

TACKLING TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS IN ACP COUNTRIES

LEGAL AND POLICY FRAMEWORK

RECOMMENDATIONS, RESOURCES AND EXAMPLES



INTERNATIONAL STANDARDS FOR ANTI-TRAFFICKING AND ANTI-SMUGGLING LEGISLATION

Establishing comprehensive national legal and policy frameworks constitutes the most basic prerequisite for effectively combating trafficking in human beings and migrant smuggling. The Trafficking and Migrant Smuggling Protocols set forth international standards pertaining to both crimes, respectively, with which State signatories are expected to align their national laws and policies.

Ratify Migrant Smuggling and Trafficking Protocols and the UNTOC.

THB and SoM legislation must be integrated into national legal frameworks.

Criminalize THB and SoM in line with Protocol definitions and enact comprehensive legislation to ensure the full scope of protection and assistance to victims.

Recommendations

Some ACP States currently detail the crimes of THB and SoM within the same piece of legislation. This was identified as a source of confusion among stakeholders, and has an impact on the ability to distinguish both crimes and address them accordingly.

Criminalize THB and SoM in separate pieces of legislation.

Recommendations

Although it has been recommended that international migrants should in principle not be criminalized for their irregular status, many countries criminalize possession of fraudulent travel documents or illegal entry, and deport migrants instead of screening (for determining if they have a right to protection under the Refugee Convention) and/or assisting them.

Decriminalize the resort to smugglers by migrants in line with Article 5 of the Smuggling Protocol.

Focus prosecutions on migrant smugglers and not smuggled migrants.

Recommendations

Trafficking in human beings (THB) and smuggling of migrants (SoM), two distinct, but often interrelated phenomena, are occurring on a global scale. Searching for a way out of economic inequalities, environmental crises, armed conflict, political instability and persecution, and in view of tightening border controls and restricted options for legal migration, migrants are driven to resort to smugglers. At the same time, a globalized economy, fostering demand for diverse types of exploitation, makes them also vulnerable to traffickers. Both THB and SoM constitute of billion dollar businesses that come at a high human cost. African, Caribbean and Pacific (ACP) States are increasingly stepping up to address THB and SoM. However, they face challenges in developing the necessary holistic, long-term approaches. The ACP-EU Migration Action analyzed these challenges and provides recommendations to tackle the difficulties that ACP countries face in relation to THB and SoM.

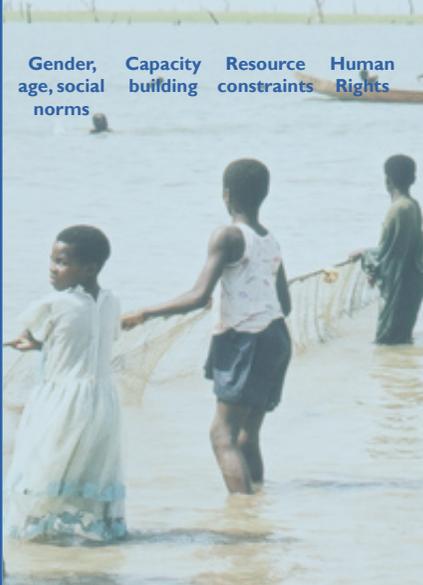
7 TOPICS

Elements of THB and SoM response

4 X-CUTTING ISSUES

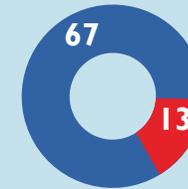
Issues cutting through every topic related to THB and SoM response

Gender, age, social norms
Capacity building
Resource constraints
Human Rights



THE TRAFFICKING PROTOCOL

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol) is a protocol to the Convention against Transnational Organised Crime (UNTOC)



ACP States signed/ratified
Africa: 46/49 Caribbean: 16/16 Pacific: 5/15

ACP States not signed/ratified
Africa: 3/49 Caribbean: 0/16 Pacific: 10/15

ART. 3

Article 3:
Legal definition

ACT + MEANS + PURPOSE

ACT: recruitment, transportation, transfer, harbouring or receipt of persons.

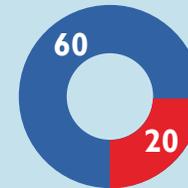
MEANS: the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;

PURPOSE: exploitation



THE SMUGGLING PROTOCOL

The Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol) supplements the Convention against Transnational Organised Crime (UNTOC).



