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## Working Group on the Smuggling of Migrants

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Item 3 of the provisional agenda\*

**Protection and assistance measures for smuggled  
migrants**

### Protection and assistance measures for smuggled migrants

#### Background paper prepared by the Secretariat

## I. Introduction

1. The present background paper was prepared by the Secretariat to facilitate the discussions of the Working Group on the Smuggling of Migrants at its eleventh meeting. It sets out a series of issues that the Working Group may wish to address during its deliberations and provides background information and policy considerations related to the need for and provision of protection and assistance measures for smuggled migrants. Based on an overview of the international legal framework, and of the risks and dangers faced by smuggled migrants during their journeys, it provides background information and practical suggestions for related guidance and responses, especially regarding how to identify the needs of smuggled migrants, and examples of specific protection and assistance measures needed to duly implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

## II. Issues for discussion

2. Delegations may wish to consider their own national legal, policy and operational frameworks, as well as local knowledge, practice and challenges related to the following questions, among other issues concerning protection and assistance measures for smuggled migrants, to facilitate the deliberations of the Working Group on the Smuggling of Migrants:

(a) What are the most prevalent risks and dangers that smuggled migrants are exposed to during their journeys and upon reaching their destinations?

\* CTOC/COP/WG.7/2024/1.



(b) What policies, standards and guidance do States parties currently have in place to identify protection and assistance needs of smuggled migrants and to refer them to the relevant authorities and services? How might they be improved?

(c) What specific protection and assistance measures are currently provided by States parties to smuggled migrants? How are they human rights-based, gender- and culture-sensitive and age-appropriate? What measures are not yet provided but are the subject of local consideration or discussion?

(d) How do States parties currently assess and evaluate their assistance and protection measures and services to verify whether they effectively meet the actual needs of smuggled migrants?

(e) How do States parties provide, disseminate or otherwise facilitate the access of smuggled migrants to information regarding protection and assistance measures and services and referral mechanisms?

(f) How do States parties incorporate assistance and protection measures into their criminal justice responses to migrant smuggling, especially regarding access to justice, the non-liability of smuggled migrants and protection of witnesses?

(g) How have States parties built partnerships with relevant stakeholders to identify the needs of smuggled migrants and provide relevant, human rights-based, gender- and culture-sensitive and age-appropriate protection and assistance measures? What are examples of successful partnerships?

### **III. International law**

3. The Smuggling of Migrants Protocol does not consider smuggled migrants as victims but rather as the objects of the crime of smuggling,<sup>1</sup> which is committed against States. Nevertheless, States do have legal obligations under the Protocol to protect and assist smuggled migrants. The Protocol's preamble recognizes that this crime can endanger the lives or security of the migrants involved, and that it is necessary to treat migrants humanely and fully protect their rights. Moreover, articles 2 and 4 clearly establish that the instrument is aimed at preventing and combating the transnational crime of migrant smuggling while protecting the rights of persons who have been the object of such criminal acts.

4. This legal duty is further detailed in article 16, which specifies protection and assistance measures to be adopted by States parties regarding, at a minimum, the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to be protected from violence inflicted by reason of being smuggled, the right to assistance whenever peoples' lives or safety are endangered by reason of having been smuggled, and the right to consular assistance.

5. Article 5 also entails a protective duty, as it prohibits the criminal prosecution of migrants for the fact of having been smuggled. When requesting States establish aggravating circumstances, article 6, paragraph 3, recognizes the potential risks that migrants might be exposed to during the smuggling process and the consequent duty of protection and assistance. Article 9, paragraph 1 (a), establishes States' duty to ensure the safety and humane treatment of people on vessels suspected of engagement in migrant smuggling. Article 19 safeguards the principles of non-discrimination and assures that the Protocol's provisions do not affect any rights, obligations and responsibilities of States and individuals under other international legal instruments, particularly the principle of non-refoulement. Article 18 protects the safety and dignity of smuggled migrants during return procedures. Lastly, since smuggled migrants might be victims of aggravated forms of smuggling and other crimes and

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<sup>1</sup> Article 5 of the Protocol.

are, in any case, witnesses of crime,<sup>2</sup> articles 24 and 25 of the United Nations Convention against Transnational Organized Crime, related to the assistance and protection of victims and witnesses of crime, establish a legal framework of protection and assistance measures for smuggled migrants.

## IV. Challenges: an overview of issues, related topics and relevant guidance

### A. Risks faced by smuggled migrants

#### 1. Death, violence and exploitation

6. To provide adequate protection and assistance measures for smuggled migrants, it is essential that States understand and acknowledge all the risks that people are exposed to by reason of being smuggled. Although violence is not one of the defining elements of the crime of migrant smuggling, migrants are often exposed to circumstances that endanger their physical and mental integrity or even their lives during the smuggling process, and to a wide range of crimes committed by smugglers, human traffickers, criminal groups and authorities.<sup>3</sup>

7. Every year, thousands of migrants die during smuggling processes due to accidents, extreme terrain and weather conditions, unsafe modes of transportation and deliberate killings.<sup>4</sup> The number of recorded deaths due to drowning far exceeds other causes.<sup>5</sup> As previously noted by the Working Group on the Smuggling of Migrants, adverse weather conditions, low-quality equipment, the absence of provisions, a lack of navigation skills and deliberate endangerment and killing constitute some of the risks faced by smuggled migrants at sea.<sup>6</sup> As at 26 March 2024, the Missing Migrants Project of the International Organization for Migration (IOM) had registered 956 dead or missing migrants this year.<sup>7</sup> In 2023, it registered 8,541<sup>8</sup> dead or missing migrants, the highest number since the project began in 2014. The accumulated total since 2014, as at 26 March 2024, was 64,241 migrants, including cases from all regions. It is likely that many deaths go unreported, as they might take place along unmonitored sea routes as well as remote or inhospitable stretches of overland routes.<sup>9</sup>

8. Beyond loss of life, smuggled migrants are exposed to many forms of abuse, exploitation and crime. According to interviews undertaken between December 2019 and December 2023 with 16,985 migrants of different origins and with various destinations, the main types of danger reported are physical violence, robbery, detention, bribery/extortion, death, kidnapping, trafficking and exploitation, non-physical violence, injury/ill-health from harsh conditions and sexual violence, which is much more prevalent against female migrants (46.6 per cent) than male ones (22.93 per cent).<sup>10</sup> The risks vary according to the region and the gender and age of

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC), *International Framework for Action to Implement the Smuggling of Migrants Protocol* (Vienna, 2011), p. 40.

<sup>3</sup> *Global Study on Smuggling of Migrants* (United Nations publication, 2018).

<sup>4</sup> *Global Study on Smuggling of Migrants*, p. 9; and UNODC, *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response* (Vienna, 2021), p. 18.

