

UNHCR's role in combating human trafficking in Europe



by Malika Floor

TRAFFICKING

An estimated 100-500,000 persons are trafficked annually into Europe. Human trafficking in general is on the increase. New EU and external border countries have become important transit routes and are increasingly becoming destination countries as well. The phenomenon of re-trafficking has also been reported as a growing trend. While the great majority of persons trafficked to and within Europe are women and girls for the purpose of sexual exploitation, the trafficking of children includes boys for begging and street vending, and men for other types of exploitative labour.

UNHCR has consistently expressed the view that persons who experience sexual violence or other gender-related persecution should have their claims for refugee status considered under the 1951 Convention Relating to the Status of Refugees. UNHCR is not the principal organisation working on combating the trafficking of humans but because of the interlinkages between asylum, migration and trafficking, some of the victims of trafficking may be refugees. UNHCR is primarily concerned with two categories of trafficking victims: refugees and other persons of concern to UNHCR who may fall prey to traffickers looking to take advantage of their vulnerability, and people who have been trafficked - some of whom can be recognised as refugees under the 1951 Convention and thereby in need of and entitled to international protection. UNHCR's efforts to combat trafficking in Europe are often implemented in cooperation with national governments, other intergovernmental organisations and NGOs.

The possible connection between trafficking, asylum and vulnerability of refugees and asylum seekers to human trafficking is linked with the phenomenon of smuggling and irregular entry to a country of

asylum. In an environment of tightening visa regimes, restrictive asylum policies and stricter border control, some refugees may resort to desperate and even illegal measures in their search for a safe asylum country and can be deceived by traffickers. Some victims of trafficking may only become conscious of the difference between smuggling and trafficking after departure to or upon arrival in the destination country, when the deception linked to trafficking becomes readily apparent.

UNHCR is concerned about human trafficking as a human rights violation, which can under certain conditions amount to a crime against humanity or a war crime in the context of armed conflict. Some trafficking victims, in particular but not exclusively women and children, can be defined as refugees under the 1951 Convention if a well-founded fear of persecution based on at least one of the Convention grounds is established. Victims of trafficking may qualify for international refugee protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or serious harm as a result of traffickers' potential retaliation.

A claim for international protection from a victim of trafficking can thus arise in two distinct circumstances: where the victim has been trafficked from abroad and seeks the protection of the host state or where the victim, having been trafficked within national territory, manages to extricate her/himself and flees abroad in search of international protection. When assessing asylum claims by victims of trafficking it

is always necessary to establish a well-founded fear of persecution and a causal link to one or more of the 1951 Convention grounds - for reasons of race, religion, nationality, membership of a particular social group or political opinion.

A recently published study, *Combatting Human Trafficking: Overview of UNHCR Anti-Trafficking Activities in Europe*, analyses UNHCR's engagement in combating human trafficking in Europe¹. Regional and country-specific data on statistics and trends, national legal frameworks and implementation arrangements are presented for 33 of the 42 countries covered by UNHCR's Europe Bureau. The report is designed to deepen regional and in-country cooperation with partners such as the Office of the High Commissioner for Human Rights (OHCHR), the newly appointed UN Special Rapporteur on Human Trafficking in Persons, especially in Women and Children, the Organization for Security and Cooperation in Europe (OSCE), the International Organization for Migration (IOM), United Nations Children's Fund (UNICEF), the Council of Europe (CoE) and international and local NGOs.

Responses to trafficking

A recent proliferation of legislative reforms within European countries means that most countries have now introduced laws specifically designed to combat the trafficking of humans. When countries include an anti-trafficking law in their national criminal code it is not necessarily in sync with either the Palermo Protocol or with the Council of Europe definitions and therefore there is no common

Areas of UNHCR involvement in Europe:	No of countries
Development of anti-trafficking laws	8
Membership of anti-trafficking coordination fora	8
Training and capacity building	22
Pre-screening and referral	6
Prevention	11

standard. Punishment can vary significantly from state to state.

