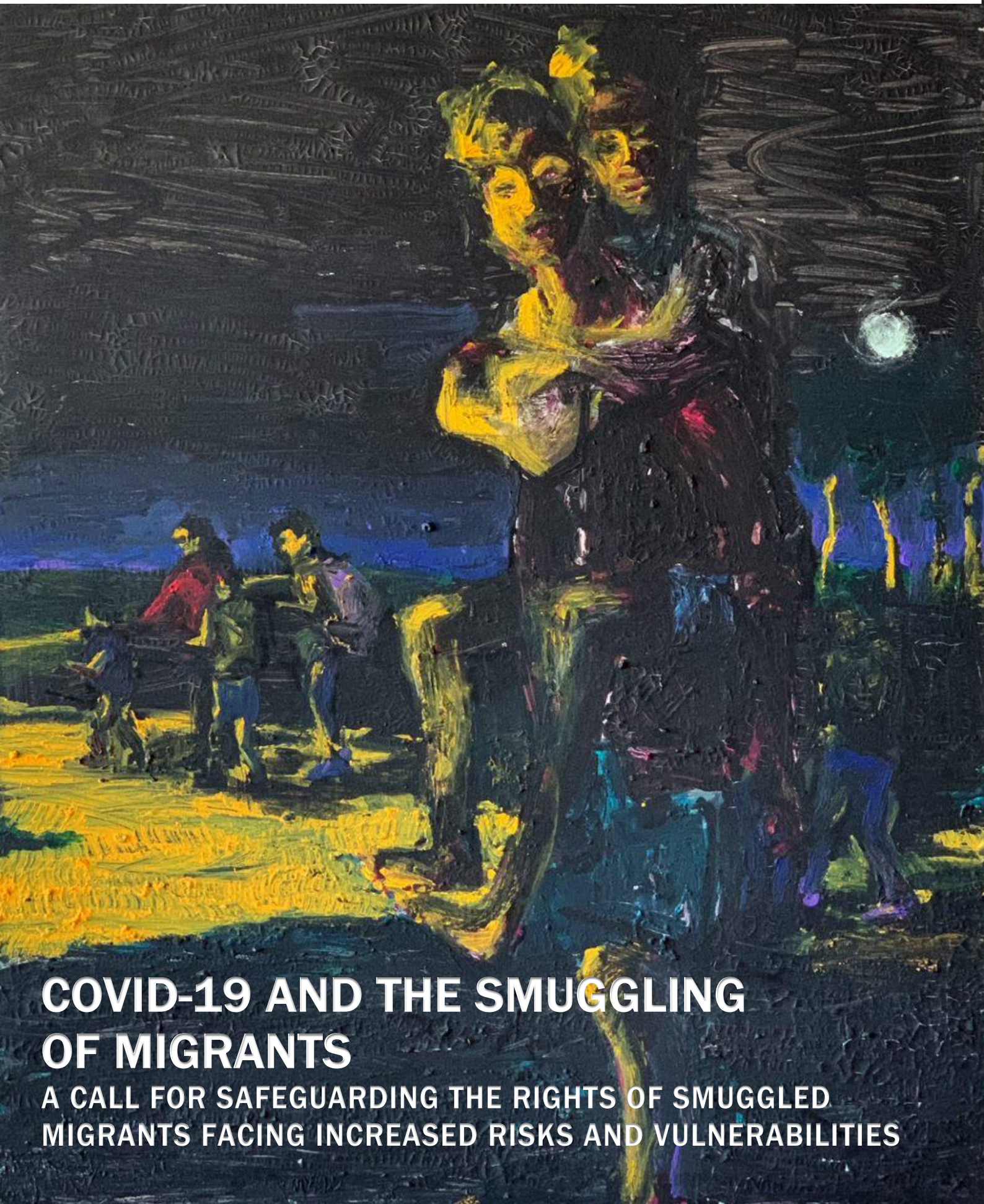




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United Nations Office on Drugs and Crime



COVID-19 AND THE SMUGGLING OF MIGRANTS

**A CALL FOR SAFEGUARDING THE RIGHTS OF SMUGGLED
MIGRANTS FACING INCREASED RISKS AND VULNERABILITIES**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
VIENNA

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FOREWORD

The content of this paper was originally prepared in the context of the 30th session of the ECOSOC Commission on Crime Prevention and Criminal Justice, the United Nations' annual global forum on criminal justice.