<sup>5</sup> UNODC, *Abused and Neglected*, p. 18; UNODC and Canada, STARSOM (Strengthening Transregional Action and Responses against the Smuggling of Migrants), “The scope of transcontinental migrant smuggling from South Asia to North America” (Vienna, 2023), p. 30; and UNODC, Observatory on Smuggling of Migrants and others, “Migrant smuggling from the Northwest African coast to the Canary Islands (Spain)” (Vienna, 2022).

<sup>6</sup> [CTOC/COP/WG.7/2023/4](#).

<sup>7</sup> Available at <https://missingmigrants.iom.int/>.

<sup>8</sup> This number is not final as data can be retrospectively included.

<sup>9</sup> *Global Study on Smuggling of Migrants*, p. 9.

<sup>10</sup> Mixed Migration Centre, 4Mi Interactive: direct access to data from migrants. Available at <https://mixedmigration.org/4mi/4mi-interactive/>.

the migrant, but they are present on all smuggling routes, as different research and publications demonstrate.<sup>11</sup>

## 2. Gender and age considerations

9. Gender and age play a role in some vulnerabilities to, and types of, abuse and violence inflicted upon migrants. Male migrants report a wider range of abuses, with significantly higher instances of forced labour, physical violence and inhuman and degrading treatment en route, while women are much more exposed to sexual violence and report a lack of access to sufficient health care as a significant obstacle.<sup>12</sup> Along the Western and Central Mediterranean routes, women are about three times more likely to be subjected to sexual violence than men.<sup>13</sup> In the Darién Gap, sexual violence is experienced by 29 per cent of women and 2 per cent of men.<sup>14</sup>

10. A recent report of the Secretary General of the United Nations notes that “women who migrate using the services of smugglers experience a higher level of sexual and gender-based violence, including rape, along with kidnapping, exploitation and physical and psychological violence”. They are also “more likely to run out of funds earlier and more frequently during migration and are therefore more at risk of sexual exploitation, forced prostitution and transactional rape for passage”.<sup>15</sup> Sexual violence is omnipresent along all migration routes and is perpetrated as a form of retaliation, intimidation or coercion, as a means of payment, or with no purpose besides demonstration of power, misogyny, racism or sexual gratification.<sup>16</sup>

11. Gender considerations do not relate only to sexual violence. Proportionally, more women than men drown when migrating along sea routes for gender-related reasons.<sup>17</sup> When pregnant, women are subject to reduced mobility and are at increased risk of dehydration. They are regularly forced to take care of sick or elderly migrants or children that are not their own.<sup>18</sup> They are also more likely to be abandoned during the smuggling process, either because they cannot keep up with the demands of the journey or because they are expected to care for the sick and injured who cannot continue.<sup>19</sup>

12. Children on the move are also more vulnerable to violence, including death, gender-based violence, trafficking and deprivation of liberty, often experiencing severe trauma.<sup>20</sup> More than 76.85 per cent of migrants surveyed in different regions think that refugee and migrant children are highly or very highly exposed to dangers during their journey, including physical violence, kidnapping, death, sexual violence and robbery.<sup>21</sup> A total of 95 per cent of surveyed migrants reported that children were highly or very highly exposed to risks during their journey across the Darién Gap, especially injury/ill-health, death, sexual violence, physical violence and robbery.<sup>22</sup> Surveys with migrants in Mali and the Niger show that the risk of abuse and

<sup>11</sup> See UNODC, Observatory on Smuggling of Migrants, *Migrant Smuggling in Southeast Asia: Research Findings on Migrant Smuggling in Southeast Asia* (Vienna, 2024); UNODC, Observatory on Smuggling of Migrants, West Africa, North Africa and the Central Mediterranean, “Key findings on the characteristics of migrant smuggling in West Africa, North Africa and the Central Mediterranean”, 20 June 2023; UNODC and Canada, STARSOM, “Pocket book: Nigeria and Ghana” (October 2022), p. 8; and Mixed Migration Centre, “Security risks in the Darien Gap and assistance needed among migrants, 4Mi Infographic (February 2024).

<sup>12</sup> UNODC, *Abused and Neglected*, p. 4.

<sup>13</sup> *Ibid.*, p. 44.

<sup>14</sup> Mixed Migration Centre, “Security risks in the Darien Gap”.

<sup>15</sup> [A/78/292](#), para. 11.

<sup>16</sup> UNODC, *Abused and Neglected*, p. 43.

<sup>17</sup> *Ibid.*, p. 41.

<sup>18</sup> *Ibid.*, pp. 41 and 42.

<sup>19</sup> *Ibid.*, pp. 52 and 53.

<sup>20</sup> [A/HRC/55/58](#).

<sup>21</sup> Mixed Migration Centre, 4Mi Interactive.

<sup>22</sup> Mixed Migration Centre, “Security risks in the Darien Gap”.

exploitation is much higher when children travel with smugglers.<sup>23</sup> Unaccompanied children are even more vulnerable,<sup>24</sup> as they are often unable to withstand the conditions of longer, more dangerous journeys; lack the support of adults who can provide some assistance or protection; and work off fees to pay off their journeys.<sup>25</sup> Similarly to elderly migrants and people with disabilities, children may not be as able to hold on to trains and other moving vehicles and are hence more likely to be injured during transit, as well as abandoned along the journey.<sup>26</sup>

## B. Identifying protection and assistance needs

### 1. Vulnerability screenings and assessments

13. States must be able to identify smuggled migrants and their specific needs in a timely, accurate and adequate manner.<sup>27</sup> Identification can be facilitated through the training of first responders, including on relevant human rights and other protection obligations, and clear standard operating procedures, as well as through effective referral mechanisms. This is particularly important for children, as a failure to properly identify children among smuggled migrants can result in a lack of age-appropriate responses and adequate care,<sup>28</sup> as well as for refugees and victims of crime, in order to ensure adequate referral to specialized mechanisms and procedures, especially regarding asylum and access to justice.

14. Migrants should be screened as soon as they are intercepted at any entry or exit points, and before further evidential interviews are carried out.<sup>29</sup> The purpose of the screening interview is, inter alia, to assess health and safety issues, identify potential victims of trafficking in persons and other forms of crime, violence and abuse, and provide relevant information and assistance.<sup>30</sup> Suspected smugglers should be separated from migrants as soon as possible for safety reasons.<sup>31</sup> The screening should not be limited to visibly identifiable vulnerabilities but be comprehensive enough to also identify, for example, women in the early stages of their pregnancy, persons with psychosocial disabilities and survivors of trauma or sexual and gender-based violence who do not have easily visible scars and are hesitant to self-identify.<sup>32</sup> Special attention must be given to particularly vulnerable migrants, such as women, children and LGBTQI+ persons, who are disproportionately affected by crimes related to migrant smuggling such as human trafficking and sexual exploitation.<sup>33</sup> Screening processes should be carried out individually and be human rights-based, gender- and culture-sensitive, trauma-informed, victim-centred and age-appropriate. Otherwise, it is not possible to properly determine whether a migrant is an asylum-seeker, trafficking survivor, smuggled migrant, or some combination thereof<sup>34</sup> and what next steps should be taken.