Most European countries have drawn up national action plans to combat the phenomenon. However, the problem is now one of implementation as many of the projects are still run on an ad hoc basis. Human trafficking is an exceptionally dynamic phenomenon where traffickers adapt in response to policies designed to combat it. Thus, action to address inter-linkages between trafficking, asylum, human rights, poverty, organised crime and growth of sex business must be promoted. First and foremost, however, the plight of the victims of this scourge deserves to be the focus of concerted and collaborative attention.

One of the main response actions is establishing safe houses and shelters located either in the countries of transit or destination where victims can be placed following their interception. Shelters also exist in the countries of origin in order to receive returned victims. The number of women and girls in shelters for victims of trafficking is decreasing despite an apparent increase in the number of trafficking cases. A recent report confirms that in countries of transit, shelters are virtually empty, only accommodating local women identified as internally trafficked.² One possible reason is because, typically, victims who choose to stay in shelters are either repatriated to their countries of origin directly or, if they are offered the opportunity to remain in the country for a short period of time, the temporary stay permits are conditional on collaborating with criminal proceedings. Some countries are willing to grant victims a temporary two to three month reflection or recovery period while he/she decides whether or not to cooperate with the authorities. However, victims are often not informed about their right to this reflection or decision period as it is not systematically applied.³ Once women and girls are returned to their countries of origin, without adequate follow-up support they often face the same vulnerabilities that led to their trafficking in the first place. There is a need to protect the victims of trafficking in cases where they

are returned to their country of origin, and more qualitative and quantitative data is needed regarding the numbers of victims who are re-trafficked. There seems to be a lack of adequate support during the reintegration phase for women and children who are returned to their country of origin, and it is mostly left to NGOs without proper involvement or support by governments and law enforcement authorities. It may be that when victims are not informed of their right to seek asylum but rather advised to seek temporary stay, they usually opt for the latter. UNHCR has expressed the view on several occasions that a temporary residence permit and asylum should not be exclusive of each other. Another factor negatively impacting the possibilities of victims of trafficking to seek protection is that they are usually not provided appropriate legal counselling to articulate their asylum claim. There have been a few cases where it is the traffickers who advised their victim to seek asylum as a way of ensuring the victim's stay in the country.

The regional variation in numbers of trafficking victims recognised as refugees throughout Europe is problematic. Victims in different countries who have similar profiles – having been trafficked by the same or similar criminal groups and facing the same threats of persecution if forced to return – are not being equivalently assessed. Some asylum authorities recognise asylum claims by the victims of trafficking but others do not and for this reason many victims might not be able to access international protection. Overall, this inconsistency in granting asylum to the victims of trafficking corresponds to the geographical variations in recognition rates of asylum applications in Europe, where only half of the 42 countries have recognised refugees claiming asylum on gender-related persecution grounds. A 2004 UNHCR study on gender-related persecution in European laws and practice found that only ten of the 42 countries studied systematically granted some form of protection status for asylum cases based on sexual exploitation – Albania, Austria, Belarus, Denmark, France, Germany, Ireland, the Netherlands, Spain and the UK.⁴ The most often established Convention ground is the victim's membership of a

particular social group, although a few applicants were also recognised on the ground of race, religion and nationality.

Available asylum and trafficking data does not record key indicators, such as age, gender, number of victims or country of origin. Available information is primarily collected by government ministries, police departments and NGOs but data is not quantifiable or comparable. Region-wide data obtained through consistent means with reliable partners is desperately needed. Without this information, it is extremely difficult to raise awareness and effectively deal with the protection and assistance needs of the victims.

The main findings of the study indicate that most national and regional activities to combat trafficking have focused on response rather than prevention. The response action has been most pronounced in law development, regional and international standards setting, criminal prosecution of persons involved in trafficking, finding durable solutions to the victims and safeguarding the rights of the trafficked persons. There is an increasing recognition that effective addressing of the phenomena should be multi-sectoral and seek to prevent trafficking by addressing both supply and demand. Responses must be tailored to the needs of individual victims. Addressing supply and demand should entail criminal, legal, medical, rehabilitation and durable solutions dimensions and be respectful of and compliant with the human rights of the victim.

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3. See article by Cecilia Bailliet p28-30.
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