the smuggling of migrants. Accordingly, requests contained in those resolutions, such as the request that “relevant mission and thematic reporting to the Security Council includes information relating to trafficking in persons in the context of armed conflict and recommendations on how to address it”, apply only to trafficking in persons.

The key differences between trafficking in persons and the smuggling of migrants are with regard to the following:

- Exploitation and source of profit
- Transnationality
- Victimization and consent

Exploitation and source of profit. The primary objective of traffickers is to generate profits through the exploitation of their victims. Victims of trafficking are generally exploited over a period of time, which can even last for years.⁸ On the other hand, exploitation is not an element of the smuggling of migrants. The smuggler and the migrant generally enter into a temporary relationship, exchanging money for the procurement of illegal entry into another State.

However, although exploitation is not the purpose of the smuggling of migrants, smuggled migrants may be mistreated or exploited during the smuggling journey, and such conduct may constitute an aggravating circumstance of the crime.

⁸There are exceptions: trafficking for the purpose of organ removal is not continuous, as the exploitation is completed when the organ is removed.

Transnationality. The smuggling of migrants is, by definition, transnational, as it requires the illegal crossing of an international border. Trafficking in persons is not necessarily transnational: it can involve the transportation of victims from one country to another, but it can also occur within the same country. For example, a victim may be recruited in a village and then transported to a bigger city to be exploited, or may even be exploited in the city or area where he or she was residing when he or she fell victim to the traffickers.

Victimization and consent. Trafficking in persons is always a crime involving a victim. Even where there are signs that the victim has consented to the exploitation, the use of any of the means negates the consent. On the other hand, smuggled migrants typically consent to the smuggling operation, as their goal is to reach a country that they could not otherwise access legally. Generally, smuggled migrants freely enter into a contract with the smugglers to reach their goal country, thus they are not the victims of the criminal behaviour as such. There are cases, however, where migrants have consented to the smuggling operation, without being aware of, or accepting, the circumstances of the journey, during which they may face significant risks, threats or even mistreatment and abuse. In such cases, migrants may become victims of other crimes during their journey.

Conflating trafficking in persons and the smuggling of migrants must be avoided. However, it should be kept in mind that, in practice, there is often a certain amount of interplay between the two types of crime. For example, the same criminal networks that perpetrate transnational trafficking in persons are sometimes also involved in the smuggling of migrants, and vice versa; they may also be involved in other transnational criminal activity, such as trafficking in firearms or drugs. This interplay is exacerbated in conflict zones; the large movements of people from conflict settings and the lack of access to safe and regular pathways for migration has created a lucrative market for migrant smugglers, who in some cases try to maximize their profits by also exploiting people.

A person can therefore shift from being a smuggled migrant to being a victim of trafficking, either at some point during the migration journey or upon arrival in the destination country. A person may even pay to be smuggled with the intention of travelling irregularly to a safe country to seek a safe haven or decent work, but instead may end up being diverted to an unsafe country and exploited as a victim of trafficking in persons.

5. Migrant smuggling routes affecting Mali

In the Sahel and the broader Saharan region, there is a long history of facilitated movement of both people and goods. Smuggling networks have emerged from ethnic and kinship ties stretching across borders, as communities have spread and travelled within the region and have remained an important source of economic opportunity and trade, trading in both licit and illicit goods, and at the same time facilitating the movement and employment of migrants with or without documentation.⁹ Between Mali and Algeria, in particular, local populations have been able to circulate freely, engaging in an informal trade economy to which the central Government of Mali has turned a blind eye and has not enforced any constraints or customs or police formalities, thus allowing the informal economy to sponsor economic development in the region.¹⁰

Mali is an important transit country for West African migrants attempting to reach Northern Africa and Europe.

A significant number of citizens of Benin, Côte d'Ivoire, Ghana, Guinea, Nigeria, Senegal and Togo travel through Mali before crossing the Sahara, with Libya and Europe being the most frequent final destinations. The historical trade and migratory patterns, as well as the situation in several countries in the region facing economic hardship and political tensions, explain why a large number of people are compelled to leave their country in search of a brighter future.¹¹

Furthermore, to understand the overall context of current migratory movements in West Africa, one has to consider the legal framework of the Economic Community of West African States (ECOWAS) relating to the free movement of people in the region.

ECOWAS is a regional economic union of States in West Africa, established in 1975 with the objective of promoting economic integration across the region. The States members of ECOWAS are Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, the Niger, Nigeria, Sierra Leone, Senegal and Togo.

In accordance with ECOWAS Protocol A/P.1/5/79, relating to the free movement of persons, residence and establishment, nationals of ECOWAS member States are able to enter freely into another ECOWAS member State, if in possession of a valid travel document and an international health certificate, for a duration of 90 days, without requiring a visa. Therefore, as nationals of

⁹Thomas Munsch, William Powell and Sonia Jolly, "Before the desert: conditions and risks on mixed migration routes through West Africa – insights from the Mixed Migration Monitoring Mechanism initiative (4Mi) in Mali and Niger" (n.p., Regional Mixed Migration Secretariat West Africa, 2017), p. 7; Fransje Molenaar and Thibault van Damme, "Irregular migration and human smuggling networks in Mali", CRU Report (The Hague, Netherlands Institute of International Relations (Clingendael), 2017), p. 14.

¹⁰Molenaar and van Damme, "Irregular migration and human smuggling networks in Mali", p. 7.

¹¹Ibid., p. 14.

ECOWAS countries are able to move legally across borders in the ECOWAS region, they have no reason to resort to the services of smugglers.

However, free movement within the ECOWAS region is often hindered for the following reasons:

- Domestic laws in some ECOWAS member States still contravene the ECOWAS Protocol
- Access to appropriate travel documents is lacking, as they may be expensive or difficult to obtain
- The lack of relevant information available to citizens
- Harassment at border crossing points or informal “taxation” of passage imposed by border officials

As a result, many border crossings, including within the ECOWAS area of free movement, are undertaken irregularly.¹² Although most nationals of ECOWAS countries who are not in possession of travel documents simply avoid official border posts, some make the journey through ECOWAS countries with the assistance of smugglers. Nationals of non-ECOWAS countries also rely on the help of smugglers to move within the region or to obtain ECOWAS passports enabling them to move freely within the region.¹³

Regardless of where in West Africa they start their journey, all migrants and refugees heading north pass through Mali and/or the Niger.¹⁴ When transiting Mali, migrants usually travel through Bamako on their way to Gao, where they then make arrangements to head to either Algeria or the Niger, then onward to Libya.