<sup>23</sup> Jessamy Garver-Affeldt, “Human rights in the context of smuggling: perceptions and experiences of migrants in Mali and Niger”, Mixed Migration Centre Paper (2023).

<sup>24</sup> United Nations Children’s Fund (UNICEF), “Number of unaccompanied children crossing deadly Central Mediterranean Sea migration route to Italy increases by 60 per cent”, press release, 29 September 2023.

<sup>25</sup> UNODC, *Abused and Neglected*, p. 53.

<sup>26</sup> Ibid.

<sup>27</sup> [E/CN.15/2020/6](#).

<sup>28</sup> Ibid.

<sup>29</sup> UNODC and Canada, STARSOM, “Pocket book”, p. 13.

<sup>30</sup> UNODC and Canada, STARSOM, “Pocket book”, p. 13; and UNODC and Canada, STARSOM, “The scope of transcontinental migrant smuggling”, pp. 33 and 42.

<sup>31</sup> Ibid.

<sup>32</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “In search of dignity: report on the human rights of migrants at Europe’s borders” (Geneva, 2017), p. 19.

<sup>33</sup> UNODC and Canada, STARSOM, “The scope of transcontinental migrant smuggling”, p. 42.

<sup>34</sup> Rebecca L. Feldmann, “Preventing trafficking by protecting refugees”, *Utah Law Review*, vol. 2023, No. 3 (2023), p. 665.

15. First responders must be aware that interviews may reveal crimes committed against migrants; that injuries sustained by migrants may be evidence of abuse and violence; that some migrants might be victims of trafficking in persons; that a lack of visible injuries does not necessarily mean a migrant has not been harmed; and that statements may not be consistent due to traumatic experience.<sup>35</sup> It is important to provide same-sex interviewers and access to a competent interpreter (also of the same sex), to legal representation and to information regarding asylum and migration procedures, as well as to observe data protection principles.<sup>36</sup>

16. Denying smuggled migrants access to effective screening and identification processes may risk their health and safety and expose them to human rights violations.<sup>37</sup> Moreover, under objective 12 of the Global Compact for Safe, Orderly and Regular Migration, States committed to establish effective and human rights-based mechanisms for the adequate and timely screening and individual assessment of all migrants for the purpose of identifying and facilitating access to the appropriate referral procedures.<sup>38</sup>

## 2. Research gaps

17. Despite improvements, data collection, analysis and research relating to the smuggling of migrants remain limited.<sup>39</sup> UNODC has already recommended that States enhance those areas, maintaining adequate administrative records, conducting appropriate surveys, and applying statistical methodologies and qualitative studies to monitor migrant smuggling patterns and routes, as well as the profiles of smugglers and their *modi operandi*.<sup>40</sup> The Special Rapporteur on the human rights of migrants has also recommended that States “address data gaps through the collection of disaggregated data, while upholding the right to privacy and data protection.”<sup>41</sup>

18. Regarding protection and assistance measures, the UNODC report entitled *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response* points out that the specific vulnerabilities of children to abuses during smuggling operations and the LGBTIQ+ dimensions of smuggling offences are severely understudied.<sup>42</sup> There is also a need for further data collection and research on aggravating circumstances in smuggling of migrants cases and how criminal justice systems are handling them, with due attention to the gender and age dimensions of this crime, including how they affect the right to access justice<sup>43</sup> and to protection and assistance measures.

19. The lack of accurate and complete statistics on the number of smuggled migrants, their background, the circumstances of their arrivals, and their medium and long-term immigration status is an obstacle to a comprehensive assessment of the assistance and protection available to smuggled migrants.<sup>44</sup> But it is not enough to simply undertake research. The research must be used effectively as a basis for

<sup>35</sup> UNODC and Canada, STARSOM, “Pocket book”, p. 15.

<sup>36</sup> Office of the United Nations High Commissioner for Refugees (UNHCR) and International Detention Coalition, *Vulnerability Screening Tool: Identifying and Addressing Vulnerability – A Tool for Asylum and Migration Systems* (Geneva; Melbourne, 2016), p. 4.

<sup>37</sup> OHCHR and Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (Geneva, 2017), p. 7.

<sup>38</sup> General Assembly resolution 73/195, annex, objective 12, para. 28.

<sup>39</sup> E/CN.15/2020/6, para. 27.

<sup>40</sup> *Global Study on Smuggling of Migrants*, p. 12.

<sup>41</sup> A/77/189, para. 91 (h).

<sup>42</sup> UNODC, *Abused and Neglected*, p. 78.

<sup>43</sup> *Ibid.*, p. 79.

<sup>44</sup> Andreas Schloenhardt and Kate L. Stacey, “Assistance and protection of smuggled migrants: international law and Australian practice”, *Sydney Law Review*, vol. 35, No. 1 (November 2013), p. 83.

policymaking to ensure that responses to migrant smuggling are drawn from evidence and are effective and adaptable to changing realities.<sup>45</sup>

## C. Providing protection and assistance measures

### 1. Right to life and access to health assistance

20. Article 16, paragraph 3, of the Smuggling of Migrants Protocol requires that basic assistance be provided to smuggled migrants whose lives or safety are endangered by virtue of having been smuggled.<sup>46</sup> The right to life is inherent to everyone without discrimination<sup>47</sup> and cannot be interpreted narrowly. Its protection requires States to adopt positive measures;<sup>48</sup> therefore, whenever smuggled migrants need emergency or basic medical or health care, they should be provided with assistance, as a denial or refusal to do so would be a violation of the right to life.<sup>49</sup> This is especially relevant considering all the risks and violence that smuggled migrants are exposed to during their journeys. It is also important to note that the right to health and/or medical care without discrimination is protected by several international instruments<sup>50</sup> and must be provided as long as smuggled migrants remain in the country.<sup>51</sup>

21. In its resolution 78/217, the General Assembly invited Member States to accelerate efforts to integrate public health considerations into migration policies and incorporate the health needs of migrants in national and local health-care services policies and plans, in ways which are transparent, equitable, non-discriminatory, people-centred, gender-responsive, child-sensitive and disability-responsive. It also encouraged States to promote equitable access to health services, disease prevention and care for migrants, including mental health and psychosocial support, which is particularly relevant considering the traumatic experiences that smuggled migrants might be exposed to. Similarly, under objective 15 of the Global Compact for Migration (provide access to basic services for migrants), States commit to incorporate the health needs of migrants into national and local health-care policies and plans, such as by strengthening capacities for service provision, facilitating affordable and non-discriminatory access, reducing communication barriers and training health-care providers on culturally sensitive service delivery, in order to promote the physical and mental health of migrants and communities overall.<sup>52</sup>

22. The right to life also necessitates the provision of other forms of immediate assistance with the basic necessities of a life with human dignity, such as food,<sup>53</sup> water<sup>54</sup> and shelter, and the removal of any immediate risk to the lives or safety of migrants, including through the provision of physical security by law enforcement if

<sup>45</sup> UNODC, *International Framework*, p. 18.

