

PROPOSALS FOR AN EXECUTIVE COMMITTEE CONCLUSION
ON THE PROTECTION OF VICTIMS OF TRAFFICKING SEEKING ASYLUM

A. Current position based on previous Executive Committee Conclusions

1. While issues concerning victims of trafficking do not, as such, fall within the purview of UNHCR's mandate, the Executive Committee (ExCom) has nonetheless made references to certain aspects of trafficking in two of its Conclusions, namely ExCom Conclusion No.96 (LIV) and ExCom Conclusion No. 97 (LIV). Underpinning the references is the acknowledgement that issues relating to trafficking can have implications for the protection of refugees and the work of UNHCR. In these two Conclusions, ExCom expressed its concern over the growth in trafficking; noted that the efficient and expeditious return of persons found not to be in need of international protection is key to the prevention of trafficking; recalled the emerging legal framework for combating criminal and organized smuggling and trafficking of persons; and noted that the Trafficking and Smuggling Protocols¹ savings clause makes reference to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and the principle of non-*refoulement*.²

B. The issue today and the relevance of an ExCom Conclusion

2. Victims of trafficking are not *per se*, of concern to UNHCR. However, as underscored by the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*³ (the Trafficking Protocol), and acknowledged by ExCom, individuals who have been trafficked outside their country can have international protection needs arising out of their trafficking experience. Their initial displacement, although not necessarily linked to international protection needs, does not obviate such needs from arising subsequent to their trafficking and as a result of it. UNHCR's expertise has been increasingly called upon to identify victims of trafficking with international protection needs, including through developing criteria and mechanisms for channelling those with international protection needs into asylum processes. While providing its expertise in support, UNHCR is aware that an inter-agency approach is needed to ensure that the needs of victims of trafficking are addressed comprehensively and holistically. In providing its support, UNHCR has undertaken substantial work in developing guidance on interpreting the refugee criteria in respect of victims of trafficking, in its participation in the Inter-Agency Cooperation Group Against Trafficking in

¹ The United Nations Convention Against Transnational Organized Crime, 2000 and its Supplementary Protocols Against the Smuggling of Migrants by Land, Sea and Air; and to Suppress and Punish Trafficking in Persons, Especially Women and Children.

² ExCom Conclusion No. 97 (LIV – 2003).

³ Entered into force on 25 December 2003.

Persons (ICAT)⁴, as well as in other areas. Further guidance from ExCom on UNHCR's roles and responsibilities would be helpful.

3. In April 2006, UNHCR issued a set of Guidelines on International Protection on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.⁵ This guidance, intended for asylum adjudicators and UNHCR staff conducting status determination is based on international refugee, human rights and criminal law, notably the *United Nations Convention against Transnational Organized Crime* and the Trafficking Protocol, and is informed by relevant jurisprudence from a number of national courts or asylum bodies. Despite UNHCR's issuance of these Guidelines, some lack of clarity seems to persist among States and organizations working for trafficked persons regarding the implementation of various forms of protection mechanisms which may be available in destination or transit countries, including asylum, as well as specific residence permits introduced in national laws pursuant to in Article 7 of the Trafficking Protocol.⁶ ExCom could provide further clarity on situations in which refugee protection is called for.

4. The nexus between trafficking and asylum also expresses itself in those situations where traffickers use asylum procedures as a way of temporarily regularizing their victims' stay in countries of transit or destination. Thus there is a need to find mechanisms protecting victims of trafficking from falling back into the hands of their traffickers pending asylum processing. Another challenge is to ensure adequate reception standards for trafficked persons seeking international protection and measures for ensuring their protection against becoming (re-) trafficked pending the outcome of status determination procedures. Finally, in the search for durable solutions for victims of trafficking whose needs for international protection have been recognized, particular challenges arise from the fact that many of these victims have been persecuted in their countries of asylum and may thus continue facing protection problems.

5. In all of the aforementioned areas, special measures should be taken with regard to women and unaccompanied child victims of trafficking who may be in need of international protection. For example, some victims may face serious risks from traffickers in the country of asylum, while some unaccompanied child victims who have been induced into trafficking by their families may risk being subjected to violence or abuse from their families if they were to return home. Guidance from ExCom on the particular considerations that need to be taken in the search for durable solutions for victims of trafficking found to be in need of international protection would thus be a way forward.

⁴ Established pursuant to Resolution adopted by the UNGA Third Committee during its 61st session, A/C.3/61/L.7/Rev.1, 19 October 2006 on improving the coordination of efforts against trafficking in persons.

⁵ Guidelines on International Protection on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006.

⁶ Pursuant to Article 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, State Parties shall consider adopting legislative or other appropriate measures that permit victims of trafficking to remain in its territory, temporarily or permanently, in appropriate cases.

C. Outline for a possible Conclusion on the protection of victims of trafficking seeking asylum

6. In view of the above, a Conclusion on the protection of victims of trafficking seeking asylum could:

- Examine situations in which victims of trafficking could have international protection needs arising out of their trafficking experience and provide guidance to strengthen the application of UNHCR's Guidelines;
- Review criteria and mechanisms for the identification and "channelling" of victims of trafficking into asylum processes, including those who arrive in mixed flows;
- Examine roles and responsibilities of, and coordination and cooperation between States, UNHCR and other organizations working in the area of trafficking in order to ensure adequate protection of victims, including through access to asylum procedures;
- Examine linkages between asylum and other protection mechanisms to enable continued stay of the victims of trafficking who may not be able to return to their home countries;
- Review special considerations in the reception and care of trafficked persons; age and gender-sensitive considerations, safeguards for unaccompanied children; considerations to ensure protection of victims of trafficking pending asylum procedures; and
- Consider durable solutions for victims of trafficking recognized as refugees including the use of resettlement as applicable.

7. Throughout, the Conclusion would appropriately pay due attention to the specific needs of trafficked children, and advise on the role and timing of formal best interest determinations; how to detect and identify those unaccompanied or separated asylum-seeking children who are being trafficked; reception and guardianship including the protection of unaccompanied and separated child asylum-seekers against traffickers; child-specific forms of exploitation and trafficking and the role parents might have played in arranging for the trafficking; applicable conditions and safeguards that must be in place when considering the return of unaccompanied or separated children; and tracing and family reunification.

8. Potentially, a Conclusion on the protection of victims of trafficking seeking asylum could also examine the factors which often make persons of concern to UNHCR particularly vulnerable to trafficking, and appropriate prevention and protection strategies.

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