According to reports of the European Border and Coast Guard Agency (Frontex), while Toubou tribes control migrant smuggling flows across Libya’s southern border with the Niger, Touareg tribesmen are responsible for providing transportation across the Mali-Algeria border. These tribes have been operating in the Sahara Desert for generations, and since their tribal links extend across national borders, they can readily move people across the desert.¹⁵ Depending on the controls and risks on the road, migrants opt for routes either through the Niger and Libya or through Algeria and Morocco.¹⁶

Owing to the ECOWAS regulations on free movement, migrant journeys to Mopti, Gao and Timbuktu from locations within West Africa are generally lawful for those in possession of the required documentation. Before arriving in cities in northern Mali, migrants predominantly use the services of transnational transport companies that organize journeys by bus. Research undertaken in 2017 found that only 11 per cent of persons travelling within the ECOWAS region had used a broker or a smuggler to facilitate travel from their place of origin.¹⁷ Those who had done

¹²International Organization for Migration (IOM) and Altai Consulting for IOM Nigeria, *Irregular Migration between West Africa, North Africa and the Mediterranean*, (Abuja, 2015), p. 7.

¹³Ibid., p. 47; Marie L. McAuliffe and Frank Laczko, eds., *Migrant Smuggling Data and Research: A Global Review of the Emerging evidence Base* (Geneva, International Organization for Migration, 2016), p. 28.

¹⁴Cases of transit through Mauritania and Chad have also been reported since 2018.

¹⁵Frontex, *Africa-Frontex Intelligence Community Joint Report 2016* (Warsaw, 2017), p. 14.

¹⁶Ibid., pp. 6 and 13.

¹⁷Munsch, Powell and Jolly, “Before the desert”, p. 10.

so were presumably lacking the necessary identification documents allowing them to cross borders within the region legally. However, it has also been reported that legitimate bus companies have been involved in irregular practices in providing transportation services: they have been known to carry both documented and undocumented migrants, helping the latter to cross borders or roadblocks by means of bribes or tolls at roadblocks.¹⁸ Algeria and Libya are not members of ECOWAS. Therefore, nationals of ECOWAS countries who wish to travel from Mali or the Niger to Algeria or Libya need a visa to cross the borders between Mali and Algeria, the Niger and Algeria or the Niger and Libya. However, nationals of Mali benefit from a special regime resulting from a bilateral agreement between Algeria and Mali: they do not need a visa to enter Algeria. For this reason, Malian passports that allow access to Algerian territory for three months are a very sought-after commodity among migrants.

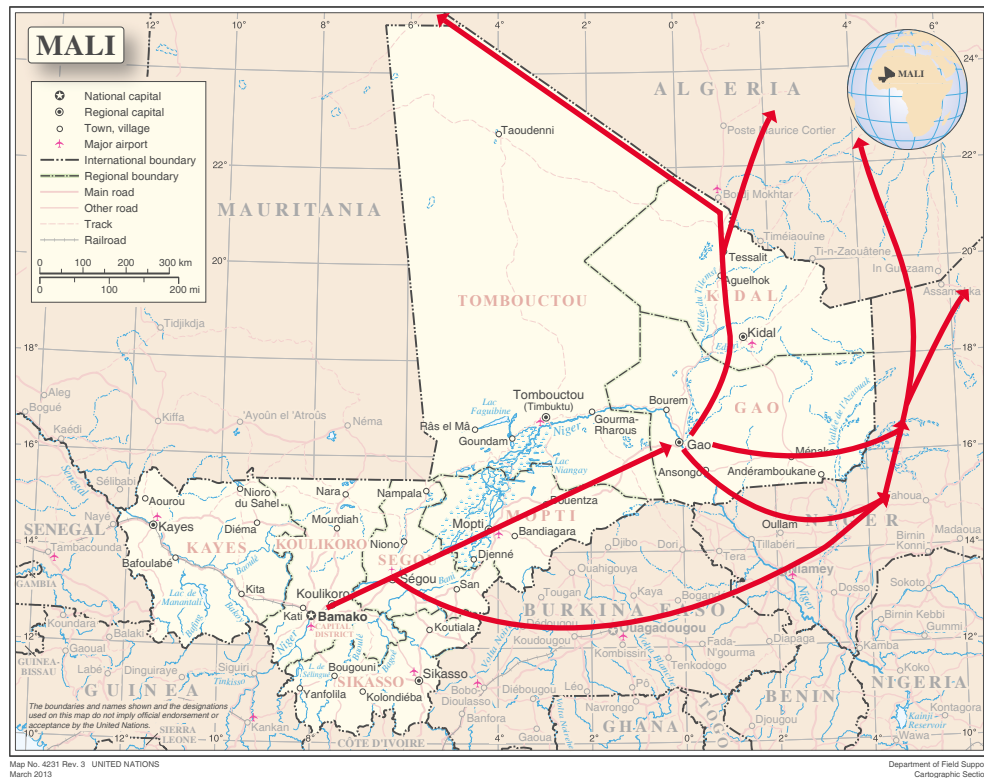
Two main types of smuggling journeys exist: “step-by-step” journeys and “full package” journeys. The step-by-step mode of passage is the most commonly used. As migrants typically do not have enough money to reach their final destination, they have to earn money on the way to pay local smugglers at each stage of their journey. This situation makes them especially vulnerable to various forms of exploitation, in particular forced labour, in the case of men, and sexual exploitation, in the case of women.

According to reports by MINUSMA police officers, the full-package mode of passage was used exclusively by Guinean migrants, who reportedly paid in Conakry the entire amount required to travel to Northern Africa or Europe. Little information is available on the development of these networks. In 2019, the full-package mode appeared to concern only a minority of migrants. According to recent research, West African smuggling networks are predominantly horizontal and rely on regional connectivity. Smugglers take on one or more roles, and some have young assistants helping them, suggesting a more informal collaboration between different members of the network rather than a fixed chain of command.¹⁹ The emergence of money transfers facilitated by telephone operators (e.g., Orange Money) has affected transactions relating to the smuggling of migrants. Migrants now avoid carrying large amounts of money while travelling. At checkpoints or in case they are stopped and detained on their way, migrants often ask their relatives to gather the amount requested and transfer it by telephone. Such transfer facilities speed up travel because migrants gain access to the money they need on their phones without having to go to a bank counter. From the standpoint of the criminals, this new tool facilitates ransom demands, which are now made regularly by a wide range of actors, including individuals established in stopover towns, militias, traffickers of all kinds and armed groups. The accumulation of sums demanded on the road leads to debt situations that sometimes have an impact on the entire extended family in the countries of origin.