The Economic and Social Council decided in 2016 that the theme of the 2020 Crime Commission 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 COVID-19 disease, this 2020 Crime Commission session was postponed to 2021.

To support discussions of Member States, civil society and expert stakeholders, UNODC developed a *Thematic Guide*¹ on this topic, which provided 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 presented an overview based on preliminary data gathered on the vulnerabilities faced by those resorting to the services of smugglers in the context of the pandemic. This current publication largely draws from this 2021 *Thematic Guide*, and includes elements published in the context of a previous *Guide*² developed for the postponed 2020 Commission session.

In late 2021, as States still reckon with the dynamic impact of the COVID-19 pandemic and its new variants, UNODC continues to support multilateral efforts to provide responses to the pandemic, while seeking to ensure those efforts address the needs and uphold the rights of those in a situation of particular vulnerability, such as smuggled migrants and refugees. Such efforts should be strategically consistent with a broad approach to address the challenges and seize the opportunities arising from international migration. Through objective 9 of the Global Compact for Safe, Orderly and Regular Migration, Member States committed themselves to, inter alia, strengthening capacities and international cooperation to prevent, investigate, prosecute, and penalize the smuggling of migrants to end the impunity of smuggling networks.

In the context of the pandemic, this joint commitment is more relevant than ever. To help States turn these objectives into action, UNODC will continue collecting data, developing guidance, and providing technical cooperation as well as supporting multilateral platforms for policy development, with a view to advancing short and long-term responses to the effects of the pandemic on mixed migration flows and on smuggled refugees and migrants in particular.

¹ UNODC, “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”, E/CN.15/2021/6, 2021.

² UNODC, “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”, E/CN.15/2020/6, 2020.

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1. INTRODUCTION

The present paper focuses on ongoing prevention and protection issues arising from the vulnerabilities faced by people on the move due to the impact of the COVID-19 pandemic.

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.

Responses to the COVID-19 pandemic have also had a profound impact on organized criminal groups,³ including migrant smuggling networks, forcing adjustments in modus operandi and increasing, in some cases, the demand for and profitability of smuggling services.

³ United Nations Office on Drugs and Crime (UNODC), “The impact of COVID-19 on organized crime”, Research Brief (Vienna, 2020), p.9.

2. DEVELOPMENTS IN THE INTERNATIONAL FRAMEWORK

The smuggling of migrants is intrinsically a transnational crime; international cooperation must therefore be placed at the heart of efforts to address it effectively.

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, 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 thereto⁴ 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.

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 2021,⁵ States highlighted that responses to the smuggling of migrants should protect migrants' rights, particularly under circumstances related to the COVID-19 pandemic.

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.

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

⁴ Read more at UNODC, Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

⁵ The ECE region, the first under review, includes 59 Member States from North America, Europe and Central Asia.

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. The United Nations Office on Drugs and Crime (UNODC) has published a technical issue paper to provide practical guidance on the concept.⁶

⁶ UNODC, *The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper* (2017), United Nations publication, Sales No. E.06.V.5, p. 469.

3. KEY FACTS AND TRENDS ON THE SMUGGLING OF MIGRANTS

3.1. SMUGGLING ROUTES⁷

Recent smuggling trends show that the main identified areas of origin for smuggled persons are the Horn of Africa, West Africa, North Africa, Central America, parts of the Middle East and areas in South, West, East and South-East Asia. Those coming from the Horn of Africa, for example, travel along one of three major identified routes, to the countries of the Gulf Cooperation Council, Southern Africa, or North Africa and/or Europe.

In Asia, various smuggling routes are used and include land, sea and air routes. Migrants from South Asia, for example, may be smuggled by air into Europe, South Africa, Australia or North America. Smuggling within the region is also common.

As a destination region, the European Union saw a significant number of smuggled migrants and refugees arriving from West and North Africa and the Horn of Africa between 2016 and 2017. For instance, 89 per cent of those who arrived in Italy by sea were from African countries, while in Spain, 94 per cent of migrants who arrived irregularly were from Africa. It is assumed that a significant proportion of those people were smuggled by sea to Europe.

In North America, the vast majority of smuggled migrants and refugees who arrived at the southern borders of the United States of America originated from Mexico and Central American countries.

3.2. PROFILES OF SMUGGLED MIGRANTS AND SMUGGLERS⁸

Young men comprise the majority of those identified as smuggled migrants and they typically travel without family members. As an example, South Asian smuggled migrants were predominantly men between the ages of 18 and 30 years. This is similar to the trends observed on smuggling routes from the Horn of Africa to South Africa, where most of those smuggled were men between the ages of 18 and 35 years. Smuggling routes from Central America and Mexico into the United States primarily involve men, although it is estimated that between 20 and 25 per cent of those smuggled on those routes are women.

The profiles of those involved in the smuggling of migrants are varied. As with most forms of crime, the smuggling of migrants typically involves men, and their average age falls between 30 and 35 years. Often, smugglers have the same national and/or ethnic background as those they smuggle or they are from the regions that the smuggling routes lead through. More recent trends suggest that many

⁷ UNODC, *Global Study on Smuggling of Migrants 2018*, (United Nations publications 2018), pp. 33–36.

⁸ *Ibid.*, pp. 36–37.

smugglers may have themselves been previously smuggled. Smuggling enterprises can be sophisticated organized criminal groups or loosely affiliated groups that pool their skills and resources. More sophisticated groups have the ability to operate in larger areas and can make significant profits, while smaller, loosely based organizations are more closely tied to the demand for their services in their communities, and the profit available to them may be less significant.

3.3. CRIMES COMMITTED AGAINST PEOPLE IN THE CONTEXT OF THE SMUGGLING OF MIGRANTS

Migrants and refugees are at risk of being victimized during smuggling operations. The *UNODC Global Study on Smuggling of Migrants* notes that, in 2017, at least 382 migrants were recorded as victims of homicide (murder or manslaughter).⁹ Additionally, reported crimes against migrants in the context of smuggling include all forms of assault, sexual violence, robbery, fraud, inhuman or degrading treatment, deprivation of liberty, enforced disappearance and extortion. As outlined in the *UNODC Global Report on Trafficking in Persons 2016*,¹⁰ there is a clear link between the broader migration phenomenon and trafficking in persons, as people who migrate and refugees escaping from conflict and persecution are particularly vulnerable to being trafficked. With information on more than 90,000 assisted trafficking victims, the Counter-Trafficking Data Collaborative of the International Organization for Migration (IOM) reports that nearly 80 per cent of transnational cases involved crossing at an official checkpoint, with 9 per cent involving the use of forged documents,¹¹ making it highly plausible that large numbers of those trafficked persons had employed the services of smugglers.

3.4. GENDER-BASED VIOLENCE

Women and girls migrate to escape violence.¹² Tragically, women and girls fleeing violence face risks of sexual violence during their migration and may be more vulnerable to being trafficked.¹³ As detailed in the 2019 report of the Secretary-General on violence against women migrant workers¹⁴:

“Travelling along certain migration corridors poses great risks for women and girls, including the risk of sexual violence by criminal gangs, human traffickers, other migrants and corrupt officials. For example, it is estimated that 60 to 80 per cent of migrant women and girls travelling through Mexico to the United States of America are raped at some stage on their journey. Along the central Mediterranean route, estimates show that up to 90 per cent of women and girls are raped en route to Italy.”

⁹ *Global Study on Smuggling of Migrants 2018*, p. 39.

¹⁰ UNODC, *Global Report on Trafficking in Persons 2016*, (United Nations publication, Sales No. E.16.IV.6), p. 13.

¹¹ UNODC, *Global Report on Trafficking in Persons 2018* (United Nations publication, Sales No.E.19.IV.2), p. 47.

¹² See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), “Gender assessment of the refugee and migration crisis in Serbia and the former Yugoslav Republic of Macedonia” (Istanbul, Regional Office for Europe and Central Asia, 2016).

¹³ *Global Study on Smuggling of Migrants 2018*, p. 41.

¹⁴ A/74/235.

4. IMPACT OF COVID-19 ON MIGRATION AND ASYLUM

4.1. ASYLUM PROCEEDINGS AND PATHWAYS FOR REGULAR MIGRATION

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.¹⁵ 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 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-19.¹⁶ 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.¹⁷

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,¹⁸ 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.¹⁹ 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.²⁰ Furthermore, some States have put resettlement arrivals on hold in view of the public health situation, which affects their capacity to receive resettled refugees.²¹

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

¹⁵ United Nations, "Policy brief: COVID-19 and people on the move (June 2020), p. 2.

¹⁶ International Organization for Migration (IOM), Displacement Tracking Matrix (COVID-19), "Global mobility restriction overview", 19 March 2020.

¹⁷ 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.

¹⁸ 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.

¹⁹ IOM, "Challenges of irregular migration: addressing mixed migration flows" (MC/INF/294, para. 6).

²⁰ Office of the United Nations High Commissioner for Refugees (UNHCR), COVID-19 Platform, "Temporary Measures and Impact on Protection".

²¹ UNHCR, "IOM, UNHCR announce temporary suspension of resettlement travel for refugees", 17 March 2020.

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.²² 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.²³ As of January 2021, UNHCR reported that in several countries asylum systems remain fully or partially out of operation,²⁴ which indicates that the pandemic continues to make it more difficult for asylum seekers to access international protection.

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.²⁵

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.²⁶

4.2. EFFECT OF COVID-19 ON THE DRIVERS OF MIGRATION

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.²⁷

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. 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

²² European Asylum Support Office, “COVID-19 emergency measures in asylum and reception systems” (June 2020), p. 19.

²³ *Ibid.*, pp. 18–20.

²⁴ UNHCR, COVID-19 Platform.

²⁵ IOM, “COVID-19 impact on stranded migrants” (September 2020), p. 4.

²⁶ 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.

²⁷ Mixed Migration Centre, “COVID-19 Global Thematic Update, No. 1: impact of COVID-19 on migrant smuggling” (September 2020).

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.²⁸

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.²⁹ 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 vulnerabilities.³⁰ 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.

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.³¹ This increased demand for labour, including for migrant workers, may have an impact on migratory flows and migration policies.

4.3. EFFECT OF COVID-19 ON THE SMUGGLING OF MIGRANTS

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.

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. 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

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

²⁹ 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.

³⁰ 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).

³¹ 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).

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.

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.³²

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.³³ UNHCR recorded 94,950 arrivals of refugees and migrants who had crossed the Mediterranean Sea in 2020, compared with 123,663 in 2019.³⁴ 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 2021, 90 per cent of irregular entries into the European Union involved the assistance of smuggling services.³⁵

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.³⁶ Similarly, in a survey of migrants undertaken by the Mixed Migration Centre,³⁷ 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.³⁸ Factors relating to the pandemic have made smuggling journeys more expensive³⁹ and have increased the risks of exploitation and aggravation when migrants cannot pay or are faced with additional fees during the journey.

³² UNODC, "Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling", pp. 17–18.

³³ *Ibid.*, p. 5.

³⁴ UNHCR, Operational Portal.

³⁵ Katrien Luyten and Stephanie Brenda Smialowski, "Understanding EU action against migrant smuggling", European Parliamentary Research Service (January 2021), p. 1.

³⁶ European Union Agency for Law Enforcement Cooperation (Europol), "How COVID-19-related crime infected Europe during 2020" (November 2020), p. 12.

³⁷ Mixed Migration Centre, "COVID-19 Global Thematic Update, No.1".

³⁸ Information provided by the UNODC Liaison and Partnership Office in Mexico.

³⁹ UNODC, "Research brief: how COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling", pp. 5–6.

5. RISKS AND VULNERABILITIES LINKED TO THE SMUGGLING OF MIGRANTS IN THE COVID-19 CONTEXT

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.

5.1. INCREASED RISKS AND AGGRAVATED FORMS OF SMUGGLING

UNODC research shows that thousands of migrants die during smuggling activities every year.⁴⁰ 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.

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.⁴¹ 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 closure of borders and other restrictions on mobility have led migrants to use more dangerous routes where rescue and humanitarian assistance are often unavailable.⁴² 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

⁴⁰ *Global Study on Smuggling of Migrants 2018*, p. 9.

⁴¹ Europol, "How COVID-19-related crime infected Europe", p. 12.

⁴² Sanchez and Achili, *Stranded: The Impacts of COVID-19*, p. 3.

outbreak.⁴³ In the Mediterranean Sea, 1,166 migrants lost their lives in transit in 2020,⁴⁴ and many more disappeared.

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. In addition, smugglers' quest for profits may lead them to neglect the safety of migrants during journeys.⁴⁵ 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.

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.⁴⁶ 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.

5.2. TRAFFICKING IN PERSONS

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.

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

⁴³ Mixed Migration Centre, "COVID-19 Global Thematic Update, No.1".

⁴⁴ UNHCR, Operational Portal.

⁴⁵ *Global Study on Smuggling of Migrants 2018*, p. 9.

⁴⁶ 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.

under exploitative conditions including sexual exploitation and forced labour.⁴⁷ 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 labour in poorly regulated economic sectors such as agriculture, construction, the fishing industry and mining.

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 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.⁴⁸

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).

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.⁴⁹ 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.⁵⁰ 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.⁵¹

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

⁴⁷ 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).

⁴⁸ *Global Report on Trafficking in Persons 2020*, United Nations publication, 2020, pp. 9–10.

⁴⁹ 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.

⁵⁰ UN-Women and OSCE, *Guidance on Addressing Emerging Human Trafficking Trends*, p. 32.

⁵¹ UNODC, "Impact of the COVID-19 pandemic on trafficking in persons: preliminary findings and messaging based on rapid stocktaking" (Vienna, 2020), p. 1.

information and recruit victims,⁵² 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.⁵³

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

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”.⁵⁴

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.⁵⁵

5.3. PUSHBACKS, IMPEDIMENTS TO SEARCH AND RESCUE OPERATIONS AND FORCED RETURNS

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.

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.⁵⁶ 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

⁵² 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.

⁵³ *Ibid.*, p. 4.

⁵⁴ Inter-Agency Coordination against Trafficking in Persons, “20th anniversary of the trafficking in persons protocol: an analytical review” (December 2020), p. 14.

⁵⁵ 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.

⁵⁶ 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.

use of force and destruction of belongings.⁵⁷ Serious allegations of boats with irregular migrants on board being pushed back into international waters are also under official inquiry.⁵⁸ 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.⁵⁹ 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.⁶⁰

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.⁶¹ 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.

5.4. EXPOSURE TO COVID-19 AND COMPROMISED ACCESS TO HEALTH CARE AND OTHER SERVICES

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.⁶² 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

⁵⁷ European Union Fundamental Rights Agency, *Migration: Fundamental Rights, Issues at Land Borders* (Luxembourg, Publications Office of the European Union, 2020), pp. 19–22.

⁵⁸ European Commission, Migration and Home Affairs, “An extraordinary meeting of the Frontex Management Board on 9 December 2020”, 17 December 2020.

⁵⁹ 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.

⁶⁰ Office for the Coordination of Humanitarian Affairs, “Global humanitarian response plan COVID-19”, p.16.

⁶¹ UN News, “Migrants stranded “all over the world” and at risk from coronavirus, 7 May 2020.

⁶² United Nations, “Policy brief: COVID-19 and people on the move”, p. 9.

putting residents at higher risk of exposure to the virus.⁶³ 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.⁶⁴

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.⁶⁵ 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.⁶⁶

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.⁶⁷ 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, deportation or reporting, with 26 per cent of migrants indicating that this was a concern.⁶⁸

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.⁶⁹ 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.

⁶³ 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.

⁶⁴ INTERPOL, “COVID-19 impact on migrant smuggling and human trafficking”, 11 June 2020.

⁶⁵ UNHCR, “Regional Bureau for Europe: COVID-19”, Update, No. 22 (11–30 November 2020).

⁶⁶ IOM, COVID-19 Response, “COVID-19 immigration, consular and visa needs and recommendations”, Issue Brief, No. 4 (January 2021), p. 2.

⁶⁷ 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.

⁶⁸ Mixed Migration Centre and OHCHR, “COVID-19 and the socioeconomic situation of migrants in Niger”, p. 4.

⁶⁹ 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.

6. PROTECTION AND ASSISTANCE MEASURES

The Smuggling of Migrants Protocol recognizes and promotes the importance of safeguarding the rights of smuggled migrants. The Preamble to the Protocol emphasizes that the States parties recognize the need to provide migrants with humane treatment and full protection of their rights.

Specific obligations to protect are identified in article 16 of the Protocol, and general obligations to protect witnesses of offences are provided for in article 24 of the Organized Crime Convention. For example, States parties to the Protocol are obligated to provide appropriate assistance to migrants whose lives or safety are endangered as a result of having been smuggled, to afford migrants appropriate protection against violence, and to 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, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, the Vienna Convention on Consular Relations, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Additional guidance can be found in the relevant recommendations, resolutions and decisions of international bodies

It is also clear that women and children, including unaccompanied children, have specific needs and face particular risks that contribute to migration. According to the UNODC *Global Study on Smuggling of Migrants 2018*, unaccompanied smuggled children tend to be predominantly boys between the ages of 14 and 18 who are travelling to join family members already in the destination country, or who, on other occasions, are being sent ahead as “pioneers” of the family. Women may migrate owing to systemic and entrenched biases that manifest in situations of poverty and lack of opportunity.⁷⁰ Among the most common barriers faced by women that can contribute to decisions to migrate are the lack of access to education, work or adequate housing, experiences or fear of sexual and gender-based violence and fear of gender-specific persecution.

Similarly, boys and girls may seek to migrate in order to escape violence or to obtain an education or work. In addition, they may be sent ahead by their family members or, conversely, may migrate to reunite with family members who have previously migrated. In situations where they travel without, or are separated from, their parents or guardians, girls and boys face particular risks.

Multiple and intersecting forms of discrimination and violence against migrant women can be hidden by the myths and stereotypes surrounding violence against women, which persist and are similar

⁷⁰ United Nations Population Fund, “Five reasons migration is a feminist issue”, 9 April 2018.

throughout the world. One of these myths is that gender-based violence only happens in certain segments of society. For example, a multi-country study on the criminal justice responses to sexual violence, undertaken jointly by UNODC, the United Nations Entity for Gender Equality and the Empowerment of Women and the United Nations Development Programme, revealed that some justice officials believed that rape was something which only happened to “low-class” people, uneducated people or migrants, and also believed that there was a prevailing suggestion that acts of sexual violence were more prone to occur in locations considered to be fraught with “complexities”, for example, where residents were from different social backgrounds or where there were significant numbers of migrant workers and ethnic minority populations.³⁰

Accordingly, effective and comprehensive measures to prevent the smuggling of migrants and protect and safeguard the rights of migrants must include 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. In order to be effective, measures to protect the rights of smuggled migrants, particularly women and children, should be based on international human rights law and build on the specific provisions of relevant United Nations standards and norms in crime prevention and criminal justice.

6.1. THE IMPORTANCE OF IDENTIFICATION IN SUPPORTING EFFECTIVE PROTECTION AND ASSISTANCE RESPONSES

The ability of government officials or personnel of non-governmental organizations to provide support and services to smuggled migrants in need (including those who may be seeking asylum), in accordance with the measures contained in the Smuggling of Migrants Protocol and other relevant international frameworks, depends on the timely and accurate identification of such persons. In addition, it is critical to identify their specific needs so that they can be provided with access to appropriate services.³¹

Accurate identification of smuggled migrants and of their rights and needs can be enabled 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 in the case of children; a failure to properly identify children among smuggled migrants can result in a lack of age-appropriate responses and prevent adequate care.

6.2. PROTECTION REQUIRES AN APPRECIATION OF RIGHTS AND AVAILABLE SERVICES

Smuggled migrants need to be informed about their rights and about where and how they may access services specific to their needs. Migrants should also be provided with information concerning any legal processes that they may have an interest in, including in respect of any charges against smugglers, or concerning their status in the country where they are found. This information should be communicated to them in a manner and language that they understand. In the criminal justice context, measures should be taken to ensure that migrants have meaningful access to legal aid services if they lack the means to pay for a lawyer,³² in case they are facing criminal charges or police detention related to their status, as well as in their capacity as victims of crime.

7. CONCLUSIONS

7.1. WAY FORWARD: THE PREVENTION OF SMUGGLING AND THE PROTECTION OF SMUGGLED MIGRANTS

Irregular migration continues to occur globally and the reasons for this are varied. In the absence of sufficient alternatives for safe and regular travel, the smuggling of migrants will continue to provide the means, and may be the only available method, by which certain people can travel to another country.

The smuggling of migrants poses unique challenges that cannot be addressed by the criminal justice system alone. As the former Special Rapporteur on the Human Rights of Migrants has said, “the reasons that set people on the go, with or without smugglers, are social, political and economic. The differences in prosperity, peace and respect for human rights are the driving force of these movements of persons, as they have been throughout the history of our ancestors.”⁷¹

Countering the demand for the services offered by migrant smugglers requires confronting the reasons why migrants turn to smugglers in the first place. Immigration, labour, asylum and other laws that restrict mobility need to be examined as means of preventing the smuggling of migrants.

The effective functioning of the criminal justice system remains, however, key.

A critical element of the investigation and prosecution of migrant smuggling operations is the capacity of criminal justice practitioners to effectively debrief and interview smuggled migrants and actively seek their cooperation. However, smuggled migrants are often reluctant to cooperate with the criminal justice system, either because they are inherently fearful of the authorities, given their irregular status, or because they fear retaliation from smugglers, directed against themselves or even against their families. Hence, it is important that State authorities provide the necessary protective measures and other incentives to migrants in order to build trust, provide reassurance and secure their collaboration.

The crime of smuggling of migrants occurs as a result of a mix of demand and supply factors, and addressing it requires a comprehensive strategy that takes into account the complexity of these factors. The development of effective strategies is hampered by the fact that many facets of the smuggling of migrants remain poorly documented and under-researched, with a corresponding gap in analytical material, for example, concerning the smuggling of unaccompanied children, as well as violent crime and serious human rights abuses occurring along migration routes.

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

⁷¹ François Crépeau, “The fight against migrant smuggling: migration containment over refugee protection”, in *The Refugee Convention at Fifty: A View from Forced Migration Studies*, Joanne van Selm and others, eds. (Lanham, Maryland, United States, Lexington Books, 2003), p. 182.

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”.

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.

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.

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.

7.2. CONSIDERATIONS

Priorities in addressing and strengthening the protection of smuggled migrants in national settings and the prevention of smuggling of migrants, especially in crises such as the COVID-19 pandemic, include:

- ➔ The express consideration of women affected by multiple forms of discrimination or of marginalized groups, such as women migrants and irregular migrants in the design, implementation and assessment of all measures to address COVID-19.
- ➔ 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.
- 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 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 and provide smuggled migrants who are victims of crimes with effective access to justice, recognizing that violence and abuses, including extortion, kidnapping, discrimination, torture and ill-treatment at the hands of private actors and public officials, are likely to take place in situations of emergency.
- 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 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.
- 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 as well as all preventive action addressing the smuggling of migrants.