<sup>46</sup> *Ibid.*, p. 29.

<sup>47</sup> International Covenant on Civil and Political Rights (ICCPR), art. 6, para. 1.

<sup>48</sup> Human Rights Committee, general comment No. 36 (2018) on the right to life.

<sup>49</sup> UNODC, *Model Law against the Smuggling of Migrants* (2010).

<sup>50</sup> International Covenant on Economic, Social and Cultural Rights (article 12); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 28); International Convention on the Elimination of All Forms of Racial Discrimination (article 5); Convention on the Rights of the Child (article 24); and Convention on the Elimination of All Forms of Discrimination against Women (article 12).

<sup>51</sup> UNODC, SHERLOC, Databases, Education for Universities, Tertiary, Trafficking in Persons and Smuggling of Migrants, Modules Series, "Module 2: protection of the rights of smuggled migrants".

<sup>52</sup> General Assembly resolution, [73/195](#).

<sup>53</sup> Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food.

<sup>54</sup> *Ibid.*, general comment No. 15 (2002) on the right to water; and [A/77/189](#), paras. 33 and 85.

necessary.<sup>55</sup> The provision of basic assistance to migrants whose lives or security are endangered reduces their vulnerability to (re)victimization and exploitation, including trafficking in persons.

## 2. Special needs of children

23. Displaced children on the move, including smuggled migrant children, are children first and foremost, and are entitled to full protection.<sup>56</sup> All actions related to them must be guided by the Convention on the Rights of the Child<sup>57</sup> and its four guiding principles, namely, the right to survival and development, the best interests of the child, the right to participation and inclusion, and non-discrimination and equity in the treatment of all children who need protection, regardless of their status.<sup>58</sup>

24. When migrant children are identified as the object of smuggling, they should, at an absolute minimum, be immediately removed from the source of any danger; not be allowed further contact with any suspects; be seen by a medical professional (for health and, possibly, evidential issues); be provided with additional clothing or nappy changes (if required), fed, given refreshments and, if old enough, given at least a pencil and paper to provide them with something to do; and be dealt with thereafter by trained officers.<sup>59</sup> Smuggled children should have access to child-friendly, integrated services that are led by the child and social protection sectors, rather than by authorities responsible for immigration and security procedures or border control.<sup>60</sup>

25. Age determination procedures should be used only when strictly necessary, conducted in a safe, age-appropriate and dignified manner, and be gender-sensitive, culturally appropriate and multidisciplinary. Methods considered inaccurate or with wide margins of error, such as bone and dental exam analysis, should be avoided, and in situations of ambiguity or uncertainty, the assumption of minority should prevail. Return procedures and detention should not occur before age assessments are carried out, and children should never be detained because of their migration status or that of their parents, which is never in the child's best interests.<sup>61</sup>

26. Unaccompanied children are even more vulnerable<sup>62</sup> and require special attention. Qualified, trained and independent guardians or advisers and legal representatives should be promptly appointed to provide gender-responsive protection and assistance to all unaccompanied children and child-headed households as soon as they are identified.<sup>63</sup> The identification of unaccompanied children and family reunification

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<sup>55</sup> UNODC, *Model Law*; Andreas Schloenhardt and others, eds., *UN Convention against Transnational Organized Crime: A Commentary*, Oxford Commentaries on International Law (Oxford, Oxford University Press, 2023), p. 654.

<sup>56</sup> OHCHR and Global Migration Group, *Principles and Guidelines*, p. 42.

<sup>57</sup> Joseph Lelliott, "Smuggled and trafficked unaccompanied minors: towards a coherent, protection-based approach in international law", *International Journal of Refugee Law*, vol. 29, No. 2 (June 2017).

<sup>58</sup> UNHCR and others, "Advocacy brief on protecting the rights of children on the move in times of crisis" (2023).

<sup>59</sup> UNODC, "Module 9: human rights", in *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (Vienna, 2010).

<sup>60</sup> [A/HRC/55/58](#).

<sup>61</sup> OHCHR and Global Migration Group, *Principles and Guidelines*, p. 43; UNHCR and others, "Advocacy brief on protecting the rights of children", p. 13; and [CTOC/COP/WG.4/2023/4](#), paras. 21–23.

<sup>62</sup> [A/77/189](#), para. 50.

<sup>63</sup> OHCHR and Global Migration Group, *Principles and Guidelines*, p. 44; and Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, paras. 33–38.



must be prioritized, with due observance of the principles of non-refoulement and the best interests of the child.<sup>64</sup>

27. Children born in migration contexts must be properly registered, without any costs and regardless of the migration or residence status of their parents or guardians, which is essential to avoid statelessness and insufficient or no access to education, health care and other social protection.<sup>65</sup> Moreover, children must always have full access to education without discrimination on any basis, including migration status.<sup>66</sup>

### 3. Special needs of women

28. In its resolution 78/217, the General Assembly called upon States to develop national gender-responsive and child-sensitive migration policies and legislation in line with relevant obligations under international law to respect, protect and fulfil the human rights of all migrant women and children, regardless of their migration status. According to objective 7 of the Global Compact for Migration, such policies may include assistance, health care, psychological and other counselling services, and access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation.<sup>67</sup>

29. One example is the training of law enforcement officials, immigration officers and border officials, diplomatic and consular officials, the judiciary, prosecutors, public sector medical staff and other service providers, with a view to sensitizing them to the issue of violence against migrant women and providing the necessary skills and attitude to ensure the delivery of proper, professional and gender-sensitive interventions.<sup>68</sup>

30. The Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations recommend that trained staff be available at all relevant sites to, in a timely manner, identify and support migrant women and girls who have experienced trauma, including sexual and gender-based violence, and that specialized medical and psychosocial support, sexual and reproductive health services, goods and information, and other relevant gender-responsive services such as trauma counselling and legal advice be available for them through adequate referral mechanisms.<sup>69</sup>

31. In all screening and assessment situations, migrant women and girls should be able to present their circumstances and claims in a safe, culturally appropriate and gender-responsive environment. Childcare should be available during interviews, and women's reports of human rights abuses should not be viewed through the lens of male experiences.<sup>70</sup>

32. Gender considerations are also relevant in reception facilities and other centres for migrants. According to the Principles and Guidelines, locations where women and girls are accommodated should have women staff and provide well-lit, safe and private gender-responsive water, sanitation and hygiene facilities, separate housing

<sup>64</sup> Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

<sup>65</sup> OHCHR and Global Migration Group, *Principles and Guidelines*; and [A/HRC/53/26](#).

