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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on trafficking in persons,  
especially women and children****Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, prepared pursuant to Council resolution 35/5.

State efforts to govern international migration are often disconnected from the legal obligation to identify victims of trafficking in human beings, creating negative consequences for their protection and for the prosecution of traffickers. Unfortunately, the international political agenda, which is focused on the prevention of irregular migration, and the populist and xenophobic anti-migration movements in certain countries and regions, are further encouraging a response to management of migration flows from a crime prevention perspective, which does not place human rights protection at the centre.

In mixed migration movements, people are placed into different categories and allocated different types of assistance accordingly. However, in practice it is challenging to draw clear lines on the circumstances of each migratory journey, and identification through rigid categories could lead to gaps in protection and assistance to victims.

In the present report, the Special Rapporteur analyses challenges in the identification, referral and protection of victims and potential victims of trafficking in persons in the context of mixed migration. Based on the findings and feedback of numerous organizations, she offers recommendations to help States, international organizations and civil society organizations adapt their responses to ensure the effective protection of victims and potential victims of trafficking. These responses must be focused on the identification of groups and persons who by their characteristics and circumstances are in a vulnerable situation, regardless of the specific determination of their case. Activating protection protocols at the outset of identification of vulnerabilities may be one of the most effective ways to assist victims of trafficking and avoid the re-victimization, detention and deportation of victims and potential victims of trafficking in persons.



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## **I. Activities of the mandate**

1. On 5 September 2017, the Special Rapporteur on trafficking in persons, especially women and children participated as a panellist in the fifth informal thematic session of the global compact for safe, orderly and regular migration, entitled “Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims”. She made her intervention during the panel discussion on “Appropriate identification, protection and assistance to migrants and trafficking victims”.
2. On 10 October 2017, she presented a thematic report to the General Assembly at its seventy-second session, with the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material. In their report, the Special Rapporteurs addressed the vulnerabilities of children to sale, trafficking and other forms of exploitation in situations of conflict and humanitarian crisis.
3. On 1 March 2018, the Special Rapporteur on trafficking in persons convened an expert group meeting in Geneva on addressing trafficking in supply chains through voluntary standards and multi-stakeholder initiatives. The meeting focused on the enhancement of workers’ voices in the governance, monitoring and grievance mechanisms of these initiatives and the active participation of workers within.

## **II. Methodology of the report**

4. In order to gather first-hand information for the present report, on 12–13 October 2017, the Special Rapporteur conducted a thematic visit to Catania, Italy, to better understand the identification procedures at disembarkation places. She also went to Portugal on 1–2 February 2018, where she was informed of good practices for the identification of victims of trafficking for labour exploitation. On 26 March 2018, she exchanged information with the European Border and Coastguard Agency (FRONTEX) on its role in identifying victims of trafficking at external European borders and related human rights concerns. The present report is also based on submissions from partners and stakeholders.
5. On the basis of the above inputs, the Special Rapporteur acknowledges the inadequacy of the current screening tools and methodologies in effectively identifying potential victims and indicators of vulnerability to trafficking. Responses to the call for inputs were abundant, though geographically limited and predominately from Europe, which reflects the current dialogue on migration. It is worrisome that the lack of responses from certain regions might also be due to the shrinking of civil society space. The Special Rapporteur is grateful to organizations that provided feedback to the report. She thanks the Office of the Prosecutor in Catania, the Portuguese National Rapporteur on trafficking in persons and FRONTEX for their role in organizing the three thematic visits, whose findings have enriched the report.

## **III. Introduction**

6. While a clear legal distinction between smuggling and trafficking has been defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), the differences between the two crimes are increasingly blurred in mixed migration movements.
7. The Special Rapporteur considers that trafficking in persons, especially women and children, is primarily a human rights violation, and often interlinked with mixed migration movements, encompassing various categories of persons on the move, including refugees, asylum seekers and migrants travelling, mostly in an irregular manner, along similar routes,

using similar means of travel, and for various and often interrelated reasons.<sup>1</sup> People do not necessarily enter mixed migration movements as trafficked persons, but might become trafficked during their journey or when they reach a transit or destination country. Their migration might have started out independently or using the services of a smuggler, but then turned into trafficking at a later stage.

8. Challenges related to the identification and protection of victims of trafficking in persons in the current migration context have not been adequately addressed either at the national, regional or international levels, where Member States are currently negotiating a global compact on refugees and a global compact for safe, orderly and regular migration. Specifically, the so-called migration “crisis” in Europe and elsewhere has exposed serious protection gaps, and State responses demonstrate that the protection of victims or potential victims of trafficking in persons is not often prioritized when countries face irregular migration movements, and is geared towards responding to the needs of the victims of particular categories (mostly the sexual exploitation of women and children).

9. Early identification is being defined as comprising both proactive informal processes as well as a formal process of screening persons to detect indications of trafficking in persons, or of vulnerabilities to trafficking and/or exploitation. Early identification should not be regarded as a one-step process. Experience from the field has shown that victims often do not come forward at first contact with assistance providers, much less at first contact with law enforcement authorities, especially when they have suffered severe forms of exploitation. Identification is possible when a safe space and a relationship of trust have been created to allow victims to share a traumatizing experience. It is therefore difficult to successfully identify victims of trafficking at arrival areas — such as disembarkation points of search and rescue operations, hotspots or airports — as well as in transit countries, due to little awareness of the indicators of trafficking in persons and of victims’ needs among first responders, and an unwillingness from the potential victims themselves to be identified and registered in a country that is not their intended country of destination.