ACP States signed/ratified
Africa: 41/49 Caribbean: 15/16 Pacific: 4/15

ACP States not signed/ratified
Africa: 8/49 Caribbean: 1/16 Pacific: 11/15

ART. 3

Article 3:
Legal definition

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

ART. 5

Article 5:
Non-criminal liability

"Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol."





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LEGAL AND POLICY FRAMEWORK

RECOMMENDATIONS, RESOURCES AND EXAMPLES

NATIONAL STRATEGIES AND ACTION PLANS

National policies to address the crimes of THB and SoM provide the necessary framework for inter-agency cooperation and coordination at national and other levels, ensure delegation of tasks and involvement of stakeholders (Government, civil society and ideally migrants/victims of trafficking).

National strategies and action plans should clearly delegate responsibilities and tasks, with established time-frames and indicators for monitoring and evaluation purposes.

Memoranda of Understanding (MoUs) should be employed to support ongoing inter-agency cooperation.

Apply monitoring, follow-up and evaluations to track policy implementation and effectiveness.

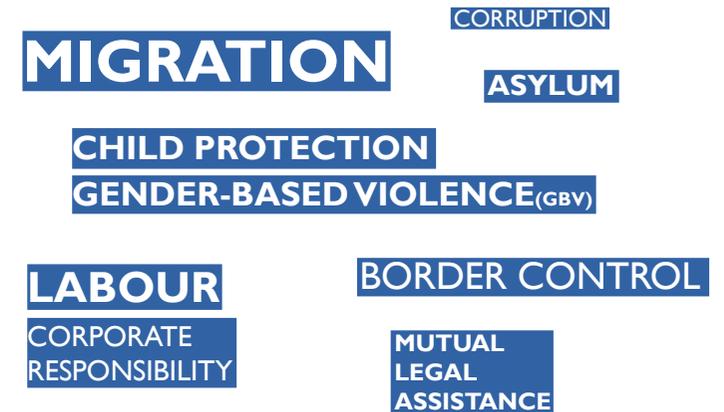
Ensure adequate budgeting allocations for the implementation of national strategies and action plans.

Create protocols and standard operating procedures to ensure that referrals, assistance and protection are provided to victims of trafficking and smuggled migrants consistent with their rights under the Protocols.

Recommendations

COMPREHENSIVE LEGISLATIVE AND POLICY FRAMEWORK

Many issues intersect with, and feed into, trafficking in human beings and migrant smuggling. In addition to THB and SoM -specific legislation, the legislative framework should hence be strengthened comprehensively and harmonized across sectors, including:



THB- and SoM-related issues should be mainstreamed across the law and policy of a wide range of sectors.

Relevant international human rights conventions should be signed and ratified, such as: the Convention of the Rights of the Child (CRC) Optional Protocols, ILO Conventions (labour standards/workers' rights) and the Convention on the Rights of All Migrant Workers and Members of their Families.

The effective implementation of law and policy on GBV is necessary for tackling trafficking in human beings as a continuum of such violence.

Child protection should be the central focus of efforts to combat child trafficking.

Recommendations



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AFRICA

Angola • Benin • Congo (the Democratic Republic of) • Ghana • Guinea • Nigeria • Senegal I • Senegal II • Sierra Leone • Swaziland •

CARIBBEAN

The Dominican Republic • Haiti • Saint Lucia • Saint Vincent and the Grenadines • Trinidad and Tobago •

PACIFIC

Papua New Guinea • Pacific Immigration Directors' Conference (PIDC) • Samoa • Solomon Islands • Vanuatu • Yap State (The Federated States of Micronesia) •



CASE STUDY: HAITI



In 2015, the Government of Haiti established an inter-ministerial committee responsible for improving coordination on counter-trafficking. However, the Committee lacks an internal regulatory structure, including concrete functions, and a meaningful plan for obtaining much needed technical and financial resources. The Committee submitted a request for technical assistance to the Action, precisely aiming to reinforce their knowledge and leadership.



Photo taken at the first national conference on THB in Haiti

ACTIVITIES UNDER THE TA:

- A **scoping study** on THB in Haiti was developed.
- A **national workshop** on THB was held, gathering the main stakeholders to input on the future national strategy and action plan.
- The **national strategy and action plan**
- The first **national conference** on THB was held, as to present the newly developed strategy and action plan.