



Tool 7.9 Protecting refugee victims of trafficking

Overview

This tool flags the issue of protecting and assisting trafficking victims as refugees and refers to various guidelines of the Office of the United Nations High Commissioner for Refugees (UNHCR) which may assist in the process of affording such protection.

Asylum for victims as refugees

In some instances, victims of trafficking may be eligible to claim asylum status, in particular when repatriation is not possible. Helping victims seek asylum can be a crucial part of the victim assistance services offered. Anti-trafficking laws, programmes and interventions should not affect the right of victims to seek and enjoy asylum from persecution in accordance with international refugee law. To claim protection under refugee protection law, trafficked persons need to claim and prove that they have fled persecution under the meaning of the Convention relating to the Status of Refugees (United Nations, *Treaty Series*, vol. 189, No. 2545). The Convention defines a refugee as any person who has

a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the State of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

A trafficking victim who has a well-founded fear of persecution in his or her country of origin, based on one or more of these five grounds stipulated in the refugee definition, would therefore qualify for refugee status.



The 1951 Convention relating to the Status of Refugees is available at:

www.unhcr.ch/html/menu3/b/o_c_ref.htm

The principle of non-refoulement

The principle of non-refoulement is often referred to as the cornerstone of international protection. This principle, as enshrined in the 1951 Convention relating to the Status of Refugees, has acquired the status of customary international law, meaning that it has become binding on all States, regardless of whether or not they are signatories to the 1951 Convention. All countries must respect the principle of non-refoulement, which includes:

1. Not returning asylum seekers or refugees to a place where their life or liberty would be at risk;
2. Not preventing asylum seekers or refugees—even if they are being smuggled or trafficked—from seeking safety in a country, if there is a chance of them being returned to a country where their life or liberty would be at risk;
3. Not denying access to their territory to people fleeing persecution who have arrived at their border (access to asylum).

The principle of non-refoulement could therefore apply if a trafficking victim fears persecution or other serious harm in his or her country of origin, for example in the form of re-trafficking, reprisals from traffickers or criminal networks, ostracism, social exclusion or discrimination to an extent that would amount to persecution, harassment, threats or intimidation. It is not uncommon for victims of trafficking to fear intimidation or discrimination by the authorities in their countries of origin.



For more information about the principle of non-refoulement, see *The IOM Handbook on Direct Assistance for Victims of Trafficking*, available at:

www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=13452

Recommended resources

The relationship between UNHCR, refugee issues and trafficking in persons is twofold:

- UNHCR has a responsibility to ensure that refugees, asylum seekers, internally displaced persons, stateless persons and other persons of concern do not fall victim to trafficking.
- UNHCR has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon their return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within the definition of a refugee, are recognized as such and afforded international protection.

The following UNHCR guidelines are of benefit in offering international protection to victims of trafficking or those who are vulnerable to being trafficked.

Guidelines on international protection

The application of article 1.A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (HCR/GIP/06/07)

In April 2006, UNHCR issued guidelines on international protection focusing on persons who are victims of trafficking. These guidelines provide guidance for Governments, legal practitioners, decision-makers, the judiciary and UNHCR staff in determining the refugee status of persons who have been trafficked. The guidelines offer particular clarity on the key point that, in order to be considered a refugee under the Convention, the individual trafficking victim concerned must have a “well-founded fear of persecution” linked to one

or more of the Convention grounds. Whether their fear is considered to be well-founded depends on the individual circumstances of their case. The guidelines provide extensive interpretive guidance for determining whether this requirement has been met in the individual case of an individual victim of trafficking.



These guidelines are available at:
www.unhcr.org/doclist/publ/3d4a53ad4.html

Guidelines for prevention and response

Sexual and gender-based violence against refugees, returnees and internally displaced persons

Refugees, internally displaced individuals and repatriated refugees are very vulnerable to various forms of abuse and exploitation. Among them, women and children are particularly vulnerable. *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, published by UNHCR in May 2003, provides a framework for developing prevention and response strategies. These guidelines are adaptable to different contexts and settings.



This publication is available at:
www.rhrc.org/pdf/gl_sgbv03_00.pdf

Guidelines on the protection of refugee women

The “Guidelines on the protection of refugee women” were prepared by UNHCR in 1991 to help the staff of UNHCR and its implementing partners to identify the specific protection issues, problems and risks facing refugee women. The guidelines address traditional protection concerns, such as the determination of refugee status and the provision of physical security, and outline various measures that can be taken to improve the protection of refugee women. Recognizing that prevention is preferable to cure, the guidelines provide suggestions on actions that can be taken, particularly within traditional assistance sectors, to prevent or deter protection problems from arising. Further, they present approaches for helping women whose rights have been violated. Lastly, the guidelines outline steps that can be taken to ameliorate and report upon protection problems that do arise.



These guidelines are available at:
www.unhcr.org/publ/PUBL/3d4f915e4.pdf