<sup>66</sup> Committee on the Rights of the Child, general comment No. 6 (2005); Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration; and Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child (2017).

<sup>67</sup> General Assembly resolution [73/195](#), annex.

<sup>68</sup> General Assembly resolution [78/180](#).

<sup>69</sup> OHCHR and Global Migration Group, *Principles and Guidelines*, pp. 45 and 46.

<sup>70</sup> *Ibid.*

for women and men (except if families wish to stay together), safe and culturally appropriate spaces for women where they can rest and receive information and other services, and women-only mother/baby areas.<sup>71</sup>

33. In line with article 19 of the Smuggling of Migrants Protocol, none of the Protocol's provisions affect the rights, obligations and responsibilities of States and individuals under the Convention on the Elimination of all Forms of Discrimination against Women or any other international law, which should be duly observed by States when providing protection and assistance measures to smuggled migrants.

#### **4. Protection and assistance in the context of justice**

##### **(a) Non-liability of smuggled migrants**

34. Article 5 of the Smuggling of Migrants Protocol entails a relevant protection measure as it prevents States from criminally prosecuting migrants for having been smuggled. It ensures that nothing in the Protocol can be interpreted as requiring the criminalization of migrants or of the conduct they may engage in, as opposed to members of organized criminal groups.<sup>72</sup>

35. Although smuggled migrants may still be held liable for conduct that is a crime under States' domestic legislation, as provided for by article 6, paragraph 4, of the Protocol, this provision must be interpreted in good faith, in accordance with article 26 of the Vienna Convention on the Law of Treaties. Since the objective of article 5 of the Protocol is clearly to protect smuggled migrants, any other measures that have the same detrimental impact as criminalization, such as certain types of punitive administrative detention measures or criminalization of returnees, may infringe both this provision and the interpretative principle of the Vienna Convention.<sup>73</sup>

36. In cases where smuggled migrants are found to have committed a crime related to the smuggling process, it is important to assess all the facts and give due consideration to the possibility of coercion, to the state and extent of knowledge of the smugglers, and to the extent of their involvement.<sup>74</sup>

37. It is also relevant to note that article 5 does not make the non-criminalization of smuggled migrants conditional upon their willingness to cooperate in the investigation and prosecution of the smuggler, such as by acting as a witness, or upon any other requirement.

##### **(b) Access to justice**

38. Any person on the move who is a victim of a crime has the right to access justice without discrimination of any kind or on any grounds, such as his or her immigration status.<sup>75</sup> Nevertheless, although smuggled migrants are highly exposed to various forms of violence that qualify as aggravated smuggling or different crimes, they are often prevented or discouraged from reporting abuses, seeking justice and remedies and receiving the required protection and assistance.<sup>76</sup>

39. Screening processes that focus exclusively on determining immigration status and do not assess vulnerabilities; mass deportation or transfer of irregular migrants without indication of procedural rights; fear of corruption and lack of trust in the

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<sup>71</sup> Ibid.

<sup>72</sup> UNODC, *Legislative Guide for the Implementation of the of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime* (2005), para. 50.

<sup>73</sup> CTOC/COP/WG.7/2023/2.

<sup>74</sup> UNODC, *International Framework*, p. 21.

<sup>75</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex); International Covenant on Civil and Political Rights, art. 26; and A/HRC/53/26, para. 39.

<sup>76</sup> UNODC, "Policy brief on accessing justice: challenges faced by trafficked persons and smuggled migrants" (2023), p. 5; and UNODC, *Abused and Neglected*, p. 6.

authorities; complicity of authorities; disregard for the non-liability principle; lack of information; fear of criminalization, detention or deportation; and a wish to continue their journey and reach their final destination are some of the factors that hinder the right of smuggled migrants to access justice.<sup>77</sup> In cases of sexual and gender-based violence, access to justice is subject to even more obstacles. Laws criminalizing abortion and same-sex sexual acts, which directly affect women and members of the LGBTIQI+ community, prevent access to justice and redress for those victims, who are strongly discouraged from reporting crimes.<sup>78</sup>

40. Ensuring access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation, is one of the actions countries committed to for achieving objective 7 of the Global Compact for Migration (address and reduce vulnerabilities in migration).<sup>79</sup> This commitment was reinforced in the latest Progress Declaration of the International Migration Review Forum.<sup>80</sup> If smuggled migrants do not have adequate opportunity to report crimes committed against them and to seek the investigation and prosecution of the perpetrators, they become even more vulnerable to criminals, as the resulting impunity transforms them into easy and more attractive targets.<sup>81</sup>

41. To facilitate the access of smuggled migrants to justice, UNODC recommends, inter alia: criminalizing aggravated forms of smuggling under national legislation; establishing means for the early identification of smuggled migrants who may be victims of crime by training front-line officers to conduct identification and referral procedures with a victim-/survivor-centred approach; ensuring that migrants have meaningful access to free legal aid services if they lack the means to pay for a lawyer in their capacity as victims;<sup>82</sup> and informing migrants about their rights and about where and how they may access services specific to their needs.<sup>83</sup> Information regarding rights and legal processes that smuggled migrants may be interested in, including in respect of any charges against smugglers or concerning their status in the country where they are found, should be communicated in a manner and language that they understand.<sup>84</sup>

42. In cases of aggravated forms of smuggling or related crimes committed against smuggled migrants, the protection and assistance measures provided for by article 25 of the Organized Crime Convention are also applicable, reinforcing victims' rights to be protected against retaliation and intimidation, be heard in court, access fair and effective remedies to seek investigation and prosecution of the perpetrators, and compensation and restitution.<sup>85</sup>

43. Scholars also highlight the need to provide access to justice for the families of missing migrants.<sup>86</sup> On the basis of the rights to family life, to an identity and to know, it is argued that States should facilitate, using technology already applied for security purposes, such as biometric data, the creation of an international database of missing migrants, allowing families to find out the fate of their relatives. Such a database should observe all the necessary caution regarding the right to privacy and data protection. The retrieval of bodies and the issuance of humanitarian visas to facilitate

<sup>77</sup> UNODC, "Policy brief on accessing justice", pp. 5 and 6.

<sup>78</sup> UNODC, *Abused and Neglected*, pp. 71 and 72.