¹⁸ Molenaar and van Damme, “Irregular migration and human smuggling networks in Mali”, pp. 15–17.

¹⁹ Ekaterina Golovko, “Players of many parts: the evolving role of smugglers in West Africa’s migration economy”, Vanessa Leigh and Johannes Claes, eds. (Dakar, Mixed Migration Centre, 2019), p. 5.

Figure 1. Migrant smuggling routes through Mali to Northern Africa, 2019



Police officers deployed by MINUSMA in Gao have reported that, according to their observations, only around 30 per cent of migrants transiting through Gao would like to reach Europe; the other 70 per cent wish to reach and remain in Algeria, Morocco or Libya. Gao is the main hub and transit point in Mali because the routes running through it offer easy access to Algeria. Migrants and refugees passing through Algeria continue on, either to Libya or to Morocco.²⁰ It is reported that transnational bus companies do not operate further than Gao. From Gao, and for the remainder of their journey through Mali to Algeria, migrants need to rely on local smuggling networks, organized by *passeurs*, who connect migrants with transport companies and drivers and organize shelter in the city while waiting for the buses that will take the migrants to Algeria.²¹

The places where migrants stay in the city while awaiting their passage northwards are often called “ghettos”. Migrants are often moved out of such ghettos into “homes” where they are confined while waiting for their relatives to pay ransoms. Upon leaving the homes, the migrants are transported by taxis, called “mafia taxis”, which usually take them to other homes. There, they have to pay another ransom to be released. Those who do not have the means to pay are subjected to acts of abuse and torture and/or are exploited, particularly in the mines of northern Mali.

²⁰ IOM and Altai Consulting, *Irregular Migration between West Africa, North Africa and the Mediterranean*, 2013, pp. 36–37.

²¹ Molenaar and van Damme, “Irregular migration and human smuggling networks in Mali”, p. 19.

After departing Gao, the smuggled migrants are mainly transported to the border town of Talhandak, as the route to the town bypasses violently contested regions around the city of Kidal.²² Most migrants crossing the border between Algeria and Mali with the help of smugglers are taken through Borj Badji Mokhtar District in Algeria, just across the border with Mali, and then to Tamanrasset.²³ One smuggler is reported to have transported some 25 migrants per week from Gao to the Algerian border, under the cover of a travel company, often subjecting the migrants to inhumane treatment.²⁴ Along that route, some smugglers also operate a black market for false documents purportedly issued by the Office of the United Nations High Commissioner for Refugees (UNHCR) identifying holders as refugees in Algeria, as well as for forged Malian passports that are rented for a fee and are used to enter Algeria, as nationals of Mali do not need a visa to do so.²⁵ Once migrants have moved on to Maghnia, close to the Moroccan border, the network operators retrieve the documents so that they can be reused.²⁶

Routes can shift rapidly, and migrants' preferences can change under the influence of a number of factors, such as changes in the security environment, policy shifts or stronger law enforcement action in transit and/or destination countries. For example, in 2017, it was reported that a large number of migrants had avoided transiting through northern Mali to reach Algeria, which was attributed to the increased insecurity created by the conflict in northern Mali.²⁷ At that point, Ouagadougou in Burkina Faso gained importance as a hub for nationals of ECOWAS countries moving towards the Niger and Northern Africa.²⁸ That situation appears to have changed, as the Panel of Experts on Mali reported in August 2019 that the outflow of migrants from Gao, Timbuktu and Menaka was exclusively bound for Algeria, despite the erection of walls and border fencing, in particular around In-Khalil, where migration routes from Gao and Timbuktu converge.²⁹ Again, attention is drawn to the fact that routes may shift rapidly and repeatedly.

According to field observations, currently, irregular migrants most often travel legally by bus to Gao, as citizens of ECOWAS countries enjoy free movement up to that point. For travellers without documents, two alternative solutions are available. Either the bus drivers ask for payments that will partly be used to bribe agents at checkpoints, or the drivers drop the passengers off before they reach the checkpoints, leaving them to bypass the checkpoints on foot.

The hardships and dangers of the overland journey across the Sahara Desert are well documented. Smuggled migrants and refugees are transported across the desert in overloaded trucks or pickups, often at high speed in order to minimize the risk of interception. During the journey, vehicles sometimes break down and migrants are frequently exposed to food and water shortages.

²² Ibid., p. 24; final report of the panel of experts established pursuant to resolution 2374 (2017) on Mali and extended pursuant to resolution 2432 (2018) (S/2019/636, para. 121).

²³ United Nations Office on Drugs and Crime, *The Role of Organized Crime in the Smuggling of Migrants from West Africa to the European Union* (Vienna, 2011), pp. 28–29.

²⁴ S/2019/636, para. 123.

²⁵ IOM and Altai Consulting, *Irregular Migration between West Africa, North Africa and the Mediterranean*, pp. 41 and 50; Frontex, *Africa-Frontex Intelligence Community Joint Report 2015* (Warsaw, 2016), p. 24.

²⁶ Frontex, *Africa-Frontex Intelligence Community Joint Report 2015*, p. 24.

²⁷ Munsch, Powell and Jolly, "Before the desert", p. 9.

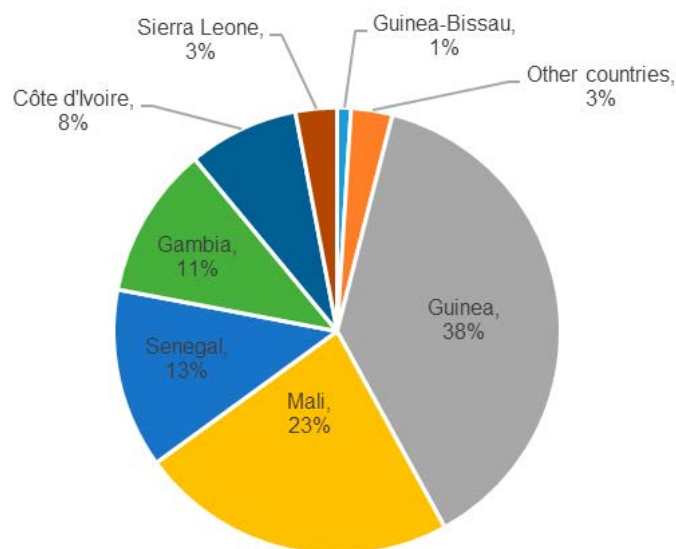
²⁸ Ibid.

