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Thematic discussion on effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children, and those of unaccompanied migrant children

Additional guide for the thematic discussion on effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children, and those of unaccompanied migrant children

Note by the Secretariat

Summary

In its decision 2016/241, the Economic and Social Council decided that the prominent theme for the twenty-ninth session of the Commission on Crime Prevention and Criminal Justice would be “Effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children, and those of unaccompanied migrant children”. As a result of the coronavirus disease (COVID-19) pandemic, the thematic discussion was postponed to the thirtieth session of the Commission.

The present note by the Secretariat seeks to support the thematic discussion by providing background information on the impact of the COVID-19 pandemic and its containment measures on people on the move and on the smuggling of migrants. It presents an overview based on preliminary data gathered on the vulnerabilities faced by those resorting to the services of smugglers in the current context of the pandemic and raises issues that the Commission may wish to discuss.

* E/CN.15/2021/1.



I. Introduction

1. In its decision 2016/241, the Economic and Social Council decided that the prominent theme for the twenty-ninth session of the Commission on Crime Prevention and Criminal Justice would be “Effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children, and those of unaccompanied migrant children”.
2. At its reconvened twenty-eighth session, held on 12 and 13 December 2019, the Commission endorsed the proposal of the Chair on the organization of the thematic discussion at its twenty-ninth session.
3. Owing to the coronavirus disease (COVID-19) pandemic, the twenty-ninth regular session of the Commission was held in a scaled-down format in December 2020. The Economic and Social Council decided in its decision 2020/230 that the thematic discussion of the twenty-ninth session would be postponed to the thirtieth session of the Commission.
4. The present note should be read in conjunction with the thematic guide ([E/CN.15/2020/6](#)) prepared for the twenty-ninth session, which offers background information on trends in the smuggling of migrants and the profiles of smugglers and those who use their services and discusses promising practices and challenges in responding to the smuggling of migrants. The present note focuses on prevention and protection issues arising from the vulnerabilities faced by people on the move in the context of the COVID-19 pandemic. The two notes are complementary and should be read as a whole.
5. The COVID-19 pandemic has led to an unprecedented health, socioeconomic and humanitarian crisis on a global scale. Drivers of migration already present before the pandemic have not only persisted but have, in some instances, increased, while borders have been closed and regular pathways for migration and asylum have been reduced, pushing many migrants to resort to the services of smugglers. As a result of COVID-19 containment measures, refugees and migrants have faced increased hardship and challenges in transit, at borders, at reception facilities, in destination countries and upon return, and they have been put in situations of increased vulnerability and placed at increased risk of aggravated forms of smuggling.
6. Responses to the COVID-19 pandemic have also had a profound impact on organized criminal groups,¹ including migrant smuggling networks, forcing adjustments in modus operandi and increasing, in some cases, the demand for and profitability of smuggling services.
7. Given that data regarding the impact of COVID-19 on the smuggling of migrants are still scarce, certain regions may be overrepresented in the present report.

II. Developments in the international framework

8. The smuggling of migrants is intrinsically a transnational crime; international cooperation must therefore be placed at the heart of efforts to address it effectively. Several international instruments provide scope for coordinated action to combat the crime.
9. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, entered into force on 28 January 2004. The purpose of the Protocol, as set out in its article 2, is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States parties to that end, while protecting the rights of smuggled migrants. As of February 2021, 150 States were parties to the Protocol,

¹ United Nations Office on Drugs and Crime (UNODC), “The impact of COVID-19 on organized crime”, Research Brief (Vienna, 2020), p.9.

which provides a comprehensive framework for preventing and combating the smuggling of migrants. In 2020, a formal mechanism for the review of the Organized Crime Convention and the Protocols thereto was launched, under which States parties to those instruments, including the Smuggling of Migrants Protocol, will, over the course of the next decade, review their implementation at the national level and identify gaps and good practices in current responses.

10. Two decades after the adoption of the Smuggling of Migrants Protocol, the Global Compact for Safe, Orderly and Regular Migration (General Assembly resolution 73/195), adopted in 2018, affirmed the commitment of the international community to tackling the smuggling of migrants as part of a broader strategy to address the challenges and opportunities arising from international migration. In objective 9 of the Global Compact, Member States reiterated the need to implement the Smuggling of Migrants Protocol and committed to intensifying joint efforts to prevent and counter smuggling of migrants, including by identifying smuggled migrants in order to protect their human rights, taking into consideration the special needs of women and children, and assisting in particular those migrants subject to smuggling under aggravating circumstances, in accordance with international law. In November 2020, at the first of the regional reviews of the implementation of the Global Compact to be conducted globally throughout 2020 and 2021,² States highlighted that responses to the smuggling of migrants should protect migrants' rights, particularly under circumstances related to the COVID-19 pandemic.

III. Definitions

11. The definition of the term “smuggling of migrants” contained in article 3 of the Smuggling of Migrants Protocol provides the foundation for action against this crime. It states that the “smuggling of migrants” shall mean the 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.

12. The concept of “financial or other material benefit” is defined neither in the Smuggling of Migrants Protocol nor in the Organized Crime Convention, in which the phrase is used in the definition of the term “organized criminal group”. It is clear, however, from the interpretive notes on article 3 of the Smuggling of Migrants Protocol contained in the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Organized Crime and the Protocols Thereto* that the concept of “financial or other material benefit” was included in the Smuggling of Migrants Protocol to distinguish between the actions of groups that facilitate the illegal entry of others for humanitarian or familial reasons and those that do so for profit. The profit motive was viewed as an important way to link the definition to the activities of organized crime, although it applies equally to acts of smuggling perpetrated by individuals and to such acts perpetrated by two or more people working together.

13. The United Nations Office on Drugs and Crime (UNODC) has published a technical issue paper to provide practical guidance on the concept,³ and the Secretariat prepared a detailed background paper on “the financial and material benefit” aspect of the definition of smuggling of migrants (CTOC/COP/WG.7/2017/4).