<sup>79</sup> General Assembly resolution [73/195](#).

<sup>80</sup> General Assembly resolution [76/266](#), annex, para. 61.

<sup>81</sup> UNODC, *International Framework*, p. 40

<sup>82</sup> This should also be provided in the event that they are facing criminal charges or police detention related to their status.

<sup>83</sup> UNODC, "Policy brief on accessing justice".

<sup>84</sup> *Ibid.*

<sup>85</sup> UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (2017), paras. 415–424.

<sup>86</sup> Sara Lodi, "The Mediterranean Sea and the right to know about the fate of missing relatives: access to justice for families of missing migrants", (*SOAS Law Journal*, vol. 3, No. 1 (February 2016)).

the identification and mourning of deceased migrants are also important measures. Determining the fate of missing migrants is essential to allow their families to access justice.

**(c) Smuggled migrants as witnesses**

44. Smuggled migrants may not always be victims of crimes but, as the object of smuggling, they are witnesses to at least this crime and potentially other related crimes committed by smugglers, traffickers, criminal groups or State agents. As such, besides the protective measures provided for by the Smuggling of Migrants Protocol, especially in articles 5 and 16, they are entitled to protection under article 24 of the Organized Crime Convention. The testimony of smuggled migrants is often essential for the investigation and prosecution of smugglers and other criminals, and article 24 requires States to take all appropriate measures to ensure that witnesses can testify in safety, without fear of intimidation or reprisals. When legislation is enacted and/or policies are adopted to protect smuggled migrants who cooperate with and participate in the criminal justice process, cooperation increases.<sup>87</sup>

45. Possible protection measures vary according to the situation and may include police escort to the courtroom and other police measures to enhance physical security; temporary visas or residence permits; court procedures to ensure the safety of witnesses during the giving of testimony, such as using closed-circuit television or videoconferences or allowing witness anonymity; or even resettlement of witnesses under a new identity in their own or another country.<sup>88</sup> It is important to provide assistance before and during the trial, enabling migrants to cope with the psychological and practical implications of testifying,<sup>89</sup> to obtain the informed consent of the witnesses and to guarantee that witness protection mechanisms are gender-sensitive.<sup>90</sup> Since smuggled migrants are highly exposed to violence and abuse and experience traumatic events, measures such as residence permits and visas can also be used to ensure that migrants have time to reflect on their situation and make an informed decision about whether or not to participate in a criminal justice process.<sup>91</sup>

**5. Protection against enforced disappearance**

46. According to the Working Group on Enforced or Involuntary Disappearances, “there is a direct link between migration and enforced disappearance, either because individuals leave their country as a consequence of a threat or risk of being subjected to enforced disappearances there, or because they disappear during their journey or in the country of destination”.<sup>92</sup> Enforced disappearances may occur in the form of abduction for political or other reasons, in the context of detention or deportation processes or as a consequence of smuggling and/or trafficking.<sup>93</sup>

47. The factors that contribute both directly and indirectly to the enforced disappearance of migrants are, inter alia, restrictive, securitized/militarized and dehumanizing migration and border governance policies, including immigration

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<sup>87</sup> UNODC, *International Framework*, p. 40.

<sup>88</sup> Ibid.

<sup>89</sup> UNODC, *International Framework*, p. 40; and UNODC, *Model Law*.

<sup>90</sup> Vivian Chukwudumebi Madu and Nnenna Joy Eboh, “Establishing gender sensitive witness and victim protection measures in complex criminal cases”, *Journal of Law, Policy and Globalization*, vol. 112 (2021).

<sup>91</sup> UNODC, *Model Law*.

<sup>92</sup> [A/HRC/36/39/Add.2](#).

<sup>93</sup> Ibid.

detention, pushbacks and chain pushbacks; the systematic failure of search and rescue operations; corrupt State agents; collective expulsion; and discrimination.<sup>94</sup>

48. To prevent migrants from becoming victims of this human rights violation, the Committee on Enforced Disappearances emphasizes the prohibition of secret detention of migrants and stresses that deprivation of liberty for immigration-related reasons should always be a measure of last resort. It also highlights the need for regular and systematic collection of disaggregated data and the generation of accurate statistics to better understand the scale of the problem of the disappearance of migrants and the importance of enhancing regular pathways for migration, guaranteeing the right to seek legal protection based on individual risk assessment and facilitating consular assistance.<sup>95</sup>

49. States have a duty to search for disappeared persons, conduct effective investigations to determine their fate and prosecute and punish, when appropriate, the perpetrators.<sup>96</sup> Recognizing missing migrants as victims of enforced disappearance is an important measure to ensure their rights to truth and justice, reparation and guarantees of non-repetition.<sup>97</sup> Moreover, saving lives and establishing coordinated international efforts on missing migrants is objective 8 of the Global Compact for Migration,<sup>98</sup> while the number of people who died or disappeared in the process of migration towards an international destination is one of the indicators of target 7 of Sustainable Development Goal 10 (facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies).<sup>99</sup>

## 6. Assistance measures at sea

50. In 2023, the Working Group on the Smuggling of Migrants adopted eight recommendations under the agenda item entitled “Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea”, encouraging States to, inter alia, carry out search and rescue operations in accordance with domestic law and applicable international instruments, prioritize disembarkation in a place of safety, uphold the principle of non-liability and protect lives at sea.<sup>100</sup>

51. Smuggling of migrants by sea is still the deadliest form of smuggling. At least 37,511 migrants have drowned since 2014.<sup>101</sup> States have the duty to preserve life at sea and assist migrants in distress without discrimination. This duty is paramount and takes priority over other concerns, including law enforcement objectives.<sup>102</sup>

52. Despite being a long-standing maritime tradition and a legal obligation based on international maritime conventions and international human rights law, and applicable both to State and private vessels, a survey focused on merchant marine shipping revealed that more than 50 per cent of the respondents do not feel sufficiently equipped and trained to safely assist migrants at sea.<sup>103</sup> To better address maritime migration and its impact on seafarers, the respondents suggested to decision-makers, inter alia, the provision of more support for non-governmental organizations to assist

<sup>94</sup> A/HRC/36/39/Add.2; Committee on Enforced Disappearances, general comment No. 1 (2023) on enforced disappearance in the context of migration; and Valentina Azarova, Amanda Danson Brown and Itamar Mann, “The enforced disappearance of migrants”, *Boston University International Law Journal*, vol. 40 (2022).

<sup>95</sup> Committee on Enforced Disappearances, general comment No. 1 (2023).

<sup>96</sup> Ibid.

<sup>97</sup> Committee on Enforced Disappearances, general comment No. 1 (2023); and Azarova, Danson Brown and Mann, “The enforced disappearance of migrants”.

<sup>98</sup> General Assembly resolution 73/195.