²⁹ S/2019/636, para. 121.

Moreover, passengers who fall ill are reportedly abandoned by the smugglers in the desert in order to avoid infecting the rest of the group.³⁰ At the same time, armed groups operating in the north of Mali have reportedly exploited their territorial control by extracting a passage fee (*droit de passage*) from migrant convoys transiting through their area of influence.³¹ According to other reports, migrants in transit have been exposed to robbery, rape and even murder by armed bandits, as well as to other human rights abuses and trafficking in persons in the form of exploitation in prostitution and forced labour.³²

According to the data collected by the International Organization for Migration (IOM), the most frequently registered country of nationality of migrants travelling through Mali is Guinea, followed by Mali, Senegal and the Gambia.

Figure 2. Countries of nationality recorded among migrant outflows from Mali, July 2016–June 2017



Source: IOM.

The vast majority, between 96 and 97 per cent, of migrants on outbound routes from Mali were male.³³ In Mali, minors comprised 7 per cent of the migrants observed at IOM monitoring points between July 2016 and June 2017.

³⁰IOM and Altai Consulting, *Irregular Migration between West Africa, North Africa and the Mediterranean*, pp. 52–53; Office of the United Nations High Commissioner for Refugees and Altai Consulting, *Mixed Migration: Libya at the Crossroads – Mapping of Migration Routes from Africa to Europe and Drivers of Migration in Post-revolution Libya* (December 2013), pp. 46–48.

³¹Molenaar and van Damme, “Irregular migration and human smuggling networks in Mali”, p. 24.

³²Ibid, pp. 25–26.

³³IOM, Displacement Tracking Matrix – Flow Monitoring Mali, Results Snapshot #17, 30 June 2016 – 30 June 2017.

6. Manifestations of trafficking in persons in Mali

Trafficking in persons in Mali affects Malian and foreign children, women and men.

A. CHILD BEGGING, INCLUDING BEGGING INVOLVING TALIBES

A *talibe* is a child, usually a boy, learning the Qur'an under the authority of a marabout (a traditional Muslim religious teacher in West Africa) in a traditional Qur'anic school (*daara*). Parents entrust their children to marabouts for various reasons, including poverty, but also because they want the children to receive a religious education. *Talibes* are very often required to beg on the streets. Traditionally, begging was a practice used to teach the children how to be humble and to contribute to the daily costs associated with running the *daaras*, as, in many cases, parents do not provide funding for their children's religious education. However, this traditional practice has in some cases transformed into a form of trafficking in persons in which the children are forced to beg on the streets and hand over the money earned to their "Qur'anic teachers". In many cases, other forms of exploitation are also linked to the treatment of such *talibes*.

It has been reported that fake marabouts tend to move children across borders in the region to beg. For example, children from Burkina Faso, the Niger and Senegal have been taken to Mali, while Malian children have been, in turn, brought to those countries to beg.³⁴ It is important to identify such forms of trafficking and exploitation and to separate them from traditional practice in which no exploitation takes place.

In addition to the exploitation of *talibe* children, other situations involving the exploitation of children in begging have been reported in Mali, in particular involving the use of twins in begging, especially twin girls. In Mali, giving money to twins is part of local custom. Many families seek to use their twins for monetary gain. Some adults disguise young girls to make them look like twins, then make them beg in the streets. Moreover, cases of twin girls being rented out by their parents to others have also been reported.³⁵

B. EXPLOITATION OF THE PROSTITUTION OF WOMEN IN NIGHTCLUBS AND BROTHELS

Women and girls are often promised employment as domestic help, waitresses or similar roles in other countries in West Africa, Northern Africa, Europe and the Middle East and advised by traffickers that they will be assisted in their journey to the country of employment. However, en

³⁴Interview with Mali based Non-Governmental Organization ENDA, 16 January 2019.

³⁵Interview with representatives of Environmental Development Action in the Third World, a non-governmental organization based in Mali, 16 January 2019.

route they are then diverted to Bamako or to mining or agricultural areas in which the demand for sexual services is high, where they are told that they have assumed a debt for the cost of the trip to their destination, which they must repay before they can move on. In order to pay the debt, the women and girls are forced into prostitution. In many situations, the forced prostitution takes place in informal settings, for example, at informal mining sites or informal establishments, such as bars, where the presence and control of State authorities is limited. In Mali, victims from Mali, as well as from other countries in the region, in particular Nigeria, have been identified.

C. FORCED LABOUR OF MIGRANTS IN AGRICULTURAL OR MINING WORK

Migrants transiting through Mali on their way to Northern Africa or Europe often run out of money to pay for their journey. This makes them vulnerable to trafficking for the purpose of forced labour, including in the agricultural sector and in the mining areas of Kayes, Sikasso and Koulikoro. Migrants in transit are often forced to pay for parts of their journey by working in restaurants, agriculture or mines.

D. TRAFFICKING IN PERSONS FOR THE PURPOSE OF EXTRACTING A RANSOM

Several testimonies have been collected in which migrants have reported being abducted and tortured in order to coerce their families to pay a ransom. Such incidents typically occur beyond Gao, on the way to the border with Algeria. Many areas between Gao and the border with Algeria are controlled by armed groups. In order to finance their activities, the armed groups force migrants in transit to pay at checkpoints that the groups operate. Migrants unable to pay the sums demanded are kidnapped and tortured, and their families are then called by phone and a ransom is demanded. The emergence of money transfers effected through telephone operators facilitates this modus operandi. Once the money is received, the migrant is released. Those who cannot pay the required amount may be sold into forced labour in mines, enlisted in armed groups or abandoned in the desert.³⁶

³⁶ According to interviews with United Nations police officers deployed in Northern Mali in 2019.

E. DOMESTIC SERVITUDE: THE USE OF CHILDREN AS DOMESTIC SERVANTS IN EXPLOITATIVE CONDITIONS

The most common form of domestic servitude in Mali involves children entrusted to a relative such as an aunt or uncle who promises the parents better possibilities (including education) for the children or promises to find work for the children in the capital. However, such children are often forced to serve as domestic workers, expected to work excessively long hours without time off, and never receive payment. In addition, Malian girls and women often fall victim to trafficking for the purpose of exploitation in domestic servitude in the Middle East, where they are transferred to after being recruited in Mali.

