



HUMAN TRAFFICKING & MIGRANT SMUGGLING: UNDERSTANDING THE DIFFERENCE

“Human trafficking” and “migrant smuggling” are two distinct crimes that often are erroneously conflated or referred to interchangeably. Clarifying the differences between the two is critical to the development and implementation of sound government policies. A key difference is that victims of trafficking are considered victims of a crime under international law; smuggled migrants are not—they pay smugglers to facilitate their movement. Thus, better awareness of the distinctions between human trafficking and migrant smuggling can potentially improve victim protection and avoid the re-exploitation of victims.

HUMAN TRAFFICKING

Human trafficking is a crime involving the exploitation of an individual for the purposes of compelled labor or a commercial sex act through the use of force, fraud, or coercion. This meaning is reflected in international law, specifically in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Trafficking in Persons Protocol), the first global instrument to recognize the crime of human trafficking, which has 170 State parties. In addition, when a child (defined as under 18 years of age) is induced to engage in commercial sex, it is a crime regardless of whether force, fraud, or coercion is used.

The term “human trafficking” may suggest movement, however no movement is required. It is a crime that can be committed against an individual who has never left his or her hometown. Individuals may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being subjected to human trafficking. Trafficking victims include women, men, and transgender individuals; adults and children; citizens and noncitizens alike.

Example: A recruiter deceived Marie into taking a job overseas in a restaurant, promising her a salary she could not pass up and helping her obtain a visa to work in the destination country. Upon arrival, she was told by her new “boss” that there was no job in a restaurant and that she would still have to pay off the cost of finding her the job and transporting her to the country. He forced her to engage in prostitution and also threatened Marie that he would tell her family what she was doing if she didn’t continue until she paid off her so-called debt. Marie is a trafficking victim: fraud, coercion, and force were used to subject her to sex trafficking.



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MIGRANT SMUGGLING

Migrant smuggling occurs when a person voluntarily enters into an agreement with a smuggler to gain illegal entry into a foreign country and is moved across an international border. It is defined in the Protocol against the Smuggling of Migrants by Land, Sea, and Air (Migrant Smuggling Protocol), supplementing the United Nations Convention against Transnational Organized Crime. Migrant smuggling often involves procuring fraudulent documents and transportation across a country's border, although in some countries it can also include transportation and harboring once in the destination country. The migrant consents to being moved and the transaction between the migrant and the smuggler is typically over once he or she has crossed the border and the smuggler has been paid in full.

Nevertheless, people who are smuggled can be extremely vulnerable to human trafficking, abuse, and other crimes, as they are illegally present in the country of destination and often owe large debts to their smugglers. Smuggled migrants sometimes flee violence in their home country; others simply seek better lives, economic opportunities, or to reunify with family members abroad. Some smuggled persons may be subjected to sex or labor trafficking while in transit or at their destination, and these individuals are trafficking victims. However, not all smuggling cases involve human trafficking, nor do all cases of human trafficking begin with migrant smuggling.



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Example: Encountering tremendous violence in his conflict-torn home country, Amir was introduced to a man who told him he could get to another country for a \$1,000 fee. The man insisted he would get Amir there safely by boat. Amir paid him for the travel and once in the new country, he never saw the other man again. There was no force, fraud, or coercion, and Amir was not subjected to forced labor or forced to engage in commercial sex acts. Amir was smuggled and is not a victim of trafficking.

WHY DOES IT MATTER?

Human trafficking and migrant smuggling often overlap in reality, which makes it particularly important that policymakers, law enforcement, immigration officers, and civil society organizations are conscious of the differences between them. When human trafficking is confused with migrant smuggling, trafficking victims may not receive the protections, services, or legal redress to which they are entitled and may be vulnerable to being re-exploited.

For these reasons, national immigration and anti-trafficking laws should provide clear definitions of migrant smuggling and human trafficking and differentiate the associated penalties. Human trafficking awareness training is also important for immigration, law enforcement, and judicial officers. Screening for human trafficking indicators is necessary any time law enforcement officials identify migrants during operations associated with migrant smuggling.

For information on indicators of human trafficking, please see a list compiled by the **United Nations Office on Drugs and Crime**.