#### **IV. International and policy framework**

10. Under the Palermo Protocol, States are required to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons with full respect for their human rights. A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. In the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights,<sup>2</sup> States are therefore called upon to ensure that such identification does take place. Similar obligations on the need to establish identification guidelines and procedures are also enshrined in regional conventions.<sup>3</sup>

11. The Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography prohibit trafficking in children for any purpose. They call upon States to develop and adopt proactive identification measures for the rapid identification of trafficked children and to establish the presumption that, pending verification of their age, children should be treated as such.

12. In addition, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol provide for specific protection guarantees for asylum seekers and refugees, which may include victims and potential victims of trafficking by prohibiting, inter alia, their return or expulsion to the territories where their lives or freedom would be threatened on account of their race, religion, nationality, political opinion or membership to a particular social group.<sup>4</sup> Moreover, the obligation of States to identify and protect victims of forced

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<sup>1</sup> See A/HRC/29/38, para. 11.

<sup>2</sup> Available at [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf).

<sup>3</sup> ASEAN Convention against Trafficking in Persons Especially Women and Children and the Council of Europe Convention on Action against Trafficking in Human Beings.

<sup>4</sup> See Office of the United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 7 (2006), available at

labour was also clearly established in the Protocol to the International Labour Organization Forced Labour Convention, 1930 (No. 29). Under the Protocol, Member States are bound to take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.

## **V. Early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements**

### **A. Identification of victims or potential victims of trafficking at first arrival areas**

#### **1. Identification during search and rescue operations and at disembarkation points**

13. Since 2014, the Central Mediterranean route has been consistently considered as one of the deadliest for migrants and refugees. It is significant to note that, in terms of the proportion of rescues being undertaken in the Central Mediterranean area under the coordination of the Italian Maritime Rescue Coordination Centre, non-governmental organization (NGO) vessels rescued the most number of individuals.<sup>5</sup>

14. In the specific context of search and rescue operations, the role and activities of NGOs in the Mediterranean have expanded and become specialized since 2014. While attempting to reduce the number of deaths and to fill the gap left by European States in complying with their international obligations, NGOs strive to save lives, despite their scarcity of means. The pressure they face to sign a “code of conduct”<sup>6</sup> that de facto requires them to have a police presence on board their vessels, and the multiple attacks and defamation campaigns they have faced, have drastically circumscribed the activities of NGOs in the Mediterranean Sea, which is harmful for the protection of migrants.<sup>7</sup> The role of NGOs in search and rescue operations was further challenged in March 2018, when the *Open Arms*, a vessel owned by the Spanish NGO Proactiva, was seized by prosecutorial authorities in Catania and the NGO’s staff investigated on suspicion of promoting irregular migration. The boat, however, was subsequently released by a judicial order, while the investigation into the NGO’s activities continues.

15. While noting with appreciation the identification procedures established in cooperation between the International Organization for Migration (IOM), the police and a specialized team from the Prosecutor’s Office in Catania after disembarkation, which led to better protection of sexually exploited children and a significant increase in prosecutions related to trafficking cases, the Special Rapporteur underlines that a human rights approach must be consistently applied across the whole spectrum of activities dealing with migration. This implies that humanitarian action aimed at rescuing lives should never be undermined or treated as promoting irregular migration.

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[www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html](http://www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html).

<sup>5</sup> See [www.guardiacostiera.gov.it/en/Pages/search-and-rescue.aspx](http://www.guardiacostiera.gov.it/en/Pages/search-and-rescue.aspx). According to the Italian Coastguard, the stakeholders involved in search and rescue operations in the Central Mediterranean area under the coordination of the Italian Maritime Rescue Coordination Centre include the Italian Coastguard, the Italian Navy, merchant vessels (commercial and NGO vessels), foreign military ships, EU NAVFOR MED Sophia Operation, and the Italian *Guardia di Finanza* and *Carabinieri*.

<sup>6</sup> For example, the Italian Code of Conduct for NGOs Undertaking Activities in Migrants’ Rescue Operations at Sea 1 (2017). Available from [www.avvenire.it/c/attualita/Documents/Codice%20ONG%20migranti%2028%20luglio%202017%20EN.pdf](http://www.avvenire.it/c/attualita/Documents/Codice%20ONG%20migranti%2028%20luglio%202017%20EN.pdf).

<sup>7</sup> Submission of Duke University International Human Rights Clinic, entitled “Search and Rescue Activities in the Mediterranean and Trafficking in Persons”.

16. During her thematic visits and through the submissions received, the Special Rapporteur noted a general lack of dedicated procedures to identify and protect trafficking victims and potential victims at disembarkation points and in hotspots. She was particularly concerned about the fact that existing procedures were not primarily aimed at detecting vulnerabilities, including trafficking, but rather at detecting so-called “economic migrants”, who were by consequence excluded from the international protection framework or any other protection scheme. The Special Rapporteur also noted a lack of awareness and understanding of logistical constraints, such as a lack of appropriate venues to carry out confidential interviews.