² The Economic Commission for Europe region, the first under review, includes 56 member States from Central Asia, Europe and North America.

³ UNODC, *The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper* (Vienna, 2017).

IV. Impact of COVID-19 on migration and asylum

A. Asylum proceedings and legal pathways for migration

14. COVID-19 has caused not only a global health crisis but also a socioeconomic and protection crisis that will affect societies for years to come.⁴ This includes a discernible impact on mobility, with the imposition by Governments around the globe of numerous, continually changing restrictions on movement, both across and within borders. According to the International Organization for Migration (IOM), in the first wave of responses to the pandemic, more than 100 countries, territories or areas worldwide had, by 19 March 2020, issued new, or changed existing, travel restrictions in response to COVID-19.⁵ These restrictions were frequently accompanied by enhanced border patrol measures. South Africa, for example, closed most of its border points and deployed the military to patrol its borders, while Peru and Ecuador deployed police units and the military to control irregular crossing points at the peak of the pandemic.⁶

15. Although research carried out by UNODC shows that COVID-19-related travel and movement restrictions have not prevented people from fleeing conflict, violence, and dangerous and inhumane conditions,⁷ the pandemic and the containment measures put in place to protect public health have made it more difficult for many countries around the world to receive refugees and assess asylum seekers' need for protection. Mixed migration flows consist of refugees, asylum seekers, economic and other migrants, including unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants.⁸ According to the Office of the United Nations High Commissioner for Refugees (UNHCR), 144 countries have fully or partially closed their borders, while in 64 countries, pandemic restrictions on entry have applied to all people on the move, irrespective of their need for international protection, and access to the territory and/or to national asylum procedures have not been possible at all, in violation of international obligations under refugee law.⁹ Furthermore, some States have put resettlement arrivals on hold in view of the public health situation, which affects their capacity to receive resettled refugees.¹⁰

16. Asylum seekers and refugees in destination countries have also faced challenges in accessing international protection and asylum. Delays in asylum proceedings due to the suspension or postponement of court hearings or proceedings have been reported, as has the enhanced use of technology and electronic tools for the conduct of asylum interviews and hearings and the submission of appeals documents, as well as the extension of time limits for the exercise of legal remedies.¹¹ Nevertheless, in the second part of the year, following the relaxation of containment measures in many States, legal services and courts faced a significant backlog in proceedings, impairing the functioning of asylum systems and affecting the already precarious conditions of asylum seekers in urgent need of protection and residence permits.¹² As of January 2021, UNHCR reported that in several countries asylum

⁴ United Nations, "Policy brief: COVID-19 and people on the move (June 2020), p. 2.

⁵ International Organization for Migration (IOM), Displacement Tracking Matrix (COVID-19), "Global mobility restriction overview", 19 March 2020.

⁶ Lucia Bird, Smuggling in the time of COVID-19: the impact of the pandemic on human-smuggling dynamics and migrant-protection risks (Geneva, Global Initiative Against Transnational Organized Crime, 2020), p. 8.

⁷ UNODC, "Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America" (Vienna, 2020), p. 6.

⁸ IOM, "Challenges of irregular migration: addressing mixed migration flows" (MC/INF/294, para. 6).

⁹ Office of the United Nations High Commissioner for Refugees (UNHCR), COVID-19 Platform, "Temporary Measures and Impact on Protection".

¹⁰ UNHCR, "IOM, UNHCR announce temporary suspension of resettlement travel for refugees", 17 March 2020.

¹¹ European Asylum Support Office, "COVID-19 emergency measures in asylum and reception systems" (June 2020), p. 19.

¹² *Ibid.*, pp. 18–20.

systems remain fully or partially out of operation,¹³ which indicates that the pandemic continues to make it more difficult for asylum seekers to access international protection.

17. Although better practices, such as remote interviews, the automatic extension of residency permits and documents and the regularization of the status of migrants in an irregular situation, were documented in some countries in 2020, other countries put migration procedures and visa processing completely on hold. In such cases, without the possibility of extension, legal residency documents expired, pushing migrants into an irregular situation.¹⁴

18. The pandemic has clearly posed a challenge to the creation or maintenance by Governments of legal migration pathways, as established as a goal in target 10.7 of the 2030 Agenda for Sustainable Development. However, legal migration pathways should be part of the response to any crisis, including the current pandemic, if only to ensure that measures to combat COVID-19 do not compound the vulnerability of migrants to significant harm and abuse.¹⁵

B. Effect of COVID-19 on the drivers of migration

19. Although responses to the pandemic have reduced mobility possibilities worldwide, the drivers of migration have largely persisted and have even, in some instances, increased owing to the economic effects of the pandemic. In a survey of migrants conducted in the Niger, for example, almost all respondents reported that COVID-19 had affected their journeys (91 per cent) and their migration plans (49 per cent), but added that despite the impact of the pandemic on their mobility, they were mostly continuing their journeys, albeit with longer stops and adjusted routes.¹⁶

20. A significant proportion of the individuals smuggled across borders originate from countries blighted by conflict, humanitarian crises, political instability, turmoil and/or persecution and are thus entitled to international protection (CTOC/COP/WG.7/2020/2, para. 12). During the COVID-19 pandemic, conflict, humanitarian disasters and a lack of safety have all continued to drive migration. Along Mediterranean routes, for example, travel and movement restrictions related to COVID-19 have not prevented people from undertaking perilous and at times even deadly journeys, including by making use of migrant smugglers.¹⁷

21. The economic impact of the COVID-19 pandemic has included rising unemployment, especially in the informal sector and among migrant workers, increasing debt and the loss of livelihoods and social protection. In 2020, remittance flows to low- and middle-income countries dropped by approximately 20 per cent to \$445 billion, down from \$554 billion in 2019. The decrease has primarily been attributed to a fall in wages and the employment of migrant workers in receiving countries.¹⁸ In a newly published study, the World Bank and UNHCR estimate that 4.4 million people in host communities and 1.1 million refugees or internally displaced persons in Jordan, Lebanon and the Kurdistan Region of Iraq were recently pushed into poverty by the pandemic. These conditions have exacerbated existing

¹³ UNHCR, COVID-19 Platform.

