

Migration and Trafficking:

Links and Differences

Migration

Trafficking

Relation to Human Rights

*To leave any State, including one's State of origin and to return at any time and remain in one's State of origin, is a human right

*Trafficking is a human rights violation in and of itself

Causes

*Causes of migration for survival, largely overlap with vulnerabilities to trafficking. Important among these are economic marginalization, displacement due to natural disasters and conflicts, gendered cultural practices and violence, and job demand in specific economic sectors.

*In addition, a lucrative market for irregular migration and trafficking is facilitated by restrictive immigration policies that obstruct demand for and supply of unskilled labour. Other related causes of trafficking are poor governance manifested in bureaucratic procedures that deter regular migration; the lack of political will to regulate recruitment agencies; economic and political tradeoffs between traffickers and implementing staff; lack of political will to sanction traffickers. Trafficking has thus become a high profit and low risk enterprise, reinforcing the violation of trafficked persons with impunity.

Interventions

*Interventions to address migration related to survival largely overlap with those related to trafficking;

*Interventions to address trafficking largely overlap with those related to migration for survival needs;

*Sustainable alternatives to migration for survival is a long term development response. In the short run, the safety and well being of those who migrate can be ensured by providing rights protections to migrant workers throughout the migration process.

*Responses may be longer term development initiatives to reduce vulnerability to trafficking. Trafficking may also be prevented by ensuring rights protections to migrant workers throughout the migration process.

Exploring Links and Differences between Migration, Human Trafficking and Smuggling

Migration, human trafficking and smuggling are related in many ways. Both trafficking and smuggling occur within the migration process. The vulnerabilities of groups of people who migrate to meet survival needs and those who are trafficked or smuggled are largely similar. However there are important differences between migration, trafficking and smuggling. The links and differences point to the need for similar and different sets of responses to these phenomena.

But many fail to distinguish between migration, trafficking and smuggling. There are no operational criteria for the police or immigration officials to distinguish between trafficked and smuggled persons. As a result, trafficked persons who are victims of crimes are treated like smuggled persons - as violators of immigration laws. They are detained and deported.



Restrictions on Women's Migration and Inadequate Rights Protections Increase Vulnerability to Trafficking

Many also believe that men migrate and women are trafficked - although men are also trafficked and increasing numbers of women are migrating independently. A consequence of such perceptions is to obviously protect women against trafficking, often in the form of restrictions or bans on women's migration. While the intent is well meaning, evidence suggests that women who must migrate for work to survive take recourse to dangerous alternatives when restricted from migrating legally and are driven to traffickers. Nor do restrictions target oppressive environments or build women's capacity to avoid or confront potential exploitation in empowering ways. Clarity on the links and differences between migration, trafficking and smuggling enables action that substantively promotes and protects women's human rights.

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Migration and Trafficking: Links and Differences

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Definition

Migration is defined as people movement abroad for employment, study, family reunification, or other personal factors, or people forced to leave countries of origin to escape persecution, conflict, repression, natural/human-made disasters, ecological degradation, or other situations endangering lives, freedom or livelihood.

Trafficking is the recruitment, transfer, transportation, harbouring, receipt of persons, using blatant force and violence or subtle inducements that capitalize on vulnerability to achieve 'consent'.

Immigration Status

Regular Migration

Irregular Migration

- *The status of the individual in the country of origin or habitual residence is legal;
- *The departure process from the country of origin or habitual residence conforms to laws and procedures in that country;
- *Entry, stay and employment in country of employment is in procedural and substantive conformity with laws and procedures of the country;
- *The purpose of stay and employment remains the same for which entry is approved. In case of variation, relevant procedures are followed.

- *Violation of lawful conditions of entry, stay or employment in State of employment.
- *Trafficking occurs within the migration process by wilfully manipulating the process in two key ways:
 - a manipulating persons through coercion, violence, and deception, insidiously capitalizing on vulnerability to gain consent;
 - b manipulating migration legislation, norms, rules and procedures rendering the process illegal and the status of the persons irregular. This is manifested in: (i) regular or legal processes of entry, but irregular work and stay; e.g entry on tourist, student, transit visas and engagement in criminal activity such as thieving and drug running, illegal work or illegal conditions of work such as confinement and debt bondage, and/or living in the country of employment after expiry of the visa (ii) irregular processes of entry on the basis of fraudulent documents or by avoiding border and immigration controls, but finally regularizing stay and work; (iii) irregular processes of entry, irregular stay and irregular work;

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Knowledge and Consent

- *The migrant acts with knowledge and 'consent'.

- *Trafficking is non-consensual and entails a lack of knowledge. Where there is consent to move for work, consent is nullified through coercion, deception and exploitation.

Conditions of Work

- *Work conditions of a regular migrant may be discriminatory and exploitative because of the person's marginalized economic, nationality, ethnic and gender status;
- *However regular immigration status affords greater protection than a trafficked or smuggled person has.

- *Trafficking is a serious human rights violation that also involves deprivation of liberty. This is partly related to the person's marginalized economic, nationality, ethnic and gender status.
- *Continuing violence is a necessary part of the trafficking process to ensure continued compliance and control over the victim;
- *The irregular immigration status of a trafficked person exacerbates discrimination, abuse and exploitation;