17. Furthermore, European efforts to reduce migration movements in the Central Mediterranean, and in particular the implementation of European Commission action plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity,<sup>8</sup> together with the signature of memorandums of understanding with countries of origin and transit, have had negative consequences on the protection of the rights of migrants and victims of trafficking in persons. The above action plan, which is primarily based on the strengthening of the Libyan coastguard, has proven to be problematic from a human rights perspective. Recent incidents during search and rescue operations involving, inter alia, the Libyan coastguard, have included threats to shoot at NGO vessels if they did not hand over rescued persons, adding to the proof of its inability to carry out such functions in line with international human rights standards. No migrant should, after rescue operations, be forcibly returned to Libya, where gross violations of human rights, including torture, sexual violence, trafficking and slavery, are systematically perpetrated in detention centres and “connection houses”.<sup>9</sup> Finally, the Special Rapporteur is alarmed at the increasing tendency to place migration within the law enforcement paradigm, and to present migration-related measures as part of the fight against organized crime, including human trafficking, with little attention to human rights concerns. This is clearly reflected in the role played by FRONTEX through its “Operation Themis”, which has been given an enhanced law enforcement focus and three times the available resources and personnel, although no new staff and resources are dedicated to the protection of fundamental rights and the promotion of a victim-centred approach to human trafficking.

## 2. Identification in hotspot areas

18. A flagship response to identification challenges at disembarkation or first arrival areas has been the implementation of a hotspot approach, especially in Europe’s southern countries, such as Greece and Italy. This approach, recommended by the European Commission and endorsed by the European Council since May 2015,<sup>10</sup> provides locations where undocumented migrants can quickly be identified. However, documented practices have included forced fingerprinting in de facto detention centres — in violation of fundamental rights guarantees — and the subsequent separation of migrants for the purposes of processing asylum applications or to return them to their countries of origin.<sup>11</sup> The repressive nature of such identification, coupled with a screening process performed in

<sup>8</sup> Available at [http://europa.eu/rapid/press-release\\_IP-17-1882\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1882_en.htm). See also the joint communication of the European Commission to the European Parliament, entitled “Migration on the Central Mediterranean route: Managing flows, saving lives”, available at <http://www.refworld.org/docid/588ef8764.html>.

<sup>9</sup> United Nations Support Mission in Libya, “*Detained and Dehumanised: Report on Human Rights Abuses against Migrants in Libya*” (2016), pp. 14–23, available at [www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf); and C. Healy and R. Forin, “What are the protection concerns for migrants and refugees in Libya?”, International Centre for Migration Policy Development policy brief (2017).

<sup>10</sup> European Commission, “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions: A European Agenda on Migration” (2015), p. 6. Available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf).

<sup>11</sup> Amnesty International, *Hotspot Italy: How EU’s flagship approach leads to violations of refugees and migrant rights* (2016), p. 5.

haste when migrants are still traumatized as a consequence of their perilous journey,<sup>12</sup> as well as severe overcrowding, lack of police protection, unhygienic conditions and abuse and exploitation, especially against women and children, have been widely reported and criticized in Greece and in Italy.<sup>13</sup>

19. It should be reiterated that identification in hotspots is mainly aimed at registering people in the Eurodac system through fingerprinting, rather than at identifying vulnerabilities, which are usually detected at a much later stage. In Greece and Italy, challenges in identifying vulnerabilities at the hotspot stage include: the de-prioritization of trafficking, in particular during large influx of migrants; the excessive profiling of certain types of victims, which risks excluding other potentially vulnerable groups from protection; a weak system of shelter allocation, which causes vulnerable groups to be subjected to a protracted stay in hotspots; a lack of reliable data in relation to identified victims; limited awareness among migrant communities about the unacceptability of incidents relating to gender-based violence and trafficking in human beings; impunity among perpetrators; infrequent police patrolling in residential areas of the hotspots at night; and a backlog of people not medically screened upon arrival.

20. A good practice identified in Italy concerns the presence of specialized agencies such as the Office of the United Nations High Commissioner for Refugees (UNHCR), IOM and the NGO Save the Children at disembarkation points and hotspots, working in cooperation with the police and the Prosecutor's Office to ensure the identification and referral of victims or possible victims of trafficking among the incoming migrants.

21. As regards Greek hotspots, a positive development has been the inclusion of trafficking in the standard operating procedures for the prevention of and response to sexual and gender-based violence, finalized in June 2017 and jointly agreed upon by the Ministry of Migration Policy, the Ministry of the Interior, international organizations and civil society.<sup>14</sup> However, weak sensitization of authorities and limited shelter capacity have resulted in a reluctance to report incidents of trafficking or gender-based violence to the appropriate services.<sup>15</sup>

22. In a context where the identification of trafficked or potentially trafficked persons is not a priority at disembarkation, the consequence is a very low number of victims and potential victims identified and protected at that stage, even in situations where anecdotal evidence and limited but significant research show that a high number of those travelling in mixed migration movements have been subjected to trafficking and exploitation during their journey and/or are at a high risk of being trafficked at their final destinations. Lack of identification of vulnerabilities and consequent referral to non-specialized reception centres can lead to further re-victimization and exposure to different forms of exploitation, such as recruitment for forced prostitution/sex work or labour exploitation.<sup>16</sup>

### 3. Identification at airports

23. Airports have a role in the identification of victims or potential victims of trafficking arriving in a country by plane, and especially children. According to FRONTEX and the European Union Agency for Law Enforcement Cooperation (Europol), airports are considered to be the likeliest place to find children being trafficked or smuggled into the

<sup>12</sup> Ibid. pp. 5–7. See also Oxfam, “Hotspot: Rights Denied”, Briefing Paper (May 2016).

<sup>13</sup> While the Special Rapporteur welcomes efforts by FRONTEX to develop individual complaint mechanisms in cases of violations of fundamental rights, this is limited to FRONTEX activities, and doubts have been raised in relation to the effective widespread dissemination among vulnerable groups and effective understanding of the tool, given also the lack of complaints filed in this regard, while it has been widely documented that violations have occurred on a regular basis, especially in hotspot areas. See also [www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary](http://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary).