¹⁴ IOM, “COVID-19 impact on stranded migrants” (September 2020), p. 4.

¹⁵ Gabriella Sanchez and Luigi Achili, *Stranded: The Impacts of COVID-19 on Irregular Migration and Migrant Smuggling*, Policy Brief, No. 2020/20 (Florence, Italy, Migration Policy Centre, Robert Schuman Centre for Advanced Studies, European University Institute, 2020), p. 2.

¹⁶ Mixed Migration Centre, “COVID-19 Global Thematic Update, No. 1: impact of COVID-19 on migrant smuggling” (September 2020).

¹⁷ UNODC, “Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling”, pp. 5–6.

¹⁸ Dilip K. Ratha and others, “COVID-19 crisis through a migration lens”, Migration and Development Brief Series, No. 32 (Washington, D.C., World Bank Group and Global Knowledge Partnership on Migration and Development, 2020), p. viii.

vulnerabilities.¹⁹ Long-term consequences, including the global economic downturn and the resulting deepening of social and economic inequalities, will push many into a situation of financial precarity and lead them to consider migrating. This may, in turn, heighten the risk of aggravated smuggling and exploitation.

22. In parallel, the need for labour remains one of the key drivers of migration. Despite the current economic recession, some sectors are witnessing an increase in demand for labour, including the health-care, manufacturing, food, delivery service, transportation and seasonal agriculture sectors.²⁰ This increased demand for labour, including for migrant workers, may have an impact on migratory flows and migration policies.

C. Effect of COVID-19 on the smuggling of migrants

23. The smuggling of migrants thrives when legal pathways for migration are curtailed, with tight border controls and restrictive migration policies increasing the likelihood of migrants resorting to smuggling services to cross borders. It follows that many of the measures adopted to counter the spread of COVID-19 have had an impact on the smuggling of migrants.

24. Research on specific migratory routes shows that COVID-19-related travel restrictions have not diminished and may, in fact, have increased demand for smuggling services in the medium to long term. Since the beginning of the COVID-19 pandemic, people on the move, including those leaving their countries of origin or stranded in transit, have experienced increasing difficulties in reaching their planned destination, with many resorting to the services of smugglers to cross borders (CTOC/COP/WG.7/2020/2, para. 16). In other cases, migrants and refugees, including children, have been trapped in a country of transit, unable to easily move onwards or return to their country of origin, and stuck in precarious conditions in camps or shelters or on the streets. These individuals are likely to try to continue their journeys, which may create a surge in demand for migrant smuggling services as some borders reopen.

25. The unequal economic recovery that will follow the current downturn is likely to increase labour migration towards countries that recover more quickly, which may cause an increase in the smuggling of migrants if it is not accompanied by an increase in regular pathways for migration. Similar trends have been observed in previous economic crises, where irregular migration tended to diminish at the beginning of the crisis and increase again, towards higher-income countries, as the economic situation in migrants' countries of origin deteriorated. In those instances, trends concerning the smuggling of migrants followed the same pattern.²¹

26. Data analysed by UNODC concerning the three key Mediterranean smuggling routes suggest that smugglers have been active despite the virus containment measures that have resulted in restrictions on mobility.²² UNHCR recorded 94,950 arrivals of refugees and migrants who had crossed the Mediterranean Sea in 2020, compared with 123,663 in 2019.²³ Although the total number of arrivals was lower in 2020 than in 2019, there was no decrease in arrivals of migrants who had travelled along the central and western Mediterranean routes. It has been estimated that in early

¹⁹ Joint Data Center on Forced Displacement, World Bank and UNHCR, "Compounding misfortunes: changes in poverty since the onset of COVID-19 on Syrian refugees and host communities in Jordan, the Kurdistan Region of Iraq and Lebanon" (December 2020).

²⁰ International Labour Organization (ILO), "Protecting migrant workers during the COVID-19 pandemic: recommendations for policymakers and constituents", Policy Brief (April 2020), p. 2. See also Inter-Agency Coordination Group against Trafficking in Persons, "Amidst the COVID-19 global crisis, ICAT calls for coordinated action to address trafficking in persons for forced labour" (July 2020).

²¹ UNODC, "Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling", pp. 17–18.

²² *Ibid.*, p. 5.

²³ UNHCR, Operational Portal.

2021, 90 per cent of irregular entries into the European Union involved the assistance of smuggling services.²⁴

27. In late 2020, the European Union Agency for Law Enforcement Cooperation (Europol) found that, as smuggling networks adjusted their business models, smuggling fees increased in many parts of the world owing to mobility restrictions, continued demand and increased risks faced by criminal networks.²⁵ Similarly, in a survey of migrants undertaken by the Mixed Migration Centre,²⁶ half of all respondents noted that smugglers' fees had increased since the beginning of the COVID-19 pandemic, with respondents in Burkina Faso, Colombia, Libya, Mali, the Niger and Peru all reporting such increases more frequently. In Latin America and the Caribbean, a survey carried out by the network of specialized prosecutors against trafficking in persons and the smuggling of migrants (REDTRAM), also found that smugglers' fees had increased, while in Mexico, UNODC identified a four-fold increase in smuggling fees since the beginning of the pandemic.²⁷ Factors relating to the pandemic have made smuggling journeys more expensive²⁸ and have increased the risks of exploitation and aggravation when migrants cannot pay or are faced with additional fees during the journey.

