

1.5 Return and reintegration

The Smuggling of Migrants Protocol sets out a framework for returning smuggled migrants (article 18), and article 8 of the Trafficking in Persons Protocol concerns facilitating and accepting the safe repatriation of victims who are nationals or permanent residents. All persons have a right to return to their countries. This right can be damaged where (1) the countries of return do not admit them or support their readmission by the confirmation of their identities and issuance, where necessary, of the necessary travel and identity documents, or (2) where countries returning them interfere with their return, for instance, by detaining them in immigration facilities or shelters. Human rights concerns emerge when returns are carried out that should not take place, and in the process of return.

Human rights considerations in carrying out returns and reintegration

In relation to the latter, human rights violations can result when people are returned in ways that do not respect their human rights and dignity⁶⁸, such as when physical restraints are unnecessarily used. The return process should be safe and voluntary, taking into account the special needs of the returnee, and respecting their dignity. Yet there have been situations of non-nationals being returned in conditions that have resulted in psychological and physical harm, or even death.

Rights violations can also result where trafficked and smuggled people are returned to situations that made them vulnerable at the outset. UNODC should also be aware of programs that seek to protect victims from re-trafficking by restricting their options, in particular through actively discouraging the option of safe migration; such approaches may rather make them vulnerable. Accordingly, the success of a reintegration process should not

be measured against victims being returned to and remaining in their home communities.

Where people are returned, there are risks that they may be returned in ways that violate their right to privacy, resulting in risk of retaliation from traffickers or smugglers. Violations of privacy in return processes can also result in stigmatization from their family or community. For instance, victims of trafficking in sexual forms of exploitation may be stigmatized in ways that mean they are unable to integrate or to find work when they return home. Similarly, smuggled migrants may be stigmatized for their ‘failed’ attempt to be smuggled to another country, which results instead in them being returned home, often with smuggling debts to pay. For these reasons, social inclusion is a key component of a rights-based approach to returns, of both victims of trafficking and smuggled migrants. Social inclusion can be understood as “a process of improving the terms of participation in society for people who are disadvantaged - through enhanced opportunities, access to resources, voice, and respect for their rights⁶⁹.” In the case of victims of trafficking legislation may allow options for non-citizen victims of trafficking to remain in the country temporarily through special categories of visas that allow them to remain for a period of reflection, and or to participate in criminal justice processes. In other cases, victims may be able to remain on a more permanent basis.

Human rights considerations preventing returns

In relation to returns that should not take place, international law prohibits collective expulsion (as noted above), and thus guarantees due process and individual assessments of persons before such returns are carried out. The principle of *non-refoulement* is recognized as

⁶⁸ For more on the return of victims of trafficking, see Guiding Principles on Human Rights in the Return of Trafficked Persons (OSCE / ODIHR, 2014)

⁶⁹ Trafficking in Persons, especially women and children, Report of the Special Rapporteur on trafficking in persons, especially women and children, UN. Doc. A/HRC/41/46 (23 April 2019) 4

constituting a norm of international customary law. In regard to asylum seekers and refugees, international refugee law establishes a prohibition on the return of refugees to any place where they face persecution under Article 33(1) of the 1951 Convention relating to the Status of Refugees.

The absolute prohibitions on torture and cruel, inhuman or degrading treatment or punishment in article 7 of ICCPR and article 3(1) of the CAT, also uphold this principle. Article 3(1) of the CAT states that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". In the case of trafficked persons, being trafficked does not in itself amount to a valid ground for claiming refugee status. However, some victims may qualify for international protection if what they would be subject to upon their return would amount to persecution for one of the reasons contained in the definition provided for in the 1951 Refugee Conventions, if the State does not provide effective protection. In

addition to prohibitions on returning a person to situations where they face persecution, or violations of the right to life or the prohibition against torture, States are also obligated to protect victims from re-victimization. Fulfilling this obligation may require that States not returned trafficked persons to a place where they are at risk of being re-victimized, subject to stigma, threats, intimidation, violence and retaliation.

Smuggled migrants and trafficked persons in need of international protection should be given the full opportunity to make a claim for asylum, including by being provided with information required and access to systems through which to make asylum claims. Return decisions must take a case-by-case approach to determine these issues; some people may need to be resettled elsewhere rather than be returned home. As with any decision relating to a child, decisions about return must accord with the child's best interests.

Table: Example of advocacy points [Tool 3.7](#) on return and reintegration

Human rights / gender concern	Advocacy point to address concern
User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Human rights-based, gender-sensitive and child-friendly return and repatriation of victims of trafficking and smuggled migrants is not prioritized	Victims of trafficking / smuggled migrants who are not returned / repatriated in accordance with human rights obligations may result in evidentiary opportunities (e.g. testimonies) being lost. Ineffective return / repatriation may result in re-trafficking / re-smuggling that does not disrupt either crime