<sup>14</sup> Submission of Fundamental Rights Agency.

<sup>15</sup> C. Healy and R. Forin, “Trafficking along migration routes to Europe: Bridging the gap between migration, asylum and anti-trafficking”, International Centre for Migration Policy Development policy brief (May 2018).

<sup>16</sup> Organization for Security and Cooperation in Europe (OSCE), *From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows* (2017), p. 30.

European Union and are used by traffickers and smugglers at peak times when the pressure at passport control is the highest.<sup>17</sup> As such, they have benefited from several initiatives, training and campaigns aimed at the transport sector.

24. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Civil Aviation Organization have developed guidelines for airlines to train cabin crew members to identify and report on trafficked individuals.<sup>18</sup> In addition, the United Nations Office on Drugs and Crime (UNODC) initiative #BeAwareOfTheSigns, implemented in Mexico, has empowered personnel in contact with the airline sector, including senior management, airline staff, airport managers, baggage handlers, information employees, flight crew, migration and customs officials, duty-free sales people and travellers in general, by providing information and indicators to detect possible situations of human trafficking.<sup>19</sup> Moreover, the UNODC Blue Heart and #AQUIESTOY campaign promotes the detection and prevention of trafficking in partnership with the leading airline in Mexico. Another example of training is the VEGA Handbook on children at airports, developed by FRONTEX. In Nigeria, airport officials in Abuja together with the National Agency for the Prohibition of Trafficking in Persons identified 14 potential victims of trafficking on their way to Saudi Arabia and had their traffickers arrested.<sup>20</sup>

25. However, concerns remain in relation to the need to strengthen the institutional framework for identifying victims of trafficking, especially in relation to unaccompanied and separated children, as noted by UNODC while monitoring immigration points during visits to border territories with high rates of migration, including in El Dorado international airport in Bogota. The lack of a clearly articulated response in relation to cases of unaccompanied minors and victims of trafficking, and the lack of registration of such cases and of technical expertise, have been identified as the main challenges.<sup>21</sup> Another factor limiting border officials' capacity to identify potential victims is the pressure to keep queues at airports and other ports of entry moving.<sup>22</sup> In addition, the increased use of electronic passport gates at airports means that many passengers do not come into direct contact with border officials.

#### 4. Identification at land border control

26. Many challenges have been identified at land border control, including: invisible and porous borders; language and cultural barriers; a lack of education; fear of reporting to relevant authorities; economic difficulties; lack of adequate settings to conduct interviews; lack of resources and logistics, for instance transport and child support; the presence of armed groups and other criminal organizations; and a lack of standardized procedures and expertise from relevant authorities.

27. For example, the porous nature of the borders between Colombia and Brazil, Ecuador and the Bolivarian Republic of Venezuela, together with the lack of coordination among the relevant administrative authorities, hinders the identification and assistance of unaccompanied and separated children at risk of sexual or labour exploitation, an increasing concern in the region. Cases of trafficking of children from Colombia to Brazil and Peru for sexual exploitation have also been reported, and identification concerns have been raised regarding issues such as the cultural acceptance of child marriage among some communities and professional prejudices or lack of response from competent authorities in child protection.<sup>23</sup> Along Central American migratory routes and at land borders, similar concerns have been raised regarding the early detection of such cases owing to the invisibility of borders, a lack of coordination between different countries' border control officials or the high rotation among border control staff, which contribute to the difficulties

<sup>17</sup> FRONTEX, *VEGA Handbook: Children at Airports*, p. 23. Available at <https://euagenda.eu/publications/vega-handbook-children-at-airports>.

<sup>18</sup> See [www.icao.int/safety/airnavigation/OPS/CabinSafety/Documents/Cir.352.alltext.en.pdf](http://www.icao.int/safety/airnavigation/OPS/CabinSafety/Documents/Cir.352.alltext.en.pdf)

<sup>19</sup> Submission of UNODC.

<sup>20</sup> See [www.today.ng/news/nigeria/79507/human-trafficking-naptip-rescues-14-victims-abuja-airport](http://www.today.ng/news/nigeria/79507/human-trafficking-naptip-rescues-14-victims-abuja-airport).

<sup>21</sup> Submission of UNODC.

<sup>22</sup> Submission of FLEX.

<sup>23</sup> Submission of UNODC.

in creating multidisciplinary and transnational teams despite implemented efforts on training and capacity-building at the regional, bilateral or national levels.<sup>24</sup>

28. Similarly, serious concerns have arisen in relation to the increasing number of trafficking cases of Rohingya refugees in Bangladesh and neighbouring countries.<sup>25</sup> For such refugees, the clandestine nature of their journey, the often unscrupulous and corrupt conduct of their facilitators and collaborators and the extent to which some States will go to prevent their departure, transit or arrival, all operate to create or exacerbate opportunities for traffickers, who prey on their precarious situation. For instance, Rohingya from Myanmar typically embark on maritime and overland journeys, often via Thailand, to reach Malaysia irregularly. Initially smuggled across borders, some are subsequently trafficked to work on fishing boats or palm oil plantations for labour exploitation.<sup>26</sup>

29. The Special Rapporteur also received allegations in relation to a pattern of arrests and detentions of Bangladeshi and Rohingya women and girls for the sole purpose of them being undocumented in the area of West Bengal in India, at the border with Bangladesh. In that regard, appropriate investigations and early identification had to be undertaken to determine whether they had entered the territory of India by means of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, for the purpose of exploitation.