F. TRADITIONAL SLAVERY

Traditional slavery practices are still, to a certain extent, practiced in Mali. Children born to slave parents (in particular from the Bella tribe) will themselves be slaves and continue to serve the enslaving families, for example, as shepherds or as nurses for the families' children. In addition, the tradition of "Wahaya" (the "fifth wife") exists, in which men take, in addition to the four legally permitted wives, an unofficial fifth wife. This person does not have any official rights and is often used for domestic work and sexually exploited.

G. RECRUITMENT OF CHILDREN BY ARMED GROUPS

Several instances of the recruitment of children by armed groups have been reported in the reports of the Secretary-General on children and armed conflict in Mali. All armed groups operating in northern Mali have reportedly targeted children with the aim of recruiting and using them in armed conflict; hundreds of children, primarily boys between the ages of 12 and 15, have been recruited and used for that purpose. Many of the children were encouraged to join armed groups as a way out of poverty or owing to their ethnic affiliations, with families, imams and community leaders also playing a role. A large number of children who had been sent by their parents to marabouts or Islamic schools were recruited by armed groups, as schools were often used as places of indoctrination and recruitment. Groups such as *Mouvement national de libération de l'Azawad*, *Mouvement pour l'unification et le jihad en Afrique de l'Ouest*, and *Ansar Eddine* recruited children by promising them gifts or payments and used them to operate checkpoints and toll gates, conduct patrols, enforce the Islamic dress code for women, conduct searches for forbidden items and to participate directly in hostilities, and children were often seen carrying automatic weapons.³⁷

³⁷Report of the Secretary-General on children and armed conflict in Mali (S/2014/267).



7. Protection of and assistance to victims of trafficking in persons and smuggled migrants

One of the reasons it is of utmost importance to correctly identify situations of trafficking in persons and the smuggling of migrants is to ensure that appropriate measures are taken to assist the persons subjected to such crimes and protect their rights. The Trafficking in Persons Protocol and the Smuggling of Migrants Protocol contain provisions addressing protection and assistance. Their scopes are, however, different in some respects.

A. PROTECTION OF AND ASSISTANCE TO VICTIMS OF TRAFFICKING IN PERSONS

Victims of trafficking in persons are victims of crime. Their most immediate need is to be removed from their exploitative situation so that they will no longer be subjected to further physical or psychological harm. Trafficking in persons is indeed associated with extreme threats and dangers. Many victims are found in a very fragile situation, having suffered severe trauma. In some cases, victims may not even identify themselves as victims, as they may fear retaliation against themselves or against their family, or they may feel ashamed, embarrassed or somehow responsible for their own exploitation. This makes it even more challenging to take appropriate protection and assistance measures.

The Trafficking in Persons Protocol lists a number of protection and assistance measures for victims that States parties must take or consider taking. Those measures include the following:

- Protecting the privacy and identity of victims of trafficking in persons
- Providing victims with information on relevant court and administrative proceedings
- Ensuring that the views and concerns of the victims are presented and considered at the appropriate stages of criminal proceedings against offenders
- Providing for the physical, psychological and social recovery of victims, in particular through appropriate housing; counselling and providing information; medical, psychological and material assistance; and employment and educational and training opportunities

Assisting and supporting victims of trafficking is primarily an obligation of States, as provided for in the Trafficking in Persons Protocol and other applicable instruments of international law. However, some States may have limited resources or infrastructure for providing appropriate care and support to victims of trafficking. In such cases, other actors, such as civil society organizations or international organizations, may complement the assistance provided by States. It is

therefore crucial to identify the actors providing assistance and support to victims of trafficking so as to ensure that the victims, when detected, may be referred to the relevant stakeholders able to support them.

Chapter 4 of Act No. 2012-023 of Mali addresses the protection of victims and witnesses. The Act provides for the possibility of making trials confidential, allowing victims to be absent from the trial and granting the victims permission to remain in Mali after the prosecution has started. There are no provisions in the law of Mali on measures providing for the physical, medical or psychological recovery of victims of trafficking.

With regard to the referral of victims of trafficking to assistance and support services, until January 2019, there was no formal victim identification or referral mechanism in Mali, but such a mechanism was under development in 2019. Assistance to victims of trafficking is provided almost exclusively by international and non-governmental organizations and primarily to children. This assistance includes social and psychological support, education, training, and reintegration assistance. There are several non-governmental organizations that provide shelter services, including Environmental Development Action in the Third World, *Bureau National Catholique de l'Enfance Mali*, *L'association Temedt* and *Femmes et Développement* (FEDE). Such organizations support child victims by attempting to locate their families and conducting risk assessments to determine if reunification can occur. A regional network of non-governmental organizations focusing on child protection, the *Réseau Afrique de l'Ouest pour la protection des enfants*, has established regional mechanisms for child referral that follow this procedure.

Non-governmental organizations that provide shelter and other types of assistance in Mali

- Environmental Development Action in the Third World (ENDA Tiers Monde, Mali) (tel.: +223 20225564)
- Bureau National Catholique de l'Enfance (tel.: +223 66 74 02 02)
- L'association Temedt
- Femmes et Développement (FEDE)
- Réseau Afrique de l'Ouest pour la protection des enfants

As mentioned above, in 2011, the Government of Mali created the National Committee for the Coordination of Measures to Combat Trafficking in Persons and Related Acts, which is the main focal point within the Government for matters related to trafficking in persons. In 2017, the Committee was allocated a budget amounting to the equivalent of \$326,000. If a situation of trafficking in persons or a victim of trafficking in persons is identified by the police component of MINUSMA, it is recommended that the matter be reported through the chain of command. The incident should also be brought to the attention of the United Nations country team through the appropriate channels so that the international agencies able and mandated to provide support and assistance to victims can take the necessary action.

B. PROTECTION AND ASSISTANCE NEEDS OF SMUGGLED MIGRANTS

The Smuggling of Migrants Protocol contains important provisions requiring States parties to take measures to protect and assist smuggled migrants.³⁸ The provisions respond to concerns about the basic safety, security and protection of human rights of persons who have been the object of the smuggling of migrants. They are intended to set an appropriate standard of conduct for officials who deal with smuggled migrants and to deter conduct on the part of offenders involving danger to or degradation of migrants.

In accordance with article 16 of the Smuggling of Migrants Protocol, States parties are required to:

- Take all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of the smuggling of migrants and related conduct, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 16, para. 1)
- Take measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of the smuggling of migrants (art. 16, para. 2)

National law enforcement authorities have a crucial role to play in identifying those in need of protection and implementing the appropriate measures to protect them. The role of the police component of MINUSMA is important in supporting national authorities to fulfil this duty.

