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## Working Group on the Smuggling of Migrants

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**Analysis of the impact that the availability of  
regular channels of migration has on reducing  
demand for the smuggling of migrants**

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**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 eighth meeting. It sets out a series of issues that the Working Group may wish to address in the course of its deliberations and provides background information and policy considerations on the availability of regular pathways for migration, the impact of the coronavirus disease (COVID-19) pandemic and how smugglers have adjusted their business models in response to the mobility restrictions imposed. The paper also addresses drivers of migration, as well as the risks of aggravated smuggling faced by migrants on irregular pathways for migration. Lastly, it provides a list of specific references, resources and tools that States may use to further develop related responses to the smuggling of migrants.

#### **II. Issues for discussion**

2. The Working Group may wish to discuss the following issues in its analysis of the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants:

(a) In the aftermath of the COVID-19 pandemic, how can Member States concretely and practically translate into action their commitments to enhance safe, regular and accessible pathways for migration?

(b) How can Member States best ensure accountability on the part of all actors involved in human rights violations in the context of migrant smuggling, including State officials?

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\* [CTOC/COP/WG.7/2021/1](#).



(c) How can Member States best place the protection, safety and rights of refugees and migrants at the core of anti-smuggling policies and practices?

(d) What needs to be changed in legislation and policies in order to ensure that private actors who carry out search and rescue operations involving migrants in distress or who provide humanitarian assistance without financial or material benefit are not considered smugglers and not criminalized or penalized for their assistance?

(e) How can Member States ensure that all irregular migrants arriving at their borders, including smuggled migrants, go through individual screenings and assessment procedures to effectively identify vulnerabilities and determine the legal protection frameworks needed?

(f) What can Member States do to better address, in policy responses, the role of collusion and corruption in the facilitation of migrant smuggling?

(g) How can Member States enhance data collection on the correlation between the use of migrant smuggling services and the unavailability of pathways for regular migration to develop more evidence-based anti-smuggling policies?

### III. Overview of issues and guidance for response

3. The COVID-19 pandemic has both created and increased some drivers of migration, while the measures to contain it have restricted people's movement within and across borders. The pandemic has undeniably challenged the ability of Governments to establish or maintain pathways of regular migration, as pledged in target 10.7 of the Sustainable Development Goals. In addition, restrictive migration policies and methods for deterring migration, which can put the safety of refugees and migrants at risk, have contributed to making it especially challenging for people on the move to reach their countries of destination. Collective expulsions, so-called "pushbacks", impediments to search and rescue operations, the systematic detention of irregular migrants and asylum seekers, and criminal proceedings against humanitarian actors for providing assistance to refugees and migrants in distress have been reported.<sup>1</sup>

4. Smuggling networks, which have quickly adapted to the restrictions imposed as a result of the pandemic, have used more dangerous routes, charged higher fees and exposed refugees and migrants to risks of aggravated forms of smuggling, such as violence and kidnapping. The high death toll among irregular migrants in the first half of 2021<sup>2</sup> is a reminder that States should not only combat the crime of migrant smuggling, but also offer alternatives to those illegal services for people on the move.

5. According to the United Nations Office on Drugs and Crime (UNODC) *Global Study on Smuggling of Migrants 2018*, the demand for smuggling services is largely determined by the limited legal channels, which cannot satisfy the total demand for regular migration, or by the costs of legal migration, which some migrants cannot afford.<sup>3</sup> Other reasons driving individuals to resort to the services of smugglers

<sup>1</sup> See, for example, [A/HRC/47/30](#); Office of the United Nations High Commissioner for Human Rights, "Lethal disregard": search and rescue and the protection of migrants in the central Mediterranean Sea" (May 2021), pp. 18 ff.; European Union Agency for Fundamental Rights, "June 2021 update: search and rescue (SAR) operations in the Mediterranean and fundamental rights", 18 June 2021. See also European Parliamentary Research Service, "Briefing: pushbacks at the EU's external borders" (March 2021), p. 1: "Pushbacks often involve excessive use of force by EU member States' authorities and EU agencies operating at external borders, and degrading and inhuman treatment of migrants and their arbitrary detention."

<sup>2</sup> According to the Missing Migrants Project of the International Organization for Migration (IOM), at least 1,146 people died in the first six months of 2021 alone while attempting to reach Europe by sea, a record increase compared to the previous two years.