## B. Identification in transit countries

30. The recent migration situation into Europe has primarily involved an influx of Syrians, Iraqis and Afghans, many of whom moved through the Balkans (often referred to as “the Balkan route”) in their attempt to reach Europe. Along the way, and at various stages of their journeys and flights, many of those migrants and refugees are exposed to different risks, vulnerabilities and exploitation, including, in some cases, human trafficking.<sup>27</sup>

31. In Central America, migrants attempting to reach the United States of America, have been forced to rely upon increasingly dangerous routes, often ending up in the hands of smugglers and traffickers. Smuggled migrants are vulnerable to trafficking, including mistreatment, sexual exploitation, threats, intimidations and restriction of their freedom of movement. Most overland migration involves migrants from El Salvador, Guatemala and Honduras transiting through Mexico to the United States.<sup>28</sup> IOM Mexico noted that trafficking victims are often identified at the moment they are freed from exploitation, either through the payment of ransom sums, when they manage to escape by their own means or, in exceptional circumstances, when traffickers free or abandon them.

32. Similarly, the journey of sub-Saharan African women and unaccompanied children is particularly hazardous. Thousands of such women and children have disappeared, presumably abducted for purposes of trafficking-related exploitation. Somali and Sudanese refugees and asylum seekers fleeing conflict, including numerous unaccompanied children, have been kidnapped or lured from refugee camps or while travelling, sold and subsequently held captive in Libya or in the Sinai desert for the purpose of exploitation through extortion.<sup>29</sup>

33. The main challenges common to all transit countries relate to a recurrent confusion between trafficking and smuggling, and an inadequate legal framework and standard

<sup>24</sup> Ibid.

<sup>25</sup> See A/HRC/32/18, para. 11.

<sup>26</sup> See A/HRC/29/38/Add.1, para. 19; and A/HRC/32/41, para. 24.

<sup>27</sup> FAFO, *Vulnerability and exploitation along the Balkan route: Identifying victims of human trafficking in Serbia* (Oslo, 2017), available at [www.faf.no/images/pub/2017/20620.pdf](http://www.faf.no/images/pub/2017/20620.pdf). Also Healy and Forin, “Trafficking along migration routes”.

<sup>28</sup> See UNODC, “Smuggling of Migrants from the Northern Triangle to the United States”, available at [www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA\\_CACaribb\\_migrantsmuggling\\_to\\_US.pdf](http://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_migrantsmuggling_to_US.pdf).

<sup>29</sup> See A/HRC/32/41 para. 21.

operating procedures or their correct implementation, which contribute to the non-identification and misidentification of victims and possible victims of trafficking in transit to their destination.<sup>30</sup> The varying knowledge concerning counter-trafficking among immigration case officers and other authorities, health-care providers and NGOs, and the lack of communication between stakeholders, further impact the practical implementation of the activities envisaged in the standard operating procedures.

34. Moreover, refugees and migrants in transit countries are often not willing to report their exploitation, as their priority is to continue their journey to their intended country of destination. Those in irregular migration situations have limited avenues to seek redress in the event that exploitation occurs, because of threats to them or their family members from traffickers. The risk of becoming stranded, arrested, detained or deported also makes them reluctant to complain or seek the support of the relevant authorities or other stakeholders.<sup>31</sup>

35. These challenges are further exacerbated by the hostile political climate towards migrants, including asylum seekers and refugees, and by the fact that the identification of trafficked persons is not perceived as a protection priority in the context of mixed migration.<sup>32</sup> As migrants find themselves stranded in transit countries owing to a lack of financial means and a lack of safe and legal ways to continue the journey to their intended country of destination, or in destination countries with no access to the regular labour market, often the only option available to them is to resort to traffickers or dubious intermediaries, who offer exploitative working conditions.

36. Specific challenges have been reported in relation to individual regions. In many European countries, screening and identification procedures/activities remain insufficient and incomprehensive. Moreover, few countries seem to have specific indicators on vulnerability for the target group in place. Early identification among migrants and refugees is also not mandatory or not part of formal procedures.<sup>33</sup> Other challenges include a lack of facilities, the fact that temporary residence permits for trafficked persons — and consequently protection and assistance measures — are linked to police investigation and the legal qualification of the crime. Other factors contributing to misidentification include the disconnect between asylum and migration actors and procedures, on the one hand, and anti-trafficking actors and procedures, on the other; receiving a negative decision in the asylum or family reunification procedure; long waiting periods within the asylum procedure; having an undocumented immigration status; uncertain legal status during the journey; and delays in the appointment of a guardian, and/or guardians' insufficient capacity to appropriately care specifically for unaccompanied and separated children.<sup>34</sup>

37. In El Salvador, some of the challenges related to lack of identification, especially in relation to cases of forced labour and labour exploitation, stem from a sort of “normalization” of conditions of exploitation of the working class, especially the most vulnerable ones, such as indigenous groups, women, children and migrants, who are less keen to report cases of exploitation for fear of reprisals.<sup>35</sup>

38. Lack of identification of victims or potential victims of trafficking is also linked to the use of profiling, which tends to categorize women and children as victims, excluding men from protection measures. For example, in Lebanon, Syrian single male refugees are disproportionately targeted by both governmental authorities and host communities because they are perceived as a security threat. They therefore rely upon negative coping strategies to maintain their immediate safety, which exposes them to exploitation and abuse, especially in the labour market. Both in cases of threats to personal safety and exploitation

<sup>30</sup> Healy and Forin, “Trafficking along migration routes”.

