



# UNODC

United Nations Office on Drugs and Crime

## UNODC Submission to the Report of the UN Special Rapporteur on the Human Rights of Migrants, February 2022

The United Nations Office on Drugs and Crime (UNODC) welcomes the upcoming publication by the UN Special Rapporteur on the human rights of migrants of a report on *“human rights violations at international borders: trends, prevention and accountability”*.

As the guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, including the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol) and the Protocol against Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol), UNODC strives to advance the agenda on countering human trafficking and migrant smuggling, as well as to protect and assist trafficking victims and migrants that are the object of smuggling, with full respect for their human rights. UNODC wishes to support the Rapporteur by identifying the following priority areas related to addressing human trafficking and migrant smuggling, which could inform the report.

### 1. International legal developments related to trafficking and migrant smuggling

Strong national legal frameworks, in line with the UNTOC and its Protocols against Trafficking in Persons and the Smuggling of Migrants, are paramount for effectively addressing the immediate, as well as the longer-term effects of the COVID-19 pandemic on human trafficking, migrant smuggling and other violations taking places across international borders.

The Smuggling of Migrants Protocol recognizes in its Preamble that the States parties need to provide migrants with humane treatment and full protection of their rights. The Protocol further recognizes and promotes the importance of safeguarding the rights of smuggled migrants and sets out in Article 6 (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 migrant smuggling. In Article 16, the Protocol outlines measures of protection and assistance to smuggled migrants. It states in particular that *“each State Party shall 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 also underlines that “each State Party shall 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.”*

With the adoption of the 2030 Agenda on Sustainable Development, States committed 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). Reinforcing and complementing the pledges made under the former, the Global Compact for Safe, Orderly and Regular Migration<sup>1</sup> (GCM) re-affirmed the commitment of Member States to tackle migrant smuggling as part of a comprehensive strategy to regulate international migration. In its objective 9, Member States committed themselves to promote the implementation of the Smuggling of Migrants Protocol and to intensify joint efforts to prevent and counter this crime, including by identifying smuggled migrants in order to protect their human rights, and assisting particularly those migrants subjected to smuggling under aggravating circumstances, in accordance with international law.

In GCM Objective 10, Member States committed themselves to preventing trafficking in the context of international migration focusing on enhanced international cooperation. In GCM Objective 5, Member States committed themselves to expanding the availability and diversity of pathways for safe, orderly and regular migration. The **connection between the unavailability of pathways for regular migration and migrant smuggling** was clearly underlined by the UNODC Observatory on Smuggling of Migrants, which stated that migrant smuggling is mostly 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>2</sup>

## 2. Impact of the COVID-19 pandemic on human trafficking and migrant smuggling

With the pandemic, pathways for regular migration diminished and mobility options globally reduced. At the same time, drivers of migration largely persisted and even increased. UNODC research shows that COVID-19-related travel and movement restrictions did not prevent people from fleeing conflict, violence, and dangerous and inhumane conditions.<sup>3</sup> Faced with obstacles and fluctuating COVID-19 containment measures, migrants and

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<sup>1</sup> General Assembly resolution 73/195

<sup>2</sup> UN Observatory on Smuggling of Migrants, “Key findings on the characteristics of migrant smuggling”.

<sup>3</sup> 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

refugees, including those leaving their countries of origin or stranded in transit, have been increasingly compelled to rely on smugglers for crossing borders.

Migrant smuggling thrives when pathways for regular migration are curtailed. It follows that many of the measures adopted to counter the spread of COVID-19 have had an impact on this crime. 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**.<sup>4</sup> Smuggling networks have adjusted their business models and, for example, increased smuggling fees due to mobility restrictions, continued demand and increased risks faced by criminal networks. Factors relating to the pandemic seem to have, therefore, made smuggling journeys more expensive.

**Exposure to aggravated forms of smuggling** involving violence, abuse and death also increased during COVID-19, as smugglers were forced to use new, less explored and riskier routes because of border closures, often putting migrants' lives at greater risk. More people died at sea in 2021 compared to previous years. These accounts include **fatalities** reported during both independently arranged and smuggling-facilitated journeys. Emerging findings from the UNODC Observatory on Smuggling of Migrants research along the Central Mediterranean Route and the Northwest African Route shows that the need to avoid detection and detention in countries of arrival may further prolong the time spent at sea, increasing the risk of death. In addition, the absence of State-led search and rescue operations in recent years and the progressive reduction of NGO SAR operations in the Central Mediterranean have further increased the risk of death at sea for smuggled people.