<sup>99</sup> General Assembly resolution 70/1.

<sup>100</sup> CTOC/COP/WG.7/2023/5.

<sup>101</sup> IOM, Missing Migrants Project up to 26 March 2024.

<sup>102</sup> UNODC, *International Framework*, pp. 35–37.

<sup>103</sup> Marc Tilley and others, “Mass rescue at sea: a global perspective” (Geneva, Centre for Humanitarian Action at Sea, 2023).

migrants instead of commercial ships (74.78 per cent); greater cooperation between States to make disembarkations smoother (72.17 per cent); more legal support to protect seafarers from criminalization (69.57 per cent); and training to inform seafarers of the legal and operational context (44.35 per cent).<sup>104</sup>

53. Criminalization is an obstacle for search and rescue operations by commercial and humanitarian vessels.<sup>105</sup> It hampers the provision of assistance to migrants in distress at sea, increasing the risks to their lives and safety, and disregards article 6, paragraph 1, article 8, paragraph 5, and article 16 of the Smuggling of Migrants Protocol. The intention to obtain, directly or indirectly, a financial or other material benefit is an essential element of the crime of migrant smuggling.<sup>106</sup> Search and rescue operations to save people in distress at sea are an international obligation and thus not criminalized under the Protocol. It is crucial that States enable a supportive and safe environment for persons, organizations or companies providing humanitarian assistance to migrants at sea, and ensure that human rights defenders, civil society actors, private companies and anyone providing such assistance are not exposed to reprisals or intimidation and are not criminalized for their involvement in search and rescue operations concerning migrants, in monitoring and documenting violations or in providing any other form of assistance to migrants.<sup>107</sup>

## V. Responses: an overview of good or promising practices and lessons learned

### A. National legislation

54. The Nigerian Immigration Act of 2015 is a positive example of domestic application of the international legal framework on protection and assistance measures for smuggled migrants.<sup>108</sup> Besides prohibiting discriminatory treatment, it provides, inter alia, that smuggled migrants have: the right to temporary residence visas for the duration of any pending criminal, civil or other legal action; access to adequate health and other social services during their temporary residence; access to the embassy or consulate of their country of citizenship or else to the diplomatic representative that takes charge of their State; and the right to return home safely, should they so wish. It also provides for the creation of transit shelters where smuggled migrants can be provided with protection, assistance, counselling, rehabilitation and reintegration into society.<sup>109</sup>

55. According to the Act, the investigation, detection, gathering and interpretation of evidence must be conducted in a manner that minimizes intrusion into the personal history of the smuggled migrant, whose identity must be protected. The detention and prosecution of smuggled migrants for the reason of being smuggled is explicitly prohibited. The Act also establishes the duty to protect smuggled migrants and their families from intimidation, threats and reprisals from smugglers, their associates and public authorities. In the event of the judicial conviction of a smuggler, in addition to any penalty or measure, the offender may be ordered to return to the smuggled persons any money or property obtained from them in the course of or for the purpose of the smuggling; and to defray the medical and other expenses of the persons incurred as a

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<sup>104</sup> Ibid.

<sup>105</sup> European Union Agency for Fundamental Rights, “Search and rescue operations in the Mediterranean and fundamental rights”, 11 October 2023; and International Commission of Jurists, “Criminalization of humanitarian and other support and assistance to migrants and the defence of their human rights in the EU” (2022).

<sup>106</sup> CTOC/COP/WG.7/2023/2, paras. 19–25.

<sup>107</sup> OHCHR and Global Migration Group, *Principles and Guidelines*; OHCHR, “Lethal disregard: search and rescue and the protection of migrants in the central Mediterranean Sea” (Geneva, 2021); and Committee on Enforced Disappearances, general comment No. 1 (2023).

<sup>108</sup> UNODC and Canada, STARSOM, “Pocket book”.

<sup>109</sup> Nigerian Immigration Act, 2015.

result of any injury, loss or damage suffered in connection with or as a result of the smuggling offence. Furthermore, the legislation grants smuggled migrants the right to seek material and non-material compensation from smugglers through civil action regardless of the existence or outcome of criminal proceedings related to the same facts. Lastly, it created the Objects of Smuggling of Migrants Trust Fund, which should be maintained by all the proceeds of the sale of assets and properties of smugglers and be used to pay compensation to smuggled migrants when the convicted offender has no or insufficient resources to do so.<sup>110</sup>

56. The Philippine Migrant Workers Act of 1995<sup>111</sup> contains a range of measures to ensure that migrant workers can access their rights in their destination countries, regardless of whether or not they are in distress. Although not all migrant workers have been smuggled, the measures can also benefit smuggled migrants. They include the establishment of an emergency repatriation fund, the mandatory repatriation of underage migrant workers and the establishment of resource centres for migrant workers and other overseas Filipinos. The centres are located on the premises and under the administrative jurisdiction of Philippine embassies. They offer counselling and legal services; welfare assistance, including the procurement of medical and hospitalization services; information, advice and programmes to promote social integration; schemes for the registration of undocumented workers; training and upgrading of skills; gender-sensitive programmes and activities to assist with the particular needs of women migrant workers; and orientation programmes for returning workers and other migrants.

57. Although Pakistan is not yet a State party, the rules issued by the Ministry of Interior<sup>112</sup> regulating the Prevention of Smuggling of Migrants Act of 2018<sup>113</sup> also contain good examples of provisions on protection and assistance measures. They ensure access to consular offices for smuggled migrants who are arrested, detained or in custody, but also guarantee that if the persons indicate in writing that they do not want to have contact with the consular office, that choice must be respected, which might be essential in the case of smuggled asylum seekers. Moreover, they explicitly provide for access to any medical care that is urgently required for the preservation of life or the avoidance of irreparable harm to health and establish relevant referral procedures. The provision of necessary medical or other assistance to persons who have special needs, such as unaccompanied children or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence, is also covered by the rules.

58. The aforementioned rules focus in particular on the needs of smuggled children and vulnerable migrants. The measures designed for children include identification of the level of risk that the child may be exposed to, including any gender-related needs; the assessment of actual and potential protective and supportive factors in the home and broader environment to minimize risk to the child; the conduct of a medical examination in the presence of the parent or any other person in whom the child reposes trust or confidence; and the taking of all necessary steps to establish the identity and nationality of unaccompanied children and locate their parent or guardian. The rules also list all the relevant information about rights and duties that must be provided to smuggled migrants in a clear manner and in a language that they understand and provide for the protection of personal information regarding smuggled migrants and witnesses.<sup>114</sup>

59. In Belgium, access to the protection systems originally designed for victims of trafficking in persons was extended to certain smuggled migrants, particularly those

<sup>110</sup> Ibid.