Moreover, the Smuggling of Migrants Protocol obliges States parties to afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the objects of the smuggling of migrants and related conduct (art. 16, para. 3). In this context, “assistance” means providing for needs and safety. Assistance might be, for example, offered by a police patrol that, after having apprehended a truck driving across the Sahara for days with migrants hidden inside it, provides the migrants with shelter and medical assistance.

Article 16, paragraph 4, of the Smuggling of Migrants Protocol specifically obliges States parties to take into account the special needs of women and children in applying protection and assistance measures.

C. PROTECTION OF ASYLUM SEEKERS AND REFUGEES

In article 3 of the Smuggling of Migrants Protocol, reference is made exclusively to “migrants”. However, the term is also meant to apply to refugees, a distinct and separate category of persons specifically defined in and protected under international law, including international and regional instruments relating to refugees, as well as under the mandate of UNHCR and national legislation. According to many of these instruments, a refugee is broadly understood to be any person who is outside of his or her country of origin or habitual residence, and who is in need of international protection because of a serious threat to his or her life, physical integrity, or freedom in

³⁸Smuggling of Migrants Protocol, art. 16.

his or her country of origin as a result of persecution, armed conflict, violence or events seriously disturbing the public order.

Refugees and asylum seekers may turn to the services of migrant smuggling networks because they are otherwise unable to flee and seek safety. They may also fall victim to trafficking in a foreign country. As noted above, refugees have specific rights under international law, primarily by virtue of the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967, which are explicitly recognized under a provision in both the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, entitled “Saving clause”.

Saving clause: article 14, paragraph 1, of the Trafficking in Persons Protocol and article 19, paragraph 1, of the Smuggling of Migrants Protocol

“Nothing in this Protocol shall affect the other 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.”

While it is recognized that, in some cases, smuggled migrants and foreign victims of trafficking will be returned to their country of origin, such return must never amount to refoulement, which would be contrary to principles of international law.

The principle of non-refoulement refers to the obligation of States under international refugee law not to expel or return (*refouler*) a refugee or asylum seeker, in any manner whatsoever, to territories where his or her life or freedom would be threatened. The principle prohibits any State conduct, including, for example, rejection or non-admission at a border or interception at sea, which leads to direct or indirect (i.e. via a third country) return to such territories.

This principle is most prominently expressed in article 33 of the Convention relating to the Status of Refugees of 1951. It is also enshrined in regional law instruments relating to refugees and is part of customary international law. The principle of non-refoulement under refugee law is complemented by prohibitions on return contained in and developed under international humanitarian law and international and regional human rights law. In particular, the right to life and the absolute prohibition on torture or inhuman or degrading treatment or punishment entail an obligation not to return or expel a person to territories where there is a real risk he or she may be subjected to treatment in violation of those rights.

Decisions to return a person should therefore never be undertaken arbitrarily, summarily, immediately or without an inquiry into the conditions in the country of return.

In addition to ensuring protection against refoulement, gaining access to procedures that can determine refugee status is also crucial for those who are victims or potential victims of trafficking and smuggling. Therefore, authorities must identify, at the earliest stage, persons giving any indication that they could be at risk of persecution in their country of origin and refer them to the appropriate national asylum systems.

8. Detecting situations of trafficking in persons and the smuggling of migrants

A. INDICATORS OF TRAFFICKING IN PERSONS AND THE SMUGGLING OF MIGRANTS

Detection of situations of trafficking in persons is a prerequisite for the prosecution of perpetrators and the protection of victims of trafficking. Similarly, timely detection of situations of migrant smuggling, in particular, aggravated forms of migrant smuggling involving abuse and mistreatment of migrants, is crucial to uncovering the offenders involved in the criminal venture and providing adequate assistance to migrants in danger.

Each trafficking situation is unique, and the profiles of victims vary. Smuggling operations may also change over time and adjust to external and contextual factors. The combination of quantitative or qualitative elements, referred to as indicators, facilitates the identification and detection of both trafficking and smuggling situations.

As the contexts in which MINUSMA officers operate are very diverse, the main utility of the indicators is to describe the situation and the suspected criminal conduct in objective terms. Indicators need to be adapted according to the context. For example, since methods used by smugglers continually change, the indicators of the smuggling of migrants also change and therefore must be constantly updated in order to remain useful. The presence or absence of any of the indicators neither proves nor disproves that trafficking in persons or the smuggling of migrants is taking place; however, their presence should lead to further enquiries or investigations.

Examples of indicators of trafficking in persons

Example 1: Every day from 8 a.m. to 5 p.m., 32 children who are unable to speak the local language engage in begging on and around three blocks of the city centre.

The indicators in example 1 are:

- (a) The long hours;
- (b) The presence of children who are most likely foreigners;
- (c) The practice of begging.

Example 2: Approximately 20 Nigerian women rarely seen leaving a house where men enter frequently and regularly and spend limited periods of time.

The indicators in example 2 are:

- (a) The presence of Nigerian women who have little contact with the outside world;
- (b) The frequent and regular visits of men.

B. REPORTING SITUATIONS OF TRAFFICKING IN PERSONS AND THE SMUGGLING OF MIGRANTS

Based on the indicators identified, a report on the situation is to be addressed to the MINUSMA regional commander. The report should also include information relating to the needs of the persons and/or victims involved, such as the need for food, clothing, shelter, medical care or other types of assistance. The report may be accompanied by an informational note providing additional evidence of criminal conduct.