<sup>31</sup> *Ibid.*, and submission of La Strada International.

<sup>32</sup> Healy and Forin, “Trafficking along migration routes”.

<sup>33</sup> Submission of La Strada International.

<sup>34</sup> Healy and Forin, “Trafficking along migration routes”.

<sup>35</sup> IOM, “Trata de Personas con fines de explotación laboral en Centro América: El Salvador” (2011), p. 29. Available at [http://plataformadeaprendizaje.iom.int/pluginfile.php/12468/mod\\_resource/content/11/Trata\\_de\\_personas\\_el\\_salvador.pdf](http://plataformadeaprendizaje.iom.int/pluginfile.php/12468/mod_resource/content/11/Trata_de_personas_el_salvador.pdf).

incidents, male refugees reported not seeking help from authorities owing to lack of confidence that justice would be afforded to them.<sup>36</sup>

39. Generally, the link between migrants' vulnerabilities to labour exploitation and trafficking has not been acknowledged. On the contrary, it is ignored or culturally accepted, such as the reported cases of exploitation of migrant workers in the agricultural sector in Southern Europe, and in other informal sectors where migrants, and especially irregular migrants, are more exposed to exploitative conditions, including the agriculture, construction and textile industries. In those sectors, women are also targets for labour exploitation. Indeed, situations have also been reported in which women are exploited from a labour perspective in fields during the day, then exploited sexually during the night.<sup>37</sup> In addition, the business practices of recruitment intermediaries, who are largely unregulated or informal, such as the charging of fees to migrant workers or the arrangement of unclear and informal working arrangements, are still largely viewed as common rather than abusive conditions of work.

### C. Identification in countries of destination

40. Migrants in vulnerable situations in countries of destination remain of concern to assistance providers. Lack of protection, inadequate housing solutions and limited or lack of legal residence or employment are some of the issues raised and which impact on the identification of victims and potential victims of trafficking from among migrants. This lack of protection or assistance resources continues to increase the risk of migrants to exploitation, amounting in some cases to trafficking in persons.<sup>38</sup>

41. Concerning the identification of children, child protection services are often not trained to identify and establish a specific protection programme for child victims of trafficking. As a consequence, adults accompanying children are identified as family members or guardians, while in reality may be linked to the traffickers, or children may be placed in centres with little protection, to be picked up by a trafficker at a later stage.<sup>39</sup>

42. In addition, a lack of adequate response in the country of destination increases the risk that refugees and migrants will be returned to the first country of arrival or their country of origin. As a consequence, people on the move often prefer to remain in an irregular situation rather than being identified and therefore registered through a formal procedure.<sup>40</sup> Meanwhile, asylum procedures offer an opportunity to detect indications of trafficking, in addition to or as an alternative to grounds for international protection, eventually leading to a referral to services on the grounds of trafficking or risk of trafficking. Therefore, following existing good practices, it is absolutely necessary to train asylum staff to detect trafficking indications and cooperate with NGO service providers.<sup>41</sup>

43. As noted above, refugees and migrants are not likely to discuss their situation during first arrival interviews or in their encounters with different services along their journey through transit countries. In many cases, experiences of exploitation and trafficking in persons will only be shared at a later stage of the journey and not necessarily on arrival at the destination country. Such information is more likely to be shared in the context of a long-established relationship with a service provider that might not be originally mandated to perform identification, for example, health providers or protection actors. An exclusive focus on identification by border or other front-line officials might not provide the desired results. On the contrary, it would be more beneficial to train and raise awareness among a

<sup>36</sup> International Rescue Committee, "Vulnerability assessment of Syrian Refugee Men in Lebanon" (2016). Available at [www.rescue.org/sites/default/files/document/464/irclebanonrefugeemensvulnerabilityassessment.pdf](http://www.rescue.org/sites/default/files/document/464/irclebanonrefugeemensvulnerabilityassessment.pdf).

<sup>37</sup> Submission of Proxima NGO.

<sup>38</sup> Submission of La Strada International.

<sup>39</sup> Submission of Swedish Platform Civil Society against Human Trafficking.

<sup>40</sup> Ibid.

<sup>41</sup> See for example, [www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf](http://www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf).

larger group of social services professionals, including medical staff, social workers, or other civil society actors, as well as local communities, who enter into contact with migrants in different contexts and are in a position to establish a safe space and relationship of trust over time with potential victims of trafficking.<sup>42</sup>

44. Generally, the need for training is a major concern in the identification of victims of trafficking in countries of destination, even when there are mechanisms or procedures that include all relevant stakeholders. A lack of appropriate training is also a consequence of insufficient resources allocated to such services, which is in turn a consequence of political will, which is focused instead on countering migration.<sup>43</sup> Other groups identified in need of training include law enforcement, border police, asylum caseworkers, immigration services, refugee counselling centres, specialized migration centres, youth welfare offices, labour inspectors, immigration services, health support organizations, reception centres, migrant detention centres, legal services, municipal officers, labour authorities, migrant organizations, airport personnel, other transport providers and traditional, religious and community leaders in countries of origin.<sup>44</sup>

45. As regards the judiciary, organizations that provide assistance have also raised concerns about the subtle categorization of certain indicators in labour abuse or exploitative conditions of work as cases of trafficking in persons for labour exploitation. A good practice involves the collaboration between assistance organizations and prosecution offices, through exchanges including public hearings, which can raise the level of awareness of the judiciary. As a result, prosecutorial and judicial authorities are more attentive to relevant indicators in the subsequent cases, which can increase the number of cases reviewed with successful outcomes for victims.<sup>45</sup>

46. Feedback from destination regions shows a need to strengthen the ability of multidisciplinary teams to identify vulnerabilities and assistance needs. For example, in the identification of cases of labour exploitation, this approach implies the reinforcement of labour inspectorates and the inclusion of a trafficking dimension within service providers working on migrant worker protection.