<sup>111</sup> Available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/3799>.

<sup>112</sup> Pakistan, Ministry of Interior, Prevention of Smuggling of Migrants Act, 2018, Statutory Regulatory Order S.R.O. (I)/2020 (22 October 2020).

<sup>113</sup> Available at <https://sherloc.unodc.org/>.

<sup>114</sup> Pakistan, Statutory Regulatory Order S.R.O. (I)/2020.

who have experienced aggravated smuggling. The country's legislation also provides for a reflection period during which smuggled migrants can decide whether to make a statement or file a complaint.<sup>115</sup> This is in accordance with Council Directive 2004/81/EC, which provides for the issuance of residence permits to third-country nationals who are victims of trafficking or have been the subject of an action to facilitate illegal immigration, and cooperate with the competent authorities. During the reflection period, which should allow migrants to recover, escape the influence of the perpetrators and take an informed decision as to whether to cooperate, migrants must be granted standards of living capable of ensuring their subsistence and access to emergency medical treatment (article 7).

## B. Regular migration pathways as a preventive protection measure

60. The demand for smuggling services is largely determined, among other things, by the limits of legal channels, which cannot satisfy the total demand for regular migration, as well as the costs of legal migration, which some migrants cannot afford.<sup>116</sup> During its eighth meeting, the Working Group on the Smuggling of Migrants discussed the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants<sup>117</sup> and adopted five recommendations on this topic, recognizing the importance of regular migration pathways in curbing the crime of migrant smuggling.<sup>118</sup> Recent events and research regarding migration from Ukraine have reinforced this analysis, demonstrating that regular migration pathways are also a preventive protection measure.

61. According to the Mixed Migration Centre, the activation of the European Union Temporary Protection Directive to open a regular migration pathway to Ukrainians and guarantee the rights to enter, move and work in the European Union proved to be an extremely efficient strategy against migrant smuggling, as it “has disrupted the business model of smugglers on a massive scale”.<sup>119</sup> Of the 1,413 people displaced from Ukraine to Berlin, Bern and Warsaw who were surveyed, only 4.4 per cent reported having used smugglers to cross a border.<sup>120</sup> The positive effect becomes even more evident when compared with other migration flows. Of 1,115 Afghans interviewed in Greece and Italy between 2019 and 2023, only two had not used smugglers to enter the European Union.<sup>121</sup> Similarly, only 15 of 333 Iraqis and Syrians interviewed in the European Union had not used smugglers.<sup>122</sup>

62. As described by the United Nations Network on Migration, pathways for regular migration are “an effective tool to ensure the protection of migrants and their rights, including migrants in situations of vulnerability”,<sup>123</sup> as they drastically reduce the need for and use of smugglers and, consequently, the risks that smuggled migrants are exposed to not only during their journeys but also when they reach their destinations. Employment authorities in Berlin have reported that granting Ukrainian migrants the

<sup>115</sup> UNODC, *Model Law*.

<sup>116</sup> *Global Study on Smuggling of Migrants*, pp. 6, 37 and 38.

<sup>117</sup> [CTOC/COP/WG.7/2021/2](#).

<sup>118</sup> [CTOC/COP/WG.7/2021/5](#).

<sup>119</sup> Mixed Migration Centre, “How to break the business model of smugglers”, 27 September 2023. See also Maxime Giraudet, “Displaced from Ukraine to Warsaw: a case study on journeys, living conditions, livelihoods and future intentions”, Mixed Migration Centre Paper (June 2023); Jean-Luc Jucker, Roberto Forin and Maxime Giraudet, “Displaced from Ukraine to Bern: a case study on journeys, living conditions, livelihoods and future intentions”, Mixed Migration Centre Paper (June 2023); and Roberto Forin and Maxime Giraudet, “Displaced from Ukraine to Berlin: a case study on journeys, living conditions, livelihoods and future intentions”, Mixed Migration Centre Paper (June 2023).

<sup>120</sup> Mixed Migration Centre, “How to break the business model of smugglers”.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> United Nations Network on Migration, “Guidance note on regular pathways for admission and stay for migrants in situations of vulnerability” (2021), paras. 1 and 15.



right to work significantly reduced the risks of them falling into severe forms of exploitation.<sup>124</sup>

### C. Information and awareness-raising as a preventive protection measure

63. Afghanistan, Bangladesh, Iraq, Kyrgyzstan, Pakistan, Sri Lanka and Tajikistan<sup>125</sup> have established partnerships under the Silk Routes project of the International Centre for Migration Policy Development, in order to create and operate migrant resource centres in each of these countries. The centres provide existing and potential migrants with information on a broad range of migration-related challenges and opportunities. They are staffed by a team of counsellors who provide consultations in person, by phone and via online platforms, and raise awareness of the benefits of safe and regular migration and the dangers and consequences of irregular migration.<sup>126</sup> The centres also provide information to governmental and non-governmental stakeholders involved in the facilitation or communication of migration and related issues, and conduct information sessions at relevant locations and events, such as vocational and technical training schools, universities, colleges and schools, as well as with communities and during conferences and other events.<sup>127</sup> Such initiatives help people to make informed decisions when considering migrating, may work as an important preventive protection measure and are aligned with objective 3 of the Global Compact for Migration (provide accurate and timely information at all stages of migration).<sup>128</sup>

### D. Available tools for vulnerability screenings

64. The Vulnerability Screening Tool, developed jointly by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Detention Coalition, the IOM Screening Form for Migrants Vulnerable to Violence, Exploitation and Abuse and the Screening and Referral Toolkit, an application developed by UNHCR and the Bali Process Regional Support Office, are some examples of publicly available tools that can be used by States to develop or improve their screening processes. The Screening and Referral Toolkit app, for example, offers screening questionnaires in 15 different languages, including with audio to facilitate communication with migrants.

## VI. Points for reflection

65. The full and effective implementation of the Smuggling of Migrants Protocol depends on the provision of protection and assistance measures to smuggled migrants and should not be to their detriment. The prevention and combating of migrant smuggling is intrinsically connected with respect for the human rights of smuggled migrants, in accordance with the Smuggling of Migrants Protocol and applicable international law, including international humanitarian law and international human rights law.

<sup>124</sup> Forin and Giraudet, “Displaced from Ukraine to Berlin”, p. 15.

<sup>125</sup> The migrant resource centre in Kyrgyzstan was recently announced and is not yet established. See International Centre for Migration Policy Development, “PROTECT project ‘Improving migration management in selected Silk routes and Central Asian countries’ launches in Osh, Kyrgyzstan”, 7 March 2024.

<sup>126</sup> Available at [www.migrantresources.org/](http://www.migrantresources.org/).

<sup>127</sup> Ibid.

<sup>128</sup> General Assembly resolution 73/195.