Beyond loss of life, frequently reported crimes faced by smuggled migrants include sexual and gender-based violence, theft, kidnapping for ransom, robbery, extortion and human trafficking. The correlation between a repression of irregular migration in certain countries and refugees and migrants taking more perilous routes where more aggravations occur was observed.<sup>5</sup>

The pandemic created larger pools of vulnerable persons who, due to their worsened economic situation or irregular status, are at higher risk of being trafficked for various purposes. Women, children and migrants have been identified as particularly vulnerable to abusive recruitment and exploitation during the pandemic.<sup>6</sup> In addition, rescued trafficking victims could often not return home, receive assistance or generate income.<sup>7</sup> Longer and interrupted journeys also led to **increased risks of trafficking in persons**, especially when people on the move could not pay smugglers or were faced with additional fees during the journey.

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<sup>4</sup> UNODC, "Covid-19 and the Smuggling of Migrants: A Call for Safeguarding the Rights of Smuggled Migrants Facing Increased Risks and Vulnerabilities", Vienna, 2021, p.8

<sup>5</sup> UNODC, "Abused and Neglected, A gender Perspective on aggravated Migrant Smuggling Offences and Response", Vienna, 2021, p.6.

<sup>6</sup> UNODC, "The effects of the COVID-19 pandemic on trafficking in persons and responses to the challenges", Vienna 2021, p.8.

<sup>7</sup> UNODC, *Ibid.*, p.8.

Despite the severity of the violence and abuse inflicted upon refugees and migrants in border zones, UNODC reported a severe **lack of access to justice**. Various legal and practical barriers prevent people on the move from reporting crimes, including lack of trust in authorities given that abuses can originate from State actors, legislation criminalizing smuggled refugees and migrants as well as their abuses (most notably sexual violence experienced by women and LGBTQI+ persons) or actions taken by States **criminalizing humanitarian assistance and/or hindering SAR operations**. In addition, a lack of information about the assistance and services available, a lack of legal institutions where they can safely report and/or restricted access to these institutions due to constraints imposed by smugglers, may also impact the reporting of these abuses.

Abuses reported in the context of migrant smuggling are perpetrated by a variety of actors, including by **State officials**. According to the UNODC Observatory on Smuggling of Migrants, people on the move are exposed to extremely high risks of abuse and exploitation along smuggling routes in West and North Africa and towards Europe. Perpetrators include smugglers, local businesspeople, transnational organized criminals, but also police officers and border guards.

Violence, robbery and abuses by police officers and other actors at border checkpoints are systematically reported by people on the move across all ages, genders, and smuggling routes in West and North Africa. Several scholars have analysed how racism is central to the way people experience border enforcement in North Africa, and violence and abuse of power perpetrated by police officers is often determined by racialized profiles. In addition, accounts of deaths in the desert between Algeria, Libya, Mali and Niger have been increasingly reported in recent years. Growing patrolling may have prompted smugglers to take new and potentially riskier routes, leading to increased deaths.

### 3. Conclusion

Overall, border management measures introduced or maintained during the pandemic, such as border closures, enhanced patrols, delays in asylum proceedings, pushbacks, etc., contributed to make the crime of migrant smuggling flourish. Concomitantly, more aggravated forms of smuggling were observed as smugglers undertook more dangerous and unused routes to adjust to the situation. With more expensive and perilous journeys, the situation of vulnerability of people on the move increased. The involvement of State actors in aggravated forms of smuggling was also observed. However, a lack of access to justice for refugees and migrants victims of crime prevails.

#### 4. Recommendations:

To remedy this situation, UNODC encourages States to:

1. Promote ratification of, accession to and implementation of the Smuggling of Migrants Protocol and ensure that domestic legislation fully complies with the migrant smuggling definition, and includes an element on aggravating circumstances as well as a clear purpose of financial or other material benefit to configurate the criminal conduct, so as to exclude criminalisation of humanitarian and compassionate acts.
2. Enhance the availability of safe, orderly, and regular migration pathways as a means to break the business model of smugglers and reduce risks of abuse, violence, exploitation and death of refugees and migrants in the hands of smugglers.
3. Amend or adopt new legislation and policies to ensure that private actors who carry out search and rescue operations involving refugees and migrants in distress or who provide humanitarian assistance without financial and/or material benefit are not considered smugglers and not criminalized or penalized for their assistance.
4. Adopt responses to crimes occurring along borders that are trauma-informed, gender-responsive and consider the protection and assistance needs of refugees and migrants, including their rights to be identified as victims of crimes, such as human trafficking, SGBV, torture and ill-treatment.
5. Provide for the establishment of effective “firewalls” between immigration authorities and public service provision by State and non-State actors to ensure that migrants with no legal residency who have been victims of violence and abuses, including human trafficking, can access essential services, including health, and social services, legal support, and access to justice, without fear of punishment, detention, or deportation.
6. Engage in effective and practical international, regional, and bilateral cooperation in countering migrant smuggling and human trafficking in the context of migration, through coordinated efforts to address gaps in migrant protection within broader migration management.
7. Enhance data collection on the impact of anti-smuggling policies on the human rights of migrants to develop more evidence-based anti-smuggling and migration policies.