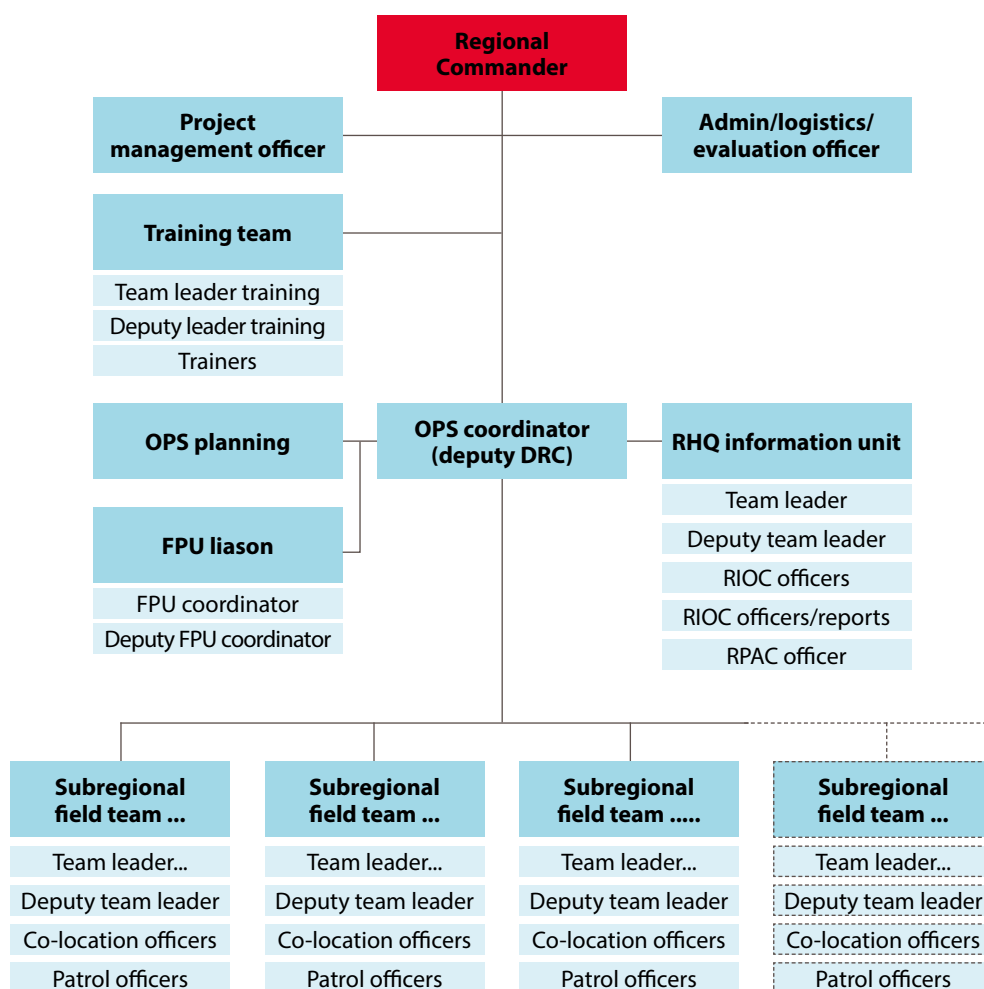
Exercise

Group 1 presents a scenario of trafficking in persons involving women, highlighting indicators and victims' needs.

Group 2 presents a scenario of trafficking in persons involving children, highlighting indicators and victims' needs.

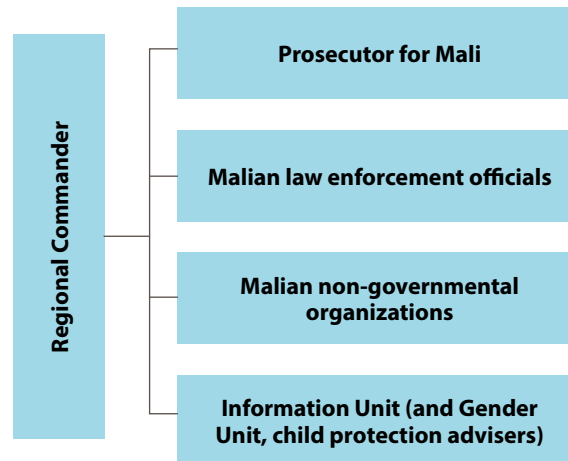
Group 3 presents a scenario of trafficking in persons involving men, highlighting indicators and victims' needs.

Figure 3. Regional chain of command



The Regional Commander will alert the competent services in Mali if necessary (the prosecutor and/or the police) and will also forward the report to the Information Unit, which, if the situation warrants it, will transmit the report to the Gender Unit and/or the child protection advisers.

Figure 4. Recipients of the reported information



Exercise

Using the scenario presented in annex I, draft a report and information note.

Annex I

SCENARIO AND EXERCISE

The following scenario is proposed to enable the trainees to apply the information and knowledge acquired during the session to a concrete situation. The trainer should distribute a hard copy to the trainees, create groups of 3–4 persons, and ask them to discuss the following questions:

1. On the basis of the circumstances at hand, are there grounds to believe that this is a situation of trafficking in persons or the smuggling of migrants?
2. How would you respond to this situation?
3. What type of assistance and protection should be offered to the young women?

The trainer should ask each group to designate a rapporteur, who will present the answers of his or her group. All trainees should be invited to react and comment on the views presented by the rapporteurs.

Scenario

During a patrol near the public market in Gao, a local person approaches you and tells you that six young girls have been offering sexual services to locals in an apartment building not far from the market, without ever leaving the building. The person adds that, in several instances, he has heard female voices screaming and has seen men with guns coming out of the building. You decide to report this to your superiors. Following your report, the commander of your unit informs the Malian police. The Malian police decide to visit the building and examine the situation, and you are invited to accompany them. As you and the Malian police approach, you see three men walking away from the premises at a fast pace. When you enter the building, you find that there are indeed six young girls inside a four-room apartment, dressed in very scanty clothing. They look very young, between 14 and 19 years old. They do not speak French and can only express themselves in English. They look scared, and most of them have bruises on their upper bodies and arms. When they are asked who brought them there, they make a sign with their hands as if they were holding a rifle and shooting at someone. They have no passports or identification cards to present.

Answers

1. In this situation, there are a number of indicators suggesting that the six young women in the apartment are victims of trafficking in persons for purposes of exploitation in prostitution, namely:

- The young women are wearing scanty clothes.
- The three men walking away from the apartment building when United Nations police officers approached (they may have been “clients” and/or guards).
- The women are very young and are not from Mali. They seem to be from an English-speaking country.
- They have bruises on their bodies, a sign that they may have been mistreated.
- They look scared.
- They have no identification documents or passports (they may have been taken by their exploiters).
- They seem to be suggesting that somebody has threatened or is threatening them with a gun.

2. United Nations police officers should respond to this situation as follows:

- Immediately report the incident through the chain of command, covering the key questions “Who?”, “What?”, “When?”, “Where?”, “Why?” and “How?”
- The information should be forwarded to the Joint Operation Centre to be included in the daily situation reports.
- The incident should also be reported to the Human Rights Section of MINUSMA, the Senior Child Protection Adviser (given that some of the young women may be under 18 years old) and the Senior Women’s Protection Adviser (as the incident may involve conflict-related sexual violence).
- The Senior Child Protection Adviser and the Senior Women’s Protection Adviser are to report the incident further to the United Nations Country Team, which manages multi-sectoral and humanitarian initiatives. The Country Team might have developed a mechanism to refer victims of trafficking in persons to specialized institutions that provide medical and/or psychosocial support and shelter. (This is not currently the case in Mali, but the situation may evolve.)
- They should consider whether a referral to the national asylum system would be appropriate and why.