47. To increase the identification of trafficking for labour exploitation, the enforcement of labour standards should be a key element in anti-trafficking policy, in addition to the evaluation of the indicators used to identify practices such as charging recruitment fees to migrant workers, the absence of contracts or the retention of passports and other personal documents, and ensure such practices are included as indicators in identification procedures. Often, trafficking for labour exploitation is linked to small labour abuses, and labour inspectors are better placed to provide early warnings on labour abuses that can mask grave violations, such as forced labour or trafficking in persons. Inspections should be strengthened and proactive, as the hidden nature of labour exploitation often goes underreported owing to a number of barriers faced by migrant workers, including fear of retaliation, linguistic barriers, lack of information about their rights, insecure status, etc.<sup>46</sup> Proactive labour inspection must not be limited to working sites but also include recruitment agents. A good example is the licensing scheme operated in the United Kingdom of Great Britain and Northern Ireland by the Gangmasters and Labour Abuse Authority, which regulates labour providers in the agriculture, horticulture and shellfish gathering sectors. That organization's licensing standards reflect key forced labour indicators and are monitored and enforced through proactive inspections. Its mandate has been expanded by the Immigration Act 2016 to cover the investigation of labour exploitation offences.<sup>47</sup>

<sup>42</sup> Submissions of La Strada International and FLEX.

<sup>43</sup> Submission of La Strada International.

<sup>44</sup> Ibid. See also ECOWAS Commission, "Annual Synthesis Report on Trafficking in Persons in West Africa 2016" (2017).

<sup>45</sup> Submission of Ruelle.

<sup>46</sup> Submission of FLEX. See also [www.icmpd.org/fileadmin/user\\_upload/WP11\\_PolicyBrief\\_LabourInspection\\_FINAL.pdf](http://www.icmpd.org/fileadmin/user_upload/WP11_PolicyBrief_LabourInspection_FINAL.pdf).

<sup>47</sup> Submission of FLEX.

48. The need to separate labour inspection from immigration control is also paramount in order to create a trustworthy space for migrant workers. Such a firewall has been advocated since 2014 by the Special Rapporteur on the human rights of migrants because migrant workers in an irregular status or precarious legal status are reluctant to report unless there is a firewall preventing labour inspectors from communicating information on potential irregularities in immigration status to immigration enforcement.

49. A good practice was examined while visiting Portugal in preparation of the present report. The Special Rapporteur on trafficking in persons found to be exemplary the country's practice of adapting the cooperation mechanism procedures to the legislative and institutional changes that had occurred since 2008. The National Referral Mechanism, revised in 2014 by the Portuguese working group that coordinated the activities of the national action plan, ensured that newly emerging forms of trafficking for the purpose of labour exploitation, forced begging and criminal activities were included with a view to also addressing the increased migrant-related trafficking in the country, which is a transit and destination for trafficking.

50. The origin of the Portuguese success is twofold. On the one hand, identification and referral is based on the work of regional multidisciplinary teams whose composition can be adapted to the circumstances of the case and type of exploitation, and which includes a wide range of actors, such as social workers and psychologists. In addition, those teams have also developed regional networks to help victims, including relevant public bodies and civil society actors. On the other hand, these efforts have been strengthened by a programme for the integration of identified victims, including access to the labour market. However, this approach has been used in a context of limited movement of people, as compared with other regions or countries, and its scalability and adaptability to deal with mixed migration movements and higher numbers of arrivals should be tested.

#### **D. Impact of return procedures in identification of victims and potential victims of trafficking in persons**

51. Within the current international protection system, those persons whose applications for international protection have been refused are subject to return to their country of origin. At the European Union level, transfer to the first European Union country of arrival can also happen even before a determination of their cases have been made, based on the Dublin III Regulation.<sup>48</sup> In that case, the risks of non-detection of victims and potential victims of trafficking increase as many countries do not have in place procedures for their proactive detection, especially when the application of Dublin criteria is assessed before a first interview takes place with the applicant for international protection.

52. According to feedback received, the risk for victims of trafficking of exposure to reprisals and re-victimization increases as they are likely to be contacted again by the trafficking network when returned to the first European Union country of arrival. Those risks are in principle not taken into consideration when determining which European Union member State is responsible for examining the application for international protection.<sup>49</sup> Submitted information also raises general concerns on the lack of training of officials to appreciate these dangers and safety concerns. Active screening for indicators of trafficking is on many occasions not performed under the assumption that the appropriate screening has already taken place at an earlier stage of the process, before the Dublin procedure is applied.<sup>50</sup> Even if cases of trafficking are identified, there is a lack of clear guidance within the social assistance system when a Dublin transfer has nevertheless been processed.<sup>51</sup>

<sup>48</sup> Available from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>. See also: [www.icmpd.org/fileadmin/user\\_upload/Policy\\_Brief\\_Relocation-20062017\\_FINAL.pdf](http://www.icmpd.org/fileadmin/user_upload/Policy_Brief_Relocation-20062017_FINAL.pdf).

<sup>49</sup> Submission of Swedish Platform Civil Society against Human Trafficking.

<sup>50</sup> European Migration network, "Synthesis report: Identification of victims of trafficking in human beings in international protection and forced return procedures" (March 2014), p. 7. Available at [www.refworld.org/docid/5326b50a4.html](http://www.refworld.org/docid/5326b50a4.html). See also Group of Experts on Action against Trafficking in Human Beings, "Fifth General Report on GRETA's activities" (2015), p. 34. Available at

53. Generally, the treatment of victims of trafficking deported to their countries of origin is of concern. Victims are stigmatized, discriminated against, and some suffer from mental health issues, which hinder them from communicating and trusting other people.<sup>52</sup> The human rights impact of returns, especially mass returns, cannot be underestimated. For instance, the deportation from Libya of 3,480 young Nigerians, mostly girls and women, following the shocking video on slavery-trade markets, reveals that some victims of human trafficking encounter considerable obstacles when they return home — on their arrival at the airport, they are seen as undignified persons and isolated from the community due to the fact that they were involved in prostitution/sex work.<sup>53</sup>

54. European States are de facto delegating returns of migrants to FRONTEX, whose budget has recently almost more than doubled specifically with regards to the implementation of return procedures. FRONTEX implements this task, inter alia, by taking into consideration the principle of non-refoulement throughout its activities, not allowing returns of unaccompanied minors and providing training on fundamental rights to the teams in charge of monitoring forced returns. However, it is alarming that States or regional institutions lack clear guidelines in relation to the forced returns of potential victims of trafficking that they might have failed to identify, considering also the rapidity and inadequacy of identification during large mixed migration movements. It is even more alarming that States are delegating the implementation of such procedures to a regional institution such as FRONTEX, which cannot interfere in the decision-making over individual cases. As a consequence, the final decision stays with national authorities, which risks nullifying the efforts made by FRONTEX specialized teams to integrate a human rights component.

55. In other regions of the world, for example in South-East Asia, forced returns of irregular migrants to countries of origin show similar challenges. High numbers of suspected victims of trafficking are potentially present within forced return programmes, but are not identified owing to a lack of appropriate mechanisms for screening indicators of trafficking.<sup>54</sup>

## **E. Role of referral mechanisms in early identification and assistance to victims of trafficking**

### **Cooperation mechanisms for referral of victims of trafficking in persons**

56. States use various means to fulfil their obligations to protect and promote the human rights of trafficked persons, including promulgating anti-trafficking legislations and policies such as national action plans, and establishing multidisciplinary coordinating institutions and frameworks such as national referral mechanisms and standard operating procedures to implement the Palermo Protocol and other anti-trafficking regional instruments. While these cooperation mechanisms are designed to provide an effective way to refer trafficked persons to comprehensive services in coordinated efforts between State institutions and civil society organizations, they are not exempt of shortcomings in their practical application. In the specific context of mixed migration movements, despite the prominent role played by international organizations in identification, a lack of specific international cooperation mechanisms hinders the referral of victims to local assistance

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000168063093c>.

<sup>51</sup> Submissions of Swedish Platform Civil Society against Human Trafficking and La Strada International.

<sup>52</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation, *Nigeria: COI Compilation on Human Trafficking* (December 2017), p. 36. Available at [www.refworld.org/pdfid/5a79c7114.pdf](http://www.refworld.org/pdfid/5a79c7114.pdf).

<sup>53</sup> *Ibid.* p. 32.

<sup>54</sup> ASEAN, *Regional review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children* (2016), p. 134. Available at <http://asean.org/storage/2016/09/ACWC-Regional-Review.pdf>.

providers.<sup>55</sup> Moreover, cooperation mechanisms are often based on police operations and assistance is only triggered by the official identification by law enforcement officials of a victim of trafficking in persons, thus creating a system shaped around a criminal investigation instead of the rights and needs of victims of trafficking.

57. The question then is what specific roles do cooperation mechanisms have in the context of early identification and assistance of victims of trafficking from among the large groups involved in the mixed migration context. In that regard, the Special Rapporteur noted with appreciation during her visit to Italy the combined use of the national anti-trafficking framework and the refugee protection system to complement each other and increase the protection of rights in cases of large mixed migration movements.<sup>56</sup> However, referral from asylum territorial commissions and from IOM at disembarkation points and hotspots to the anti-trafficking national network, and the subsequent placement of victims in specialized shelters, depends on the limited places for vulnerable groups, such as victims of trafficking and unaccompanied and separated children. As a result, those vulnerable groups end up staying for prolonged periods of time in the hotspots, as specialized shelter capacity remains limited.<sup>57</sup>

58. Moreover, when there is a large-scale arrival of people, it has been noted that cooperation mechanisms are often not involved at an early stage to identify victims of trafficking for a variety of reasons.<sup>58</sup> In European Union hotspots, migrant reception centres and other structures, a lack of understanding that trafficking can and often does happen in the context of mixed migration movements leads to the de-prioritization of trafficking issues. As a consequence, victims and potential victims of trafficking are not identified or misidentified and are not provided with effective protection and remedies.

59. Early assistance to identified victims of trafficking is even more difficult in States that did not have mechanisms or guidelines for their referral prior to large-scale arrivals. In such cases, for migrants who are not in camps or migration facilities, the chances of identification and assistance are even slimmer. For instance, in Jordan, the detection of trafficked persons from among the Syrian refugees outside camps is negligible.<sup>59</sup>

60. In order to address this problem, the Special Rapporteur echoes the views of practitioners and civil society organizations, namely, