

WHAT IS THE DIFFERENCE BETWEEN TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS?

TRAFFICKING IN PERSONS can be understood as requiring an action, means, and purpose:

- ❖ **ACTION:** Recruitment, transportation, transfer, harbouring or receipt of persons;
- ❖ **MEANS:** Threat or use of force or other forms of coercion, abduction, fraud, deception, 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;¹
- ❖ **PURPOSE:** Exploitation; including 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.

- Does not necessarily involve crossing a border
- often involves ongoing exploitation that generates a benefit, financial or otherwise, for traffickers
- Commodity is a person
- Traffickers commit a crime against individuals



SMUGGLING OF MIGRANTS is the procurement of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a **financial or other material benefit**.

- ❖ The **purpose** of the Smuggling of Migrants Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among State Parties to that end, while **protecting the rights of smuggled migrants** (Article 2 Smuggling of Migrants Protocol). The Protocol requires States not to criminalise migrants for the fact of having been the object of the crime of smuggling (Article 5).
- ❖ The Protocol against the Smuggling of Migrants refers only to the irregular movement of migrants across **international borders**.
- ❖ The Protocol also creates an obligation to establish '**aggravating circumstances**' to the crime of smuggling of migrants. These include 'circumstances (a) that endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) that entail inhuman or degrading treatment, including for exploitation, of such migrants' (Article 6(3)).

- Involves irregular border crossing and entry into another state
- The relationship between smuggler and migrant is a commercial transaction, which usually ends after the border crossing
- Commodity is a service: facilitating irregular border crossing for financial or other material benefit
- Smugglers commit a crime against the state

¹ Trafficking in children does NOT require a means. Therefore, trafficking occurs when children are subjected to an act of trafficking for the purpose of their exploitation.

KEY DIFFERENCES

- Smuggling requires crossing of an international border, whereas trafficking can occur within national borders (so called "internal trafficking").
- Smuggling need not include any form of force, coercion, deception, or abuse of power.

COMMONALITIES:

- Frequent involvement of organised crime
- Trafficking and Smuggling can occur along the same routes and be perpetrated by the same criminals
- Like trafficked persons, often smuggled migrants are **victims of other crimes, ill-treatment, violence, or human rights violations**

HOW CAN TRAFFICKING AND SMUGGLING BE RELATED?

Trafficking and smuggling can occur along the same routes and smuggling can sometimes lead to trafficking.

Smuggled persons may not have travel or residency documents, may not speak the language of the country in which they were smuggled, and may be unsure of their rights in the new country. They may also be in need of international protection and cannot return home.

These conditions of vulnerability create an environment in which the smuggled person is more susceptible to exploitation and trafficking. For example, after an individual has been smuggled into his or her destination country, the smuggler may become a trafficker by imposing a condition of debt bondage on the individual, a practice similar to slavery. The smuggler may tell the individual that he or she owes a large amount of money for the "smuggling fee," and that in order for the individual to pay off the debt he or she must work, live, and eat at a specific location designated by the smuggler. The individual may be charged for rent and food at a rate that makes the initial "debt" impossible to pay off. The individual is left in a state of debt bondage and thus becomes a victim of human trafficking.

WHY IS IT IMPORTANT TO DISTINGUISH BETWEEN TRAFFICKING AND SMUGGLING?

Trafficking in persons and Smuggling of migrants are different crimes that require different responses in law, both with regard to the rights of a person who has been the object of one of these crimes and to the penalty for perpetrators.

From a rights holder's perspective, the confusion between trafficking and smuggling often leads to States, courts and service providers **failing to identify** some migrants as victims of trafficking. States have an obligation to **correctly identify victims of trafficking** to ensure that their rights are not further violated and that they can access assistance, protection measures and solutions, including physical and mental health support, witness protection and remedies. States must create a framework to ensure that this identification does take place.

States also have an obligation to protect the **human rights of all migrants** within their jurisdiction, regardless of their immigration status.

WHY IS IT IMPORTANT TO APPLY A RIGHTS-BASED APPROACH WHEN ADDRESSING TRAFFICKING AND SMUGGLING?

Although human rights violations can and do occur alongside trafficking and smuggling, many States do not use a human rights framework as their primary lens in their responses to either trafficking in persons or smuggling. Oftentimes, legislation and other instruments designed to combat trafficking and smuggling focus on prosecuting the trafficker or smuggler while neglecting to adequately address the assistance and protection needs of individuals who have been trafficked or smuggled. It is common for States to view trafficking and smuggling through only immigration, criminal and public order frameworks.

Failing to use a human rights-based approach leaves victims of trafficking in persons and potential victims vulnerable to further violations. Smuggled persons may be subject to rape, beatings, and deprivation of food and water. These crimes go often unreported. Some persons are left to die if they cannot keep up with the larger group of migrants. If States do not employ a rights-based approach they will fail to prevent and address these types of violations.