3. In this particular scenario, the following actions to provide protection and assistance to the young women are recommended:

- Establish whether the young women require urgent medical care.
- Provide immediate support to the young women (first aid, food, water, clothing, safety and security).
- Be respectful of the privacy, dignity and confidentiality of the young women.
- Transfer the young women to the nearest medical facility.

- The authorities of Mali have the primary responsibility for providing assistance and protection. However, in Mali, the assistance provided by State institutions to victims of trafficking is inadequate, therefore assistance is provided by a number of non-governmental organizations that run shelters (for example, Environmental Development Action in the Third World).

DO	DON'T
Respect the dignity and confidentiality of the victims.	Do not interview the victims on the spot or investigate the incident (that will be done by the competent authorities).
Document and/or record the incident and preserve any evidence.	Do not judge the victims. Avoid stereotypes.
Obtain the necessary information for reporting of the incident.	Do not treat the victims as suspects or criminals.
Report, through the chain of command, to the Women's Protection Adviser and the Child Protection Adviser.	Do not reveal the personal details of the victims.
Refer victims to specialized service providers.	Do not make promises you cannot keep.
Do no harm.	Do not arrest or detain presumed victims of trafficking.



Annex II

CASE STUDIES FOR USE IN TRAINING

Case studies for discussion or evaluation

The trainer may use the situations described in the following case studies as follows:

- Discuss in small groups of 3–4 persons whether the case studies involve situations of trafficking in persons or the smuggling of migrants, identifying the elements of the offence in each situation.

and/or

- Carry out a short learning evaluation to assess the trainees' understanding of the main features of the two offences, either right after explaining the differences between them, or at the end of the session. It is recommended that the trainer print out and distribute the case studies along with the corresponding “true or false” statements.

Case study 1

A young man from Togo, Felix, aged 20, wishes to reach Europe to improve his living conditions. He has a valid passport but is unable to obtain a visa. A friend of his puts him in contact with some people who organize travel from Togo to Mali, then to Algeria, then Libya, then on to Italy by boat. Felix agrees to pay \$5,000 for the journey. He leaves Lomé three weeks later, then arrives in Gao by bus with another 20 persons travelling for the same purpose. There are no controls at the border crossings. In Gao, a *passeur* is waiting for the bus passengers, and takes them in a 4x4 vehicle to a ghetto outside of the city, where four armed guards are waiting for them. The armed men tell the passengers that they have to wait in a safe house before they can move on to Algeria by truck, as the Algerian authorities are performing increased controls of irregular border crossings.

Felix and the other passengers have to wait for seven days at the safe house. They are given very little food and water. When they complain, the armed men threaten them, and in some cases even beat them.

STATEMENTS	TRUE	FALSE
1. Felix is a victim of trafficking in persons.		X
2. Felix's entry into Mali by bus constitutes an instance of the smuggling of migrants.		X
3. Felix's entry into Algeria would constitute an instance of the smuggling of migrants.	X	

Case study 2

A 23-year-old Nigerian woman, Gina, responds to an advertisement in a local newspaper in Borno State offering employment opportunities in an upscale hairdressing salon in London. She is told that she would first have to travel to Bamako by bus, then from there she would fly directly to London with an airline ticket and a visa provided to her by a travel agent in Bamako. Gina takes the bus organized by her recruiters, and, upon arrival in Bamako, goes to the address given to her. When she arrives, two Malian men are waiting for her. They first take her smart phone, money and passport, and then they take her to a nightclub, where they tell her that she must work as a prostitute to pay for the cost of her travel to London. At first, Gina refuses, but then the men tell her that they will denounce her to the police for stealing money from them and she will go to prison. Gina does not know anyone in Bamako and speaks neither French nor any of the local languages. She has no money and no telephone. She eventually accepts the situation because she feels that she has no other choice.

STATEMENTS	TRUE	FALSE
1. Gina is a victim of trafficking in persons.	X	
2. Gina's entry into Mali constitutes an instance of the smuggling of migrants.		X
3. After she agrees to work as a prostitute, Gina can no longer be considered to be a victim of trafficking.		X

Case study 3

A young Malian man visits a Muslim village in northern Côte d'Ivoire and informs the villagers there that a Qur'anic school in the Kidal area in Mali has places available for foreign children, with all expenses covered by the school. Three families agree to send their six boys, aged between 9 and 12 years, along with the man to Mali to attend the Qur'anic school. The boys do not have passports, but the Malian man tells the families that they will travel safely and that all the necessary arrangements have been made. The boys leave their village in the Malian man's van. At the border crossing, the Malian man gives the border guards 30,000 CFA francs to let them through.

The next day, they arrive at the Qur'anic School, where the Malian man hands them over to the teachers and is paid 70,000 CFA francs. The young boys are told that, before they start the lessons, they need to contribute to the daily needs of the community of the Qur'anic school. Every day, they are taken to the central market of Kidal, where they are compelled to beg from 6 a.m. to 6 p.m. The money they make is taken by the teachers who collect them in the evening and take them back to the Qur'anic school.

STATEMENTS	TRUE	FALSE
1. The border guards who are paid at the border crossing are accomplices in the smuggling of migrants.	X	
2. The six young boys are victims of trafficking in persons.	X	
3. The young Malian man has committed the crime of trafficking in persons.	X	

Case study 4

In the north of Mali, an armed militia of obscure affiliation attacks a village and abducts 10 young Malian women aged between 18 and 22 years. The militia transports the women to their camp, telling them that each of them will have to marry a fighter. When they refuse, the militia leaders beat them and tell them that they have no choice and that, if they want to pursue a normal life, they will have to accept the marriage, otherwise they will be sold to other armed groups operating in Libya. At this point, 8 of the 10 women agree to be married to the fighters. The other two persist in their refusal, and, as a result, they are beaten and raped by the militia.

STATEMENTS	TRUE	FALSE
1. Since the women were not transferred to Libya, this is not a situation of trafficking in persons.		X
2. Only the two women that never agreed to marry fighters can be considered victims of trafficking in persons.		X
3. Only the fighters who married the women have committed the crime of trafficking in persons.		X



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