V. Risks and vulnerabilities linked to the smuggling of migrants in the COVID-19 context

28. As noted above, the COVID-19 pandemic has not led to a discernible reduction in smuggling activities and may even have helped some networks to take advantage of the specific vulnerabilities of people on the move. Faced with disruptions and changing COVID-19 containment measures, the dependence of migrants and refugees on smugglers for crossing borders seems to have increased in many regions, as has the exposure of migrants and refugees to aggravated forms of smuggling involving violence, abuse and even death. The Smuggling of Migrants Protocol sets out, in article 6, paragraph 3, that circumstances that endanger or are likely to endanger the lives or safety of migrants or entail inhuman or degrading treatment of smuggled migrants may constitute aggravating circumstances to relevant offences relating to the smuggling of migrants.

A. Increased risks and aggravated forms of smuggling

29. UNODC research shows that thousands of migrants die during smuggling activities every year.²⁹ Accidents during transportation and deliberate killings have been reported along most smuggling routes. However, many migrant deaths go unreported and the actual number of fatalities may be much higher.

30. In the context of the COVID-19 pandemic, Europol reported that in 2020 there was a shift in the route used to reach Europe, from the air route to land and sea routes, as a consequence of the near cessation of flights in the spring of 2020, and that migrants continued to be smuggled by land and sea, often in more perilous conditions.³⁰ Smugglers have been forced to use new, less explored and riskier routes as a result of border closures, often putting migrants' lives at greater risk. In the English Channel, for example, smaller boats have been used and smuggled migrants have been found locked in the dark, airtight compartments of trucks, freight vehicles and cargo trains, which have continued to cross borders despite the pandemic. The

²⁴ Katrien Luyten and Stephanie Brenda Smialowski, "Understanding EU action against migrant smuggling", European Parliamentary Research Service (January 2021), p. 1.

²⁵ European Union Agency for Law Enforcement Cooperation (Europol), "How COVID-19-related crime infected Europe during 2020" (November 2020), p. 12.

²⁶ Mixed Migration Centre, "COVID-19 Global Thematic Update, No.1".

²⁷ Information provided by the UNODC Liaison and Partnership Office in Mexico.

²⁸ UNODC, "Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling", pp. 5–6.

²⁹ *Global Study on Smuggling of Migrants 2018* (United Nations publication, 2018), p. 9.

³⁰ Europol, "How COVID-19-related crime infected Europe", p. 12.

closure of borders and other restrictions on mobility have led migrants to use more dangerous routes where rescue and humanitarian assistance are often unavailable.³¹ For example, over 70 per cent of surveyed refugees and migrants in Malaysia, the Niger and Tunisia indicated that smugglers had started using more dangerous routes since the COVID-19 outbreak.³² In the Mediterranean Sea, 1,166 migrants lost their lives in transit in 2020,³³ and many more disappeared.

31. Beyond loss of life, frequently reported crimes faced by smuggled migrants include sexual and gender-based violence, theft, kidnapping for ransom, robbery, extortion and trafficking in persons. Unaccompanied children are particularly exposed to exploitation, violence and abuse, while women and girls are likely to suffer sexual and gender-based violence en route. Those who perpetrate crimes against smuggled migrants include criminals, militia groups, other migrants, private citizens and corrupt law enforcement actors (CTOC/COP/WG.7/2020/2, para. 20). In addition, smugglers' quest for profits may lead them to neglect the safety of migrants during journeys.³⁴ A forthcoming UNODC study shows that gender dimensions can be identified within aggravated smuggling, such as the placement of women and children in less safe locations on vessels during dangerous sea crossings. Women and girls also face increased risks to life owing to pregnancy and specific health needs, making them particularly exposed to the risks associated with smuggling.

32. The Global Protection Cluster, a network of United Nations agencies, international organizations and non-governmental organizations providing protection to people affected by humanitarian crises, reported increases in gender-based violence in many countries in 2020 due to the pandemic, and noted that women and girls on the move were particularly affected.³⁵ In addition, in a UNODC study to be published later in 2021, entitled *The impact of COVID-19 on criminal justice system responses to gender-based violence against women: a global review of emerging evidence*, participating criminal justice practitioners confirmed that immigrant women were one of the groups that faced particular difficulties in accessing justice and related services in cases of gender-based violence during the pandemic.

B. Trafficking in persons

33. Throughout their journey, smuggled migrants are at high risk of exposure to various forms of abuse and exploitation, including trafficking in persons. Smuggled persons, including refugees and asylum seekers, are particularly vulnerable when they lack travel, residency or identification documents and/or do not speak the local language. This makes them particularly susceptible to traffickers, most commonly in transit and destination countries. Trafficking in persons and the smuggling of migrants are distinct crimes that can share some features but require different legal, operational and policy responses. An accurate qualification of the crime is important to ensure that victims of trafficking are duly protected.

34. Smugglers themselves may become traffickers by, for example, implementing schemes that hold migrants in debt bondage. Smuggled migrants are then forced to work to pay off the debt, typically under exploitative conditions including sexual exploitation and forced labour.³⁶ Traffickers may also be part of complex criminal networks that act in collusion with or separately from smugglers and recruit their victims in refugee camps, reception centres or other settlements in transit or destination countries, to then force them into sexual exploitation and/or exploit their

³¹ Sanchez and Achili, *Stranded: The Impacts of COVID-19*, p. 3.

³² Mixed Migration Centre, "COVID-19 Global Thematic Update, No.1".

³³ UNHCR, Operational Portal.

³⁴ *Global Study on Smuggling of Migrants 2018*, p. 9.

³⁵ Global Protection Cluster, "Aftershock: abuse, exploitation and human trafficking in the wake of COVID-19" (November 2020). See also Office for the Coordination of Humanitarian Affairs, "Global humanitarian response plan COVID-19" Progress Report, 4th ed. (November 2020), p. 2.

³⁶ Inter-Agency Coordination Group against Trafficking in Persons, Issue Brief: "What is the difference between trafficking in persons and smuggling of migrants?", Issue Brief No. 1 (October 2016).

labour in poorly regulated economic sectors such as agriculture, construction, the fishing industry and mining.

35. The UNODC *Global Report on Trafficking in Persons 2020* confirmed that, in most regions of the world, migrants made up more than half of all detected victims in the reporting period (65 per cent in Western and Southern Europe, 60 per cent in the Middle East, 55 per cent in East Asia and the Pacific, 50 per cent in Central and South-Eastern Europe and 25 per cent in North America). Migrants' irregular status in a country is often abused by traffickers as a way for them to maintain control over their victims and prevent them from escaping and/or reporting their exploiters to the local authorities. In the cases analysed in that report, it was found that that traffickers frequently took advantage of the immigration status of their victims by, for example, threatening to file reports against them, thereby exercising control to keep them in exploitative situations.³⁷

36. In 2020, the Committee on the Elimination of Discrimination against Women highlighted the vulnerability of smuggled women and girls to being trafficked and underlined that the conditions created by restrictive migration and asylum regimes pushed migrants towards irregular pathways. Furthermore, the Committee noted that girls who were unaccompanied or became separated from their families or other support structures due to displacement were particularly vulnerable to being trafficked (CEDAW/C/GC/38, paras. 5 and 24).

37. During the COVID-19 pandemic, irregular migrants (including undocumented and/or unaccompanied children and women), who often use the services of smugglers during their journey, have been among the most exposed to trafficking in persons, as their vulnerabilities have been exacerbated by restrictions to limit the spread of the virus.³⁸ Many migrants, including those who have resorted to smuggling services, have been left stranded, unable to access housing and other types of protection services suspended during the pandemic, or have been subjected to other mobility restrictions affecting their travel plans and resulting in a loss of income, exposing them to a higher risk of being trafficked for various purposes.³⁹ Migrant workers in low-income and informal sectors such as the garment industry, agriculture and farming, manufacturing and domestic work also found themselves in more precarious situations. Migrants working in these sectors, where trafficking victims are most often detected, may also face increased exploitation because of the need of businesses to produce at lower cost owing to the economic crisis and because of reduced oversight by the authorities.⁴⁰

38. Traffickers quickly adapted their *modi operandi* to the new situation by, for example, taking advantage of the initial confusion generated by the emergency and the various measures in place to spread false information and recruit victims,⁴¹ and by moving their illicit activities online wherever possible. Data indicate that traffickers have increased their activities relating to the online recruitment, grooming and exploitation, particularly of girls, during the pandemic.⁴²

39. In addition, the COVID-19 pandemic has increased the vulnerability of children, as a rise in economic vulnerability increases the threat of child labour, child

³⁷ United Nations publication, 2020, pp. 9–10.

³⁸ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights, *Guidance on Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic* (2020), p. 30. See also Amy Emel Muedin, "Reflections on the United Nations Network on Migration's listening sessions on COVID-19 and trafficking in persons", United Nations Network on Migration, 9 July 2020.

³⁹ UN-Women and OSCE, *Guidance on Addressing Emerging Human Trafficking Trends*, p. 32.

⁴⁰ UNODC, "Impact of the COVID-19 pandemic on trafficking in persons: preliminary findings and messaging based on rapid stocktaking" (Vienna, 2020), p. 1.

⁴¹ Amy Emel Muedin, "Reflections on the United Nations Network on Migration's listening sessions on COVID-19 and trafficking in persons", United Nations Network on Migration, 9 July 2020.

⁴² *Ibid.*, p. 4.

marriage and all forms of child trafficking, including for sexual exploitation and recruitment into criminal, armed or terrorist groups.

40. The Inter-Agency Coordination Group Against Trafficking in Persons stressed, in a joint analysis published in December 2020, that “as the COVID-19 pandemic has brought to the fore, crisis situations exacerbate the risks of trafficking of those already most at risk through disruption of economic activities and livelihood options, as well as family and social networks. More than creating new challenges, a crisis – whether related to a pandemic, climate change, conflict or forced displacement – aggravates the underlying issues which make people more vulnerable to trafficking in the first place”.⁴³

41. The lack of safe, orderly and regular pathways for migration may result in more migrants resorting to smuggling services and/or undertaking longer, more difficult and potentially interrupted journeys and, consequently, facing increased risks of abuse and exploitation.⁴⁴

C. Pushbacks, impediments to search and rescue operations and forced returns

42. In the second quarter of 2020, several countries closed their ports to vessels and refused to allow refugees and migrants rescued at sea to disembark. This was compounded in some places by the prohibition from docking placed on foreign vessels that undertook search and rescue operations, leaving migrants and refugees stranded on board such vessels for weeks in unsanitary and undignified conditions.

43. Pushbacks of migrants and refugees, a practice during which a person is apprehended after an irregular border crossing and summarily returned to a neighbouring country prior to the conduct of individual protection and health screenings, have been reported in several regions.⁴⁵ In a new publication, the European Union Agency for Fundamental Rights reported several pushback incidents at European Union borders in 2020, sometimes accompanied by reports of ill-treatment, excessive use of force and destruction of belongings.⁴⁶ Serious allegations of boats with irregular migrants on board being pushed back into international waters are also under official inquiry.⁴⁷ Furthermore, 57 per cent of migrants surveyed in the Niger reported that the risk of pushbacks at borders had increased following the emergence of the COVID-19 pandemic.⁴⁸ Such practices hinder the conduct of an investigation into organized criminal activities or a case-by-case assessment of protection needs and violate, in the case of the latter, the principle of non-refoulement and other obligations under refugee and international human rights law. Many smuggled migrants are victims of violent crimes and require assistance, protection and access to justice. Over the course of the pandemic, one or more occurrences of refoulement have been reported in 24 countries.⁴⁹

⁴³ Inter-Agency Coordination against Trafficking in Persons, “20th anniversary of the trafficking in persons protocol: an analytical review” (December 2020), p. 14.

⁴⁴ For more in-depth information on the long-term impact of the COVID-19 pandemic on trafficking in persons, see also the UNODC *Global Report on Trafficking in Persons 2020*, pp. 69–77.

⁴⁵ United Nations, “Policy brief: COVID-19 and people on the move”, p. 19. See also Office of the United Nations High Commissioner for Human Rights (OHCHR), “Press briefing note on migrant rescues in the Mediterranean”, 8 May 2020; OHCHR, “Press briefing notes on Venezuelans Trinidad and Tobago”, 15 December 2020; UNHCR, “UNHCR warns asylum under attack at Europe’s borders, urges end to pushbacks and violence against refugees”, 28 January 2021.

⁴⁶ European Union Fundamental Rights Agency, *Migration: Fundamental Rights, Issues at Land Borders* (Luxembourg, Publications Office of the European Union, 2020), pp. 19–22.

⁴⁷ European Commission, Migration and Home Affairs, “An extraordinary meeting of the Frontex Management Board on 9 December 2020”, 17 December 2020.

⁴⁸ Mixed Migration Centre and OHCHR, “Covid-19 and the socioeconomic situation of migrants in Niger: analysis of 4Mi data collected in Niger between July and September 2020” (January 2021), p. 7.

⁴⁹ Office for the Coordination of Humanitarian Affairs, “Global humanitarian response plan COVID-19”, p.16.

44. Another issue of concern is the allegation that some States have forcibly returned migrants, including unaccompanied and separated children, to States of transit or origin with fragile health systems, exposing them to serious health risks. This can also place receiving communities at risk of contracting COVID-19 and result in the stigmatization of returnees (A/75/542, para. 22). The return to the Bolivarian Republic of Venezuela of large groups of migrants without health screening reportedly had an impact on local communities at the borders and in neighbouring countries.⁵⁰ Furthermore, the closure of borders has resulted in the accumulation of thousands of migrants at border crossings and severe overcrowding in humanitarian camps, which has driven many to use irregular crossing points with the help of smugglers, leading to the risks described above.

D. Exposure to COVID-19 and compromised access to health care and other services

45. People on the move, including smuggled migrants, often lack access to adequate health care in relation to COVID-19. In many instances, stranded migrants and refugees, as well as internally displaced persons, have been housed in camps, migrant detention centres, informal settlements and other sites with limited access to water, sanitation and hygiene facilities, and are forced share common areas such as kitchens and toilets. Services are often even more limited for women and girls.⁵¹ These places frequently suffer from severe overcrowding and reduced access to health services. Protective measures, such as physical distancing, handwashing, quarantine and self-isolation, might be difficult or impossible to implement, thus limiting virus containment. In addition, migrants and refugees, who are obliged to respect mandatory confinement measures upon arrival in many destination countries, are often hosted in heavily crowded camps at borders. Lockdowns, curfews and other restrictions on movement may even increase the likelihood of contagion by creating crowded places, therefore putting residents at higher risk of exposure to the virus.⁵² For example, migrant smuggling incidents involving the transportation of Rohingya refugees from Bangladesh to Malaysia by sea reportedly increased threefold from March to April 2020, likely owing to fear of contagion in refugee camps fuelled by smugglers to boost demand for their services.⁵³

46. These issues are compounded by the difficulties faced by humanitarian actors in accessing certain sites as a result of State-imposed restrictions and preventive measures such as teleworking and office closures, which have also made it more difficult for some migrants and refugees to access health-care service providers.⁵⁴ In recent months, delays have been reported in the provision to migrants of social and other support services, including medical care and assistance with visa and permit renewals. Furthermore, many such services are still operating at limited capacity because of the pandemic.⁵⁵

47. Irregular migrants may also lack access to health-related information owing to legal, language, cultural or other barriers, including an unwillingness to approach health services for fear of retaliation, detention or deportation in the real or perceived absence of solid “firewalls” between immigration or law enforcement authorities and the health sector.⁵⁶ One of the main barriers reported by migrants in the Niger to accessing health services in case of COVID-19 symptoms was fear of arrest,

⁵⁰ UN News, “Migrants stranded “all over the world” and at risk from coronavirus, 7 May 2020.

⁵¹ United Nations, “Policy brief: COVID-19 and people on the move”, p. 9.

⁵² European Union Fundamental Rights Agency, *Coronavirus Pandemic in the EU: Fundamental Rights Implications – Focus on Social Rights*, Bulletin No. 6 (Luxembourg, Publications Office of the European Union, 2020), p. 31.

⁵³ INTERPOL, “COVID-19 impact on migrant smuggling and human trafficking”, 11 June 2020.

⁵⁴ UNHCR, “Regional Bureau for Europe: COVID-19”, Update, No. 22 (11–30 November 2020).

⁵⁵ IOM, COVID-19 Response, “COVID-19 immigration, consular and visa needs and recommendations”, Issue Brief, No. 4 (January 2021), p. 2.

⁵⁶ United Nations Committee on Migrant Workers and Special Rapporteur on the human rights of migrants, “Joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants”, 26 May 2020, p. 3.

deportation or reporting, with 26 per cent of migrants indicating that this was a concern.⁵⁷

48. Other key services for migrants, including legal, social and educational services considered “non-essential” during the pandemic, have been discontinued or suspended because of the diversion of public resources to the health emergency. The provision of frontline professional life-saving services to these vulnerable groups has also been affected by budget shortfalls, sanitary measures and funding reprioritization by Governments.⁵⁸ Children have experienced heightened vulnerability because they face additional challenges in gaining access to a range of services, including health care, mental health and psychosocial support and education.

VI. Contribution of the United Nations Office on Drugs and Crime to efforts to fight crime and protect the rights of smuggled migrants

49. UNODC has continued to support Member States through the development of normative and policy responses, technical assistance, data collection and research to address the smuggling of migrants as part of human rights-based, gender- and age-responsive approaches. Since the start of the outbreak and despite the challenges posed by COVID-19, UNODC has contributed to efforts to address the issues discussed above through a variety of activities.

50. Through its Global Programme against the Smuggling of Migrants, in 2020 UNODC organized or substantively contributed to 17 technical assistance activities aimed at combating the smuggling of migrants, reaching 216 practitioners (half of whom were women) in 10 countries. In Latin America and the Caribbean, a network of specialized prosecutors against trafficking in persons and the smuggling of migrants created a task force for the investigation and prosecution of cases of trafficking in persons within mixed migration flows, with the support of UNODC under the Track4Tip initiative. These efforts supported Member States in both furthering and adapting their efforts to combat this crime.

51. The Airport Communication Project, implemented by UNODC in partnership with the International Criminal Police Organization (INTERPOL) and the World Customs Organization, has trained joint airport interdiction task forces, which bring together law enforcement agencies operating at international airports in order to, inter alia, identify specific risk indicators for different types of organized crime, including the smuggling of migrants, and detect falsified travel documents. This resulted in the dismantling, in 2020, of a smuggling network by the joint airport interdiction task force of Abidjan. An INTERPOL-led operation against the smuggling of migrants led to more than 200 arrests of members of various criminal networks involved in the smuggling of 3,500 migrants throughout the Americas, Africa, Europe and Asia. As many as 100 potential trafficking victims were also rescued during the operation, known as “Turquesa II”, which brought together authorities of 32 countries. UNODC crime prevention experts have supported INTERPOL since the preparatory phase of this major initiative, and are continuing to play a key role in the post-operation phase.

52. The UNODC Smuggling of Migrants Knowledge Portal, a unique and unparalleled global database on the subject matter, continued to expand in 2020. With 817 cases from 47 jurisdictions and 250 pieces of legislation from 101 countries, the Portal provides information on how criminal groups operate and how States have responded and is a useful tool for practitioners prosecuting and adjudicating smuggling cases. UNODC has also published a research brief analysing scenarios of

⁵⁷ Mixed Migration Centre and OHCHR, “COVID-19 and the socioeconomic situation of migrants in Niger”, p. 4.

⁵⁸ Amy Emel Muedin, “Reflections on the United Nations Network on Migration’s listening sessions on COVID-19 and trafficking in persons”, United Nations Network on Migration, 9 July 2020.

how the smuggling of migrants and cross-border trafficking in persons could be affected by the COVID-19 crisis along two mixed migration routes.⁵⁹

53. Throughout 2020 and 2021, UNODC has intensified its engagement with respect to the gender dimension of smuggling. An earlier UNODC study analysed the role of women in smuggling activities, examining how women were involved and what tasks they usually performed. However, the broader human rights aspects and gender dimensions of aggravated offences involving the smuggling of migrants remain understudied. Anecdotal evidence and reports point to grave violations of human rights and gender-based violence inflicted on smuggled migrants, often in connection with other forms of crime. An ongoing UNODC study is examining, through a gender lens, aggravating factors in the crime of the smuggling of migrants in two transit regions: Central America and North Africa. The objective is to determine whether the sex of the victims and perpetrators, as well as gender norms and perceptions, play a role in the causes of and responses to aggravated smuggling, and to examine the gender-specific consequences that aggravating factors may have on victims, including their ability to access justice and need for support and assistance services. This analysis will contribute to an improved understanding of the underlying gender dimensions and facilitate more targeted prevention, protection and prosecution efforts to address the crime of the smuggling of migrants, especially in its most dangerous and abusive forms.

54. Through the Global Action against Trafficking in Persons and the Smuggling of Migrants (GLO.ACT), a joint European Union -UNODC initiative implemented in partnership with IOM, UNODC is supporting efforts in partner countries, including through a gender empowerment- and a human rights-based approach. It has established the Women's Network of Gender Champions, shifting the paradigm from women as victims to women as powerful agents of social change and drivers of development, in order to better address the gendered nature of trafficking in persons and the smuggling of migrants. The programme recently launched a toolkit for mainstreaming human rights and gender equality into criminal justice interventions to address trafficking in persons and the smuggling of migrants, with a view to creating gender transformative programming and assisting stakeholders in meeting their due diligence obligations when implementing related activities. In Bangladesh in 2020, GLO.ACT organized a national online consultation to specifically address the country's criminal justice response to human trafficking and the smuggling of migrants during the COVID-19 pandemic and beyond. A position paper drafted on the basis of the consultation will examine the criminalization of such smuggling and the protection of vulnerable migrants in line with the Smuggling of Migrants Protocol. GLO.ACT allows UNODC to assist States at different stages of the fight against the smuggling of migrants and is another example of long-term engagement to combat this crime.

55. As the leading entity with expertise on countering the smuggling of migrants within the United Nations Network on Migration, UNODC has supported efforts to develop comprehensive policy guidance on migration. The Network, established by the Secretary-General in 2018 to support the implementation by Member States of the Global Compact for Safe, Orderly and Regular Migration, is the foremost United Nations coordination mechanism for the development of guidance on all aspects of migration. With a membership of 38 United Nations entities, the Network coordinates responses at the global, regional and national levels and is the primary actor supporting States in the implementation of the Global Compact at the national level, including its objective 9, dedicated to strengthening responses to the smuggling of migrants.

56. Under the Global Programme to End Violence against Children, UNODC has supported States in improving conditions for the reception of children deprived of liberty, including children on the move, by developing strategies to reduce crowding in detention facilities and enhance the protection of children deprived of their liberty from risks and victimization during crises, including the COVID-19 pandemic. In

⁵⁹ UNODC, "Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling".

2020, UNODC helped to develop an inter-agency technical note on COVID-19 and children deprived of liberty, providing States with recommendations on how to ensure the well-being and reduce the overall numbers of children deprived of liberty during the pandemic. Recommendations included using detention only as a measure of last resort and for the shortest appropriate period of time, completely ending the deprivation of liberty of children on the basis of their or their parents' migration status and prohibiting the immigration detention of children in law, policy and practice.

VII. Conclusions

A. Way forward: the prevention of smuggling and the protection of smuggled migrants

57. The preamble to the Smuggling of Migrants Protocol underscores the recognition by States parties of the need to provide migrants with humane treatment and full protection of their rights. Specific obligations concerning protection are established in article 16 of the Protocol and general obligations to protect those who witnesses of offences are set out in article 24 of the Organized Crime Convention. For example, States parties must provide appropriate assistance to migrants whose lives or safety are endangered as a result of having been smuggled, afford migrants appropriate protection against violence, and take into account the special needs of women and children. These obligations are in addition to the protection obligations contained in other international instruments, including the Convention relating to the Status of Refugees and its Protocol of 1967. Additional guidance can be found in the Global Compact on for Safe, Orderly and Regular Migration, in particular under objective 7, "Address and reduce vulnerabilities in migration".

58. Policy responses to the COVID-19 pandemic across the globe have been limited in their inclusion of irregular migrants. Nevertheless, a number of good practices to mitigate the impact of the pandemic on migrants have emerged, such as the inclusion of migrants in medium- and long-term health strategies and the provision to them of social assistance and services, including health care and housing services, as well as support services for women and children. In certain jurisdictions, the provision or renewal of temporary residence permits for migrants, including digital permits, has also facilitated access to such services and prevented migrants from becoming stranded.

59. During the pandemic, videoconferencing devices have been used in court to enable the continued conduct of hearings in asylum proceedings. In addition, technology has been employed in court proceedings for cases of smuggling involving organized criminal networks.

60. At its seventh meeting, held in 2020, the intergovernmental Working Group on the Smuggling of Migrants highlighted the importance of dedicated, specialized training and capacity-building courses to assist the relevant authorities in responding to crises, as a further best practice.

61. As States look to gradually lift their temporary COVID-19-related restrictions, the emerging re-establishment of legal pathways for migration offers an alternative and a key preventive strategy that will have a significant impact on the need of migrants to resort to smuggling networks to cross borders, thus reducing human rights violations and related illicit financial flows. The regularization of the status of migrants contributes to a reduction in the risk of them being employed in hidden sectors lacking social protection, thereby reducing the likelihood of them being exploited.

B. Considerations

62. The Commission may wish to discuss the following international commitments and considerations as possible priorities in addressing and strengthening the protection of smuggled migrants in national settings and the

prevention of smuggling of migrants globally, particularly in the context of the COVID-19 pandemic:

- The establishment in national laws of aggravating circumstances for offences relating to the smuggling of migrants, on the basis of article 6, paragraph 3, of the Smuggling of Migrants Protocol so as to address, in particular, circumstances that endanger or are likely to endanger the lives or safety of migrants or entail inhuman or degrading treatment of smuggled migrants.
- The inclusion of financial and other material benefit as a required element of an offence of smuggling of migrants in national laws, the explicit exclusion of activities for the facilitation of entry and stay where based on humanitarian grounds, and the non-punishment of activities for the rescue at sea of irregular migrants and the provision to them of humanitarian assistance such as food, shelter, medical care and free legal advice.
- The upholding of the rights of persons in need of international protection, including access to the territory of the country in which they are seeking international protection, the right to have their asylum claim examined on an individual basis and the right to non-refoulement, including non-rejection and pushbacks at land and sea borders. In addition, the upholding of a child's right to seek asylum or protection or to reunite with family members, in compliance with public health policies and norms.
- The adoption and implementation of measures to protect smuggled migrants from violence and abuses, including extortion, kidnapping, discrimination, torture and ill-treatment at the hands of private actors and public officials, and the adoption of policies and actions that, rather than increasing their vulnerability, provide smuggled migrants who are victims of crimes with effective access to justice.
- The implementation of strategies to address gender-based inequality with broader crime prevention and criminal justice responses, along with specialized services that address the particular needs of women and girls to effectively and comprehensively prevent the smuggling of migrants and protect and safeguard the rights of migrants.
- The express consideration of women affected by multiple forms of discrimination or of marginalized group, such as women migrants and irregular migrants in the design, implementation and assessment of all measures to address COVID-19.
- The strengthening of national data collection and analysis in respect of the smuggling of migrants, including smuggling routes, the profits made by smugglers and the vulnerabilities of smuggled migrants, including in crises such as the COVID-19 pandemic, in order to support the development of solid migration and law enforcement policies, as well as cooperation with other States parties through the sharing of such data and statistics.
- The establishment of targeted responses and protection measures for smuggled migrants throughout crises such as the COVID-19 pandemic, including by ensuring accessible and affordable public and social services, with particular regard to health care and social protection measures for persons with special needs, including children, elderly persons, pregnant women and persons with psychological needs, in order to protect public health services for the entire population.
- The widespread provision and distribution of COVID-19 vaccines, including in the most fragile humanitarian settings, and the incorporation of the most vulnerable populations, irrespective of their migration status, into national vaccination campaigns.
- The establishment of “firewalls” to provide a clear boundary between law enforcement/immigration and public services so that all migrants, irrespective of their migration status, can access health care, education and other social services and justice without fear of detection, detention and deportation.

- Engagement in effective and practical international, regional and bilateral cooperation in countering the smuggling of migrants and trafficking in persons in the context of migration, through coordinated efforts to address gaps in migrant protection within broader migration management responses, especially along established and emerging migratory routes.
 - The expansion of access to safe and regular pathways for migration and to asylum procedures to further criminal justice efforts in order to reduce irregular migration and address the smuggling of migrants.
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