<sup>3</sup> UNODC, *Global Study on Smuggling of Migrants 2018* (United Nations publication, 2018), pp. 6, 37–38.

include protection and safety concerns, as well as corruption issues at border crossings.<sup>4</sup>

6. Pathways for regular migration, described by the United Nations Network on Migration as an effective tool to ensure the protection of migrants and their rights, including migrants in situations of vulnerability,<sup>5</sup> should be part of the response to any crisis, including the current pandemic. In addition, the availability of such pathways renders most smuggling services redundant. The final section of the present background paper contains a list of tools and resources relating to pathways for regular migration that States could explore and further develop to ensure safer, more orderly and regular migration in the world.

#### **IV. Impact of the COVID-19 pandemic on pathways for regular migration**

7. In recent years, migration flows in different parts of the world have had an impact on government policies on migration, and more efforts have been made at the multilateral level to coordinate actions. In 2018, the Global Compact for Safe, Orderly and Regular Migration outlined the commitments of the international community to address the challenges and opportunities arising from international migration in a broad strategy comprising 23 objectives. In addition, a global compact on refugees was jointly adopted to, inter alia, strengthen the protection of refugees and their right to asylum. Those two milestones complemented the pledges made in the 2030 Agenda for Sustainable Development.

8. However, owing to various factors, the availability of regular pathways for migration has decreased.<sup>6</sup> Those factors include migration flows and their impact on politics at the national and local levels, as well as the COVID-19 pandemic since the beginning of 2020. Compounding those challenges is the emergence of impediments to migration in many parts of the world. Such practices, highlighted below, have contributed to making migration journeys difficult and may run counter to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

9. Article 16 of the Smuggling of Migrants Protocol addresses measures of protection and assistance to smuggled migrants. In particular, it is stated that each State party must take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of smuggling as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It is also underlined that each State party is to afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of smuggling, taking into account the special needs of women and children.

<sup>4</sup> United Nations Observatory on Smuggling of Migrants, “Key findings on the characteristics of migrant smuggling in West Africa, North Africa and the central Mediterranean”, 24 May 2021.

<sup>5</sup> United Nations Network on Migration, “Regular pathways for admission and stay for migrants in situations of vulnerability”, Guidance Note (July 2021), p. 6.

<sup>6</sup> See, for example, Luisa Feline Freier, “COVID-19 and rethinking the need for legal pathways to mobility: taking human security seriously” (Geneva, IOM, 2020), p. 1: “While COVID-19-related travel restrictions remain in place, some countries have implemented restrictive immigration policies, limiting legal migration more broadly.” See also United Nations Network on Migration, “Regular pathways for admission and stay”, para. 7: “This guidance note is also informed by the impact the COVID-19 pandemic has had on access to regular pathways for migrants and on the protection of their rights. In early 2020, many Governments around the world introduced travel restrictions and border closures in an attempt to slow down the spread of the pandemic.”

## 1. Impediments to mobility, protection and assistance

### *Administrative obstacles to mobility*

10. Since the beginning of the pandemic, UNODC has noted a growing number of restrictions on migration in many regions, including new administrative and financial requirements.<sup>7</sup> The Office has observed that the lack of financial resources to overcome some of those restrictions is one of the main causes for migrants to hire the services of migrant smugglers, who often use more remote, distant and dangerous routes to reach their destinations.

### *“Pushbacks” and risks of refoulement*

11. In the context of a report to the Human Rights Council in 2021, the Special Rapporteur on the human rights of migrants called for inputs regarding the increasingly prevailing practice of pushbacks. In the report, and in the absence of an internationally agreed definition of the term in the context of migration, the Special Rapporteur described pushbacks as “various measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border”. It is “an overarching term for all such measures, actions or policies effectively resulting in the removal of migrants, individually or in groups, without an individualized assessment in line with human rights obligations and due process guarantees” (A/HRC/47/30, paras. 34–35).

12. The Special Rapporteur emphasized with concern that pushbacks deny migrants their fundamental rights by depriving them of access to protection defined in international and national law, as well as procedural safeguards, through measures taken summarily to deny migrants access to a State’s territory or jurisdiction, to prevent disembarkation, to curb onward travel or to expel migrants from the State’s territory. Those practices might also lead to refoulement.

13. In response to his call for inputs, the Special Rapporteur received a multitude of detailed accounts of such practices from civil society organizations, national human rights institutions and other stakeholders in Africa, Asia, Europe and North and South America. Prior to his report, the Parliamentary Assembly of the Council of Europe had, in its resolution 2299 (2019), expressed similar concerns about “the persistent and increasing practice and policies of pushbacks”, urging member States to “provide adequate protection to asylum seekers, refugees and migrants arriving at their borders”. Pushbacks at sea increase the risk of maritime tragedies for smuggled refugees and migrants, especially in the absence of sufficient search and rescue operations.

### *Impediments to search and rescue operations*

14. The International Organization for Migration estimates that, by the end of July 2021, about 243 people had died in the Americas on their journey to the north<sup>8</sup> in 2021, while 993 people had died or gone missing while crossing the Mediterranean Sea in their attempts to reach Europe during that period.<sup>9</sup> The European Union Agency for Fundamental Rights collects data on non-governmental organizations’ ships involved in search and rescue (SAR) operations in the Mediterranean, legal proceedings against them and difficulties in disembarking migrants in safe ports. The Agency reported that, in past years, civil society vessels with a humanitarian mandate

<sup>7</sup> UNODC, *Abused and Neglected, A Gender Perspective on Aggravated Migrant Smuggling Offences and Response* (Vienna, 2021), p. 31.

<sup>8</sup> IOM, “Missing migrants – Americas region”. Available at <https://missingmigrants.iom.int/region/americas>.

<sup>9</sup> IOM, “Missing Migrants – Mediterranean region”. Available at <https://missingmigrants.iom.int/region/mediterranean>.

to reduce fatalities and bring rescued migrants to safety in the European Union had saved a significant number of migrants in distress at sea. However, they seemed to face increasing obstacles in fulfilling their mandates. It also reported that, since 2016, national authorities had initiated 58 administrative and criminal proceedings against crew members or vessels for “aiding and abetting illegal migration” and for technical irregularities.<sup>10</sup> The Agency further noted that “due to ongoing criminal and administrative proceedings, vessel seizures, as well as mandatory maintenance work, the majority of these assets are blocked at ports without the possibility of carrying out SAR. Out of a total of 19 assets, six currently operate ... Only two vessels perform SAR operations (‘Geo Barents’ and ‘Ocean Viking’).”<sup>11</sup>

#### *Obstacles to disembarkation*

15. As a result of the COVID-19 pandemic, States have also “limited access to European ports, caused disembarkation delays and left rescued people at sea for more than 24 hours waiting for a safe port”.<sup>12</sup> Those problems were compounded in some places by the prohibition from docking placed on foreign vessels that undertake search and rescue operations, leaving smuggled migrants and refugees stranded on board such vessels for weeks in unsanitary and undignified conditions (E/CN.15/2021/6, para. 42).

#### *Criminalization of humanitarian assistance to smuggled migrants*

16. While smugglers expose migrants and refugees to violence and abuse, and even death, and smuggling needs to be combated, scholars and practitioners are increasingly concerned about the progressive extension of the notion of criminality to refugees and migrants themselves and to humanitarian actors and citizens providing help to irregular migrants with intentions of solidarity. Multiple voices are therefore calling for more nuanced discourse and policies in relation to the smuggling of migrants.<sup>13</sup>

17. Recent media, civil society and research reports have highlighted situations in which those providing humanitarian aid to smuggled migrants have been charged and prosecuted under broadly defined criminal offences or sanctioned under administrative offences.<sup>14</sup> Humanitarian acts of assistance, such as the provision of accommodation, first aid or long-term care and transportation, including to avoid environmental exposure or plain exhaustion, are increasingly being qualified by authorities as smuggling.<sup>15</sup> This constitutes a growing concern for practitioners and scholars, who have noted a dangerous shift towards “cimmigration”, an approach that interweaves criminal law and immigration law to criminalize not only smugglers, but also smuggled migrants and humanitarian actors who provide assistance to them.<sup>16</sup>

18. In the Smuggling of Migrants Protocol, however, “smuggling of migrants” is defined in article 3 as “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 practice of criminalizing humanitarian assistance to irregular migrants therefore runs counter to the letter and spirit of the Protocol and its qualification of smuggling as a crime perpetrated for a financial or other material benefit. Member States should therefore

<sup>10</sup> European Union Agency for Fundamental Rights, “June 2021 update”, and “Table 2: Legal proceedings by EU member States against private entities involved in SAR operations in the Mediterranean Sea (June 2021)”.

<sup>11</sup> European Union Agency for Fundamental Rights, “June 2021 update”.

<sup>12</sup> Ibid.

<sup>13</sup> Mixed Migration Centre, “Smuggling and mixed migration: insights and key messages drawn from a decade of MMC research and 4Mi data collection”, Briefing Paper (June 2021), pp. 4–5.

<sup>14</sup> See, for example, Carla Ferstman, “Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe member States” (December 2019).

<sup>15</sup> UNODC, *Abused and Neglected*, p. 73.

<sup>16</sup> Marika McAdam, “There's no human trafficking or migrant smuggling without organised crime, the law says – and that matters”, Open Democracy, 26 February 2020.

consider adopting nuanced policy approaches on migrant smuggling and not conflating it with humanitarian assistance.

### *Conclusion*

19. Since the beginning of the pandemic, refugees, who are entitled to international protection, and migrants compelled to leave their countries for various reasons (see below for details) have encountered additional challenges in attempting to reach their destinations owing to a range of impediments to migration and the reduced accessibility of pathways for regular migration.

## **2. Drivers of migration**

20. Although mobility options have been reduced globally as a response to the COVID-19 pandemic, the drivers of migration have largely persisted and have even increased in some instances. A large number of migrants who have crossed borders over the past two years have been fleeing conflict, humanitarian crises, political instability, persecution and a lack of safety for themselves and their families.<sup>17</sup> Those individuals are entitled to international protection. Natural disasters, such as climate change-induced droughts, have also pushed many people away from their homes, while migration and human mobility resulting from disasters have also increased pressures and affected the capacity of receiving communities to cope with and adapt to the changing climate.<sup>18</sup>

21. In addition, the economic impact of the COVID-19 pandemic has included a rise in unemployment,<sup>19</sup> often increasing debt, and a loss of livelihoods and social protection. The pandemic has also had an impact on remittance flows, which dropped significantly despite their essential role in low- and middle-income societies. These conditions have exacerbated existing vulnerabilities and might have long-term consequences for global economies and, as a result, for migration. In parallel, the need for labour remains an important driver of migration. Some sectors, including health care, manufacturing, food, delivery services, transportation and seasonal agriculture, have witnessed an increase in demand for labour over the past year.<sup>20</sup> This increase in demand, including for migrant workers, also constitutes a driver of migration and has an impact on migration flows.<sup>21</sup>

## **3. Understanding the need to resort to smugglers**

22. The smuggling of migrants often requires the involvement and collusion of State officials, who may facilitate the crime directly or turn a blind eye to it when they are bribed.<sup>22</sup> Restrictions imposed in the context of the COVID-19 pandemic might have

<sup>17</sup> Over the past two decades, the number of persons displaced across international borders while fleeing conflict, persecution, violence or human rights violations has doubled, from 17 million to 34 million (United Nations, Department of Economic and Social Affairs, *International Migration 2020: Highlights* (United Nations publication, 2020)). This is an issue of great concern and likely to be compounded by several factors, such as COVID-19, which is likely to feed many drivers of conflict, as has been the case in Africa, where it has “further exacerbated existing conflict drivers” (see [S/PRST/2021/10](#)).

<sup>18</sup> International Federation of Red Cross and Red Crescent Societies, *World Disasters Report 2020: Come Heat or High Water – Tackling the Humanitarian Impacts of the Climate Crisis Together* (Geneva, 2020).

<sup>19</sup> International Labour Organization (ILO), *World Employment and Social Outlook: Trends 2021* (Geneva, 2021). ILO projects “a sustained and pronounced increase in unemployment” that is likely to reach 205 million in 2022 (representing a 5.7 per cent unemployment rate) as a result of the COVID-19 pandemic.

<sup>20</sup> ILO, “Protecting migrant workers during the COVID-19 pandemic: recommendations for policymakers and constituents”, Policy Brief (April 2020), p. 2.

<sup>21</sup> For more details on the different drivers of migration and the impact of the COVID-19 pandemic on them, see also [E/CN.15/2021/6](#).

<sup>22</sup> Mixed Migration Centre, “Smuggling and mixed migration”, p. 4. See also UNODC, *Abused and Neglected*, p. 72.

led border officials to demand higher bribes from smugglers and migrants to avoid detention or questioning.<sup>23</sup>

23. Although the smuggling of migrants is influenced by multiple factors, scholars and practitioners agree that this criminal activity prospers when pathways for regular migration are curtailed.<sup>24</sup> As the Mixed Migration Centre noted, smuggling activities do not occur in a vacuum but undoubtedly thrive on a lack of timely and accessible legal migration channels.<sup>25</sup> Tight border controls, surveillance with new technological tools, such as thermographic cameras, and restrictive migration policies increase the likelihood of people on the move resorting to smuggling services to cross borders. This was further underlined by the United Nations Observatory on Smuggling of Migrants, which highlighted that the smuggling of migrants is largely a demand-driven crime, the incidence of which is connected with the number of people who require smuggling services combined with a lack of regular alternatives for migration. According to the Observatory, “the demand from refugees and migrants is for migration, and when this is not possible or feasible regularly and independently, this becomes a demand for migrant smuggling”.<sup>26</sup>

24. Research on specific migration routes showed that COVID-19-related travel restrictions have not reduced and may, in fact, have increased demand for smuggling services in the medium to long term. People have continued to embark on migration journeys to escape highly adverse conditions, and they have done so with the services of smugglers.<sup>27</sup> It has been estimated that, in early 2021, 90 per cent of irregular entries into the European Union involved the assistance of smuggling services.<sup>28</sup>

25. During the COVID-19 pandemic, smuggling networks have adjusted their business models and increased smuggling fees as a result of mobility restrictions, continued demand and increased risks faced by criminal networks.<sup>29</sup> Factors relating to the pandemic therefore seem to have made smuggling journeys more expensive and increased the risks of exploitation and aggravation when migrants cannot pay or are faced with additional fees during the journey.<sup>30</sup>

#### 4. Aggravated forms of migrant smuggling

26. Some smuggling networks seem to have taken advantage of the specific vulnerabilities of people on the move, including those leaving their countries of origin or stranded in transit owing to difficulties in reaching their planned destinations. Faced with obstacles and fluctuating COVID-19 containment measures, migrants and refugees have been increasingly compelled to rely on smugglers in order to cross borders in many regions. As a result, their exposure to aggravated forms of smuggling involving violence, abuse and even death has also increased. A correlation has been observed between stronger crackdowns on irregular migration in certain countries and migrants taking more dangerous routes on which more aggravations arise.<sup>31</sup>

<sup>23</sup> UNODC, *Abused and Neglected*, p. 73.

<sup>24</sup> Euro-Mediterranean Study Commission, “Beyond networks, militias and tribes: rethinking EU counter-smuggling policy and response”, Policy Study No. 19, April 2021, p. 11.

<sup>25</sup> Mixed Migration Centre, “Smuggling and mixed migration”, p. 3.

<sup>26</sup> United Nations Observatory on Smuggling of Migrants, “Key findings on the characteristics of migrant smuggling”.

<sup>27</sup> See also Euro-Mediterranean Study Commission, “Beyond networks, militias and tribes”, pp. 78, 81 and 88.

<sup>28</sup> Katrien Luyten and Stephanie Brenda Smialowski, “Understanding EU action against migrant smuggling”, European Parliamentary Research Service (January 2021), p. 1.

<sup>29</sup> European Union Agency for Law Enforcement Cooperation (Europol), “How COVID-19-related crime infected Europe during 2020” (November 2020), p. 12. See also Mixed Migration Centre, “COVID-19 Global Thematic Update, No. 1: impact of COVID-19 on migrant smuggling” (September 2020). UNODC has also observed this phenomenon in Latin America.

<sup>30</sup> UNODC, “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”, Research Brief (May 2020), pp. 5–6.

<sup>31</sup> UNODC, *Abused and Neglected*, p. 6.

27. The smuggling of migrants is frequently characterized by dangerous conduct and degrading, abusive or exploitative treatment. According to article 6, paragraph 3, of the Smuggling of Migrants Protocol, circumstances that endanger or are likely to endanger the lives or safety of migrants or entail the inhuman or degrading treatment of smuggled migrants constitute aggravating circumstances to relevant offences relating to the smuggling of migrants.

28. UNODC documented the most prevalent forms of abuse encountered by migrants in transit, such as physical violence, including sexual violence, as well as inhuman and degrading treatment, kidnapping, extortion, unlawful deprivation of liberty, exploitation, hunger, thirst and limited (if any) access to health care, with many dying along the way. In some cases, smugglers may go as far as deliberately killing or endangering the migrants' lives. It is indeed part of the modus operandi of many smugglers to sabotage vessels or instruct migrants on board to do so in order to cause distress at sea and trigger the coastal State's duty to rescue persons in danger once the vessels are in the sea zone of competence of destination countries.<sup>32</sup>

29. UNODC found that those abuses and aggravations to smuggling are rarely committed in isolation and have diverse causes, such as profit, the perpetrator's satisfaction, coercion, intimidation, punishment or control of the smuggled migrants through their fear of being detected. Profit appears to be the predominant cause across all categories of abuse.

30. Gender seems to play a major role in some vulnerabilities and types of abuse and violence inflicted upon migrants in transit. Men seem to report a wider variety of abuses, with forced labour being the aggravation almost exclusively experienced by them. Female migrants, on the other hand, seem to be exposed to higher risk of aggravations, including as a result of the social pressure to care for other travellers in situations of vulnerability, such as children, older people, pregnant women or sick migrants.

31. Different forms of sexual violence, sexual exploitation, rape and assaults perpetrated upon women are omnipresent on all migration and smuggling routes and seem to affect almost exclusively women when a financial dimension is involved (e.g., sexual exploitation for financial gain). In addition, findings suggest that women are more likely than men to be short of money earlier and more frequently in the migration process because of a variety of gender-related factors. This makes women more vulnerable to sexual abuse, as they are often forced to provide compensation with in-kind payment and "transactional rape". Women often face additional challenges in coping with the consequences of sexual abuse experienced during transit, such as a lack of health care, unwanted pregnancies and abortion. The reasons for the use of sexual violence include demonstration of power, misogyny, racism and sexual gratification. Sexual violence can also be used as a tool to coerce fellow migrants by forcing them to witness the rape of their travel companions. At the same time, sexual violence against men, though not reported frequently, is often used to humiliate, punish and emasculate male migrants.<sup>33</sup>

32. The use of smuggling for migration is, therefore, highly risky for individuals resorting to it. However, there is scarce evidence that such crimes lead to investigations or legal proceedings, especially in the transit countries where the offences are committed. Some migrants are reluctant to report abuse because they could be treated as criminals, for example because of their irregular status. Other reasons include having intercourse outside of marriage or with members of the same sex, as well as having an abortion, which are punishable acts in some countries. The lack of reporting is one of the factors explaining why widespread impunity still prevails. Criminal networks engaged in migrant smuggling can make large profits and remain relatively safe from criminal prosecution.

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<sup>32</sup> Ibid., p. 40.

<sup>33</sup> Ibid., p. 5.



33. In 2020, the Committee on the Elimination of Discrimination against Women underlined that the conditions created by restrictive migration and asylum regimes pushed migrants towards irregular pathways. Therefore, the Committee recommended the establishment of “a gender-responsive and safe migration framework to protect migrant women and girls, including those with an irregular migration status, from violations of their human rights at every stage of migration by ... supporting increased access to pathways for safe and regular migration to avoid exploitation, including sexual exploitation, considering the specific needs of women and their children and ensuring the rights of the migrant populations within such pathways to protected formal employment opportunities and legal paths to education and vocational training, in both their countries of origin and destination” (CEDAW/C/GC/38, para. 56).

## V. International commitments to increase pathways for regular migration

34. With the adoption of the 2030 Agenda for Sustainable Development, States committed themselves to facilitating orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies (target 10.7 of the Sustainable Development Goals). They also undertook to significantly reduce all forms of violence and related death rates everywhere (target 16.1), to end abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2) and to eliminate all forms of violence against women and girls (target 5.2). Those commitments, and in particular target 10.7, relate to smuggled migrants and acknowledge the relevance of regular pathways as means of addressing the situation of vulnerability in which irregular migrants find themselves.

35. Reinforcing and complementing the pledges made under the 2030 Agenda, the Global Compact for Safe, Orderly and Regular Migration affirmed the commitment of Member States to tackling the smuggling of migrants as part of a comprehensive strategy to regulate international migration. In objective 9 of the Global Compact, Member States underlined the importance of implementing the Smuggling of Migrants Protocol and committed themselves to intensifying joint efforts to prevent and counter the 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 subjected to smuggling under aggravating circumstances, in accordance with international law.

36. In objective 5 of the Global Compact, Member States committed themselves to enhancing the availability and diversity of pathways for safe, orderly and regular migration. To support States in this endeavour, thematic working group 3, on regular pathways for migrants in vulnerable situations, of the United Nations Network on Migration published in July 2021 a guidance note<sup>34</sup> containing information about the meaning of “regular pathways”, as well as detailed options that States can establish and reinforce.

37. In the guidance note, it is underlined that “providing migrants with access to entry and/or residence through regular channels reduces their need to move, live and work in unsafe circumstances”.<sup>35</sup> It is also highlighted that regular pathways for migration benefit all countries, helping them to control movements and curb migrant smuggling across their borders.

38. Regular pathways are understood to be legal, policy and/or administrative mechanisms providing for regular travel, admission or stay in the territory of a State. They should be provided in a non-discretionary manner when they give effect to

<sup>34</sup> United Nations Network on Migration, “Regular pathways for admission and stay for migrants in situations of vulnerability”, Guidance Note (July 2021).

<sup>35</sup> *Ibid.*, para. 2.

international human rights obligations. States can also develop discretionary pathways, which are “not strictly required by international law and are put in place as an exercise of discretion, international cooperation and solidarity by the concerned State authorities”.<sup>36</sup>

39. While a range of options exist, examples of regular pathways include obtaining visas, such as humanitarian visas, family reunification visas and work permits, prior to or upon arrival.

40. The provision of visas to migrants in situations of vulnerability through humanitarian admission schemes in countries of origin can greatly contribute to reducing their need to use the services of smugglers to travel to destination countries and thus their exposure to aggravated smuggling and other human rights violations. States may also grant humanitarian visas or temporary residence permits and other measures in the context of disasters or natural catastrophes or on health-related grounds.

41. Grounds of admission and stay can also include the right to family and private life. Pathways for effective and accessible family reunification serve to uphold the right to family unity and the rights of the child, and also contribute to reducing the need for family members to resort to smugglers in order to reunite.

42. States may also grant admission visas or establish a process of regularization of residence when the return of a migrant may be in breach of human rights obligations, including the principle of non-refoulement. Other reasons could be the need to uphold the rights of survivors of crime and violence, such as migrants subjected to aggravated forms of smuggling and victims of trafficking in persons. States may grant residence or work permits to migrants already in their territory and ensure that a loss of employment does not automatically result in a loss of regular migration status.

43. Refugees and asylum seekers are entitled to international protection and access to asylum under international refugee law. States should develop or increase current refugee settlement programmes, which should include private sponsorship of refugees ([A/HRC/35/25](#), para. 37 (a)).

44. In creating or expanding these different options, certain principles should be observed to enhance their accessibility and effectiveness. For example, it could be helpful to consider waiving onerous requirements and application fees to ensure that the process is affordable. Mechanisms for the identification and referral of migrants in situations of vulnerability should be put in place using a gender-responsive, child-sensitive and victim-centred approach. The procedures should also be accessible, understandable and time-bound. They should be in conformity with procedural safeguards and include the meaningful participation of all relevant stakeholders.

45. Irregular migration continues to occur globally for varied reasons. In the absence of sufficient options 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 cross international borders to their intended countries of destination. Pathways for regular migration offer an effective tool for reducing the need to use smugglers. As the Special Rapporteur on the human rights of migrants explained, “migration governance is not a matter of closing off borders and keeping people out, but one of regulating mobility by opening accessible, regular, safe and affordable migration channels ... States must move from a zero-tolerance attitude to one of harm reduction, thereby undercutting the criminal organizations responsible for migrant smuggling, addressing the security concerns of States and, ultimately, reducing human suffering and saving lives” ([A/HRC/35/25](#), paras. 16–17).

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<sup>36</sup> Ibid., para. 15.

## VI. Conclusion

46. The smuggling of migrants poses challenges that cannot be addressed by the criminal justice system alone, but need to be analysed in the broader framework of international migration policies.

47. Where smugglers partly or wholly facilitate the journeys of migrants and refugees travelling irregularly, the smugglers' *modi operandi* may include inhuman or degrading treatment, injuries, exploitation and abuse of vulnerabilities.<sup>37</sup>

48. Abuses may also be perpetrated by other actors in the smuggling context, including armed groups and militias or even public officials involved in the crime at some point. This indicates the gravity of the risks that people on the move accept in the absence of safer and regular options to cross borders. An analysis of migrant smuggling during the COVID-19 pandemic demonstrated that migrant smuggling networks benefit from restrictive migration policies and border closures. Rather than diminishing migration, those measures increase irregular border crossings, with a high toll of suffering and deaths for those who have no choice but to resort to the services of smugglers.

49. Member States should therefore urgently adopt or enhance measures and policies that contribute to enhancing pathways for regular migration.<sup>38</sup> In addition, those policies would enable States to regain control over migration flows and reduce the share of undocumented migrants.

### Previous recommendations of the Working Group on related topics

50. The Working Group on the Smuggling of Migrants has, to date, formulated around 200 recommendations advising States parties on the implementation of the Smuggling of Migrants Protocol, including five recommendations related to the impact of the availability of regular channels of migration on the reduction of demand for the smuggling of migrants.

51. In examining practical measures and other aspects aimed at improving smuggling prevention efforts, the Working Group has emphasized the following in its past recommendations:<sup>39</sup>

(a) States should establish or enhance appropriate channels for regular and orderly migration, and issue visas in the countries from which migrants originate and through which they transit, as a way to reduce the danger posed by smuggling organizations;

(b) States should consider establishing or enhancing appropriate channels and laws for regular and orderly migration, as a way to reduce the danger posed by smuggling organizations;

(c) States are encouraged to be aware of how their national laws and policies may create incentives for irregular migration, particularly for unaccompanied migrant children, or may be used as a tool by smugglers to attract potential migrants;

(d) States are encouraged to develop and implement comprehensive national policies on migration to prevent the smuggling of migrants, including, where relevant, considering the creation of multisectoral public institutions, in cooperation with civil society and migrants, and build capacity in order to fully implement those policies;

<sup>37</sup> UNODC, *Abused and Neglected*, p. 12.

<sup>38</sup> See also Danish Refugee Council and Mixed Migration Centre, "Countering human smuggling: no silver bullet for safer mobility – evidence-based recommendations towards a protection-sensitive approach to actions against human smuggling", Position Paper (July 2021).

<sup>39</sup> Each of the recommendations can be found in UNODC, *Smuggling of Migrants: Compendium and Thematic Index of Recommendations, Resolutions and Decisions* (Vienna, 2021).

(e) States of origin should consider, as a preventive measure, the implementation of exit authorization for separated or unaccompanied children in accordance with their domestic laws and regulations.

52. Additional relevant guidance can be found in the publication prepared by the Secretariat entitled *Smuggling of Migrants: Compendium and Thematic Index of Recommendations, Resolutions and Decisions*, containing a thematic index of recommendations adopted by the Working Group at its first six meetings, including under the following topics: assistance to smuggled migrants, border control and management, children (general), children (unaccompanied/separated children), facilitating immigration opportunities, legislation, migration opportunities, national strategy and coordination, Protocol against the Smuggling of Migrants by Land, Sea and Air, responders and civil society, technical assistance, training and capacity-building, and UNODC and the Secretariat.

## VII. Key tools and recommended resources

53. The selected tools and resources listed below are available on the UNODC website ([www.unodc.org](http://www.unodc.org)), where a comprehensive overview of all tools and resources regarding migrant smuggling is also available.<sup>40</sup>

### *United Nations Observatory on Smuggling of Migrants (2021)*

54. The United Nations Observatory on Smuggling of Migrants is a pilot project aimed at assessing the characteristics, drivers and impacts of the smuggling of migrants in rapidly changing contexts. The Observatory collects and disseminates data, information and analyses on the smuggling of migrants. The information is gathered through regular field research in countries of origin, transit and destination, and from people on the move, law enforcement authorities, civil society and other key actors, and is complemented by targeted surveys among people on the move and migrant smugglers in countries of origin and transit.

55. The Observatory website provides up-to-date evidence relating to the modus operandi of migrant smugglers, smuggling routes, financial aspects, and abuses suffered in the context of the smuggling of migrants. The information and analyses provided are essential to better understanding the phenomenon of the smuggling of migrants, better preventing and combating such smuggling and related crimes, and protecting the human rights of people who are smuggled.

### *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response (2021)*

56. The UNODC publication entitled *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response*, on aggravated forms of smuggling of migrants and related gender dimensions, provides an analysis of the circumstances and experiences of smuggled migrants during the migration journey, including repeated episodes of sexual violence, abuse and exploitation, in particular among migrant women. The publication is aimed at identifying gender dynamics and providing guidance to Member States with a view to increasing protection and access to justice for smuggled migrants and strengthening overall responses to aggravated forms of smuggling of migrants, including by ensuring their appropriate criminalization.

### *Guidance note on regular pathways for admission and stay for migrants in situations of vulnerability (July 2021)*

57. This guidance note, developed by the United Nations Network on Migration, is intended to support Member States and other stakeholders in building their capacity to analyse the need for, and to strengthen the design, implementation, monitoring and

<sup>40</sup> See [www.unodc.org/unodc/en/human-trafficking/resources.html](http://www.unodc.org/unodc/en/human-trafficking/resources.html).

review of, pathways for admission and stay for migrants in situations of vulnerability. It addresses matters relating to the availability and flexibility of pathways, admission and stay procedures, and the resulting conditions and duration of relevant measures.

***UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants (2021)***

58. The *UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants* was developed under the framework of the Global Action against Trafficking in Persons and the Smuggling of Migrants (GLO.ACT), a joint initiative of the European Union and UNODC that is being implemented in partnership with the International Organization for Migration. It is a collection of tools to help practitioners understand and incorporate human rights and gender equality into criminal justice responses to the smuggling of migrants and trafficking in persons.

***UNODC Global Study on Smuggling of Migrants (2018)***

59. The *UNODC Global Study on Smuggling of Migrants*, the first such study published by UNODC, shows that migrant smuggling routes affect every part of the world. The study is based on an extensive review of existing data and literature and provides insight into trends, smuggling routes and the profiles of smugglers and those smuggled.

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

60. The study entitled *The Concept of “Financial and Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper* examines legislation and case law among a broadly representative group of States in order to gain a comparative perspective on how the “financial and other material benefit” element of the international definition of smuggling of migrants has been understood and applied. It gives particular attention to the experiences and views of practitioners involved in investigating and prosecuting smuggling of migrants and related crimes. The principal purpose of the study is to contribute to more effective and consistent interpretation and implementation of the international legal obligations that States have assumed through their ratification of or accession to the Smuggling of Migrants Protocol and its parent instrument, the Organized Crime Convention.