



**Preventing Trafficking in Human beings for Labour Exploitation:  
Decent Work and Social Justice  
Alliance Against Trafficking in Persons**

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**Panel discussion on international protection and anti-trafficking action**

Contribution by Fadela Novak-Irons, UNHCR, Bureau for Europe

Ladies and Gentlemen

I am delighted to be here with you today on behalf of the Office of the UN High Commissioner for Refugees. UNHCR thanks especially Maria Grazia and her Office for this initiative and the efforts to ensure that this conference is not just another meeting about human trafficking, but an event where we all, governments, international and regional organizations, non-governmental organizations, trade unions and the private sector, commit to continue working together. Working in Partnership with a human rights-based approach is the only way we can effectively Protect victims, Prevent this crime and human right violation, and Prosecute perpetrators. Our partnership will ensure multi-disciplinary expertise and holistic responses, including in countries of origin, transit and destination. On this World Refugee Day, UNHCR reiterates its full endorsement of and commitment to this objective.

It is then not surprising that the focus of my speech is on Partnership as it applies to the area of human trafficking and asylum. My central question for us to consider today is “How can we work together better to ensure that victims of trafficking who are also refugees, are identified and assisted at the earliest opportunity, and their human rights protected, including their right to asylum?”.

Let me first outline why UNHCR, and asylum, are and should be involved with the issue of trafficking, as this is a point with which many states still struggle.

Not all victims of trafficking are refugees but my intervention focuses on those victims who are also in need of international protection. As we all know, smuggling rings and trafficking rings are often closely related. Both prey on the vulnerabilities of people seeking international protection. Refugees may rely on smugglers, whose services they may have willingly contracted, but may end up as victims of trafficking, if these services turn out to be exploitative and abusive. With increased mixed migrations, refugees, economic migrants, and victims of trafficking do not come through separate and distinct channels, where they can be neatly and easily identified. So, in this complex context, states have a duty to identify victims of trafficking at the earliest opportunity in order to effectively protect their rights.

Why is this so important? Because of the rights engaged and state obligations under the principle of *non-refoulement* i.e. the right not to be sent back to a place of persecution.

This obligation is enshrined in several international and regional treaties. Article 14 of the Trafficking Protocol foresaw that some victims or potential victims of trafficking may fall within the definition of a refugee, and may therefore require specific **protection against refoulement**. “Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under [...] the principle of *non-refoulement*.” The Council of Europe Convention on Action against Trafficking in Human Beings in its Article 40 also stresses that “Parties shall also take whatever steps are necessary to ensure full respect for the principle of *non-refoulement*.” Likewise, the European Union Directive on trafficking, in its Preamble 10 asserts that “This Directive is without prejudice to the principle of *non-refoulement*”. In reality though and all too often, failure to accurately identify the international protection needs of victims may lead to immediate deportation, and possible return to persecution or serious harm.

Let me further expand on this point. The UN Special Rapporteur on trafficking establishes in her latest report how victims of human right violations must be provided with adequate reparations for the harms suffered, including **guarantees of non-repetition**. These “guarantees of non-repetition” encompass the right to be protected from re-victimization by not being sent back to a place of trafficking or where traffickers operate. What does this mean in practice? 1st, that victims and potential of trafficking should not be returned at the border. 2nd, that it is necessary to understand how the trafficking networks operate before a decision on return is made. For instance, the fact that a victim was recruited *en route*, in a transit country, by a trafficker from the same country of origin as the victim, does not necessarily exclude a link between the recruiter and trafficking networks in the country of origin. Another example of modus operandi would be that of a single operator who may also hide his/her affiliation with other traffickers, who have a strong interest in the victim’s earnings or target earnings. Jurisprudence now exists in this regard, which must be taken into account by the competent authorities. Also of relevance to the “guarantees of non-repetition” is the issue of state protection available upon return to the country of origin. UNHCR welcomes the mounting efforts by states in countries of origin to tackle trafficking, but we have significant reservations about the gap between these efforts and the actual capacity of these states to effectively protect returned victims of trafficking. In particular, UNHCR notes with concern that authorities in some European States may consider that shelter and assistance provided by non-governmental organizations equate with state protection. Guaranteeing non-repetition therefore requires an individual assessment of the circumstances surrounding each case. And in the context of the European Union, it also requires due consideration of the “guarantees of non-repetition” in a Member State for victims of trafficking affected by Dublin returns.

The **right to asylum** is another important right engaged in trafficking. Victims’ right to assistance and protection cannot “preclude the right to seek and enjoy asylum” as the Council of Europe Convention provides. States cannot simply rely on the possibility of being granted a residence permit to deny victims, who are also in need of international protection, the right to seek and enjoy asylum. This denial of international protection is all the more of concern to UNHCR as the recent study by the European Commission on the implementation of the EU Directive on residence permits to third country national victims of trafficking shows that in most EU Member States no residence permit was granted on this basis, and

that between 1 and 20 permits per year only had been issued by some States.<sup>1</sup> The residence permit for victims of trafficking is often granted only on conditions of cooperation with prosecution, which may not always be necessary nor relevant, and cannot be seen as an alternative to refugee status or subsidiary/complementary protection.

In order for the right to asylum to be effective, **the provision of information on the possibility of granting international protection** and **access to asylum procedures** must be ensured for those victims in need of international protection. More and more states in the region are taking relevant measures to establish appropriate mechanisms aimed at the early identification and referral of trafficked persons to ensure that they receive adequate assistance while protecting their human rights. UNHCR strongly believes that underpinning protection is the ability of authorities to also 1. identify at the earliest stages persons who are victims or potential victims of trafficking, who could be at risk of persecution, and 2. refer these persons to the competent national asylum authorities. In a study commissioned by UNHCR published in October 2009,<sup>2</sup> a number of gaps in state practice were highlighted in relation to ensuring complementarity between international protection systems and procedures for the protection of victims of trafficking. States should ensure that appropriate and effective referral mechanisms are in place between the authorities involved in anti-trafficking activities, including at the borders, and those responsible for granting international protection.

A major barrier to fighting trafficking and protecting its victims is a **culture of disbelief** amongst border guards, immigration officials, asylum decision-makers, and more generally speaking amongst law enforcement officials. The mistaken assumption that trafficking victims may have consented to their exploitation, especially when they are engaged in sex work, is a contributing factor. In addition, the production of documentary evidence may prove extremely difficult for trafficking victims, who seldom have in their possession valid identity documents or relevant documentation on the harm suffered, because the confiscation of such documents is a tool of control frequently used by traffickers. “Why didn’t you escape when you had the opportunity?” is a question often put to victims. This highlights pre-conceived doubts about their credibility and disregard for the variety of methods traffickers use to manipulate and control victims. These means of coercion are at the heart of the trafficking definition, as we know. And importantly, in the case of victims of trafficking who have suffered trauma, officials too often fail to understand that the defensive, uncommunicative and erratic behaviour of victims may be a result of that trauma or the fear of reprisals by traffickers. A multi-disciplinary approach to address human trafficking should draw on the recent developments in assessing oral testimony in international criminal law, including a body of principles of international evidence law.

Last but not least, special attention must be paid to the **specific needs of vulnerable victims**. Let me focus here in particular on the needs of child victims of trafficking and the protection

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<sup>1</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, COM(2010) 493, 15 October 2010.

<sup>2</sup> UNHCR, “*The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs*”, Bhabha, J and Alfirev, C, October 2009  
<http://www.unhcr.org/refworld/docid/4ad317bc2.html>.

of their rights. Unaccompanied and separated asylum-seeking children, who rely on smugglers to reach their destination, are particularly vulnerable to recruitment by traffickers. The disappearance of asylum-seeking children from care centres is an increasingly worrying phenomenon, which requires better adjusted approaches to reach out to these children, in particular those who are resisting self-identification as refugees and/or victims of trafficking. Safeguards at the borders and within the territory of countries in the region should provide **a circle of protection** around children travelling across borders, as well as children who seek to depart. This circle of protection should ensure that unaccompanied and separated children are referred to child protection structures, where their best interest should be a primary consideration in all actions.

I will not dwell further here on what we need to do together to ensure that our actions to prevent trafficking and protect victims, including in the asylum system, are effective. These can easily be deducted from the list of issues I have just enumerated. Instead I will dedicate the last few minutes of my intervention to how we can work together better to ensure that victims of trafficking, who are also in need of international protection, are protected in practice.

We need to establish effective national and local inter-agency coordination, including the asylum authorities and child protection services, with referral mechanisms supporting the early identification of victims and their referral to assistance and protection, and if necessary, with access to the asylum procedure. Simply put, the borders, including air borders, must be effectively connected to the national referral mechanisms with operational procedures in place. And where applicable, the establishment of trans-national referral mechanisms cannot be at the expense of state obligations to protect victims against *refoulement* and to provide guarantees of non-repetition.

To support capacity building of officials in border control authorities and asylum authorities, awareness raising and training on trafficking must be solidly rooted into a human rights approach supported by close partnerships with international human right organizations such as UNHCR. In the European Union, the newly established European Asylum Support Office has a role to play in support of this capacity building alongside the EU external border agency, Frontex.

Regional and national fora, where policy developments and practical cooperation are discussed may need to consider ways of bringing in, where applicable, the asylum authorities, asylum NGOs, asylum practitioners, and UNHCR so as to ensure that policy developments and cooperation also protect and assist victims of trafficking in the asylum system. The rights of victims and their protection cannot and must not stop at the gates of the asylum procedure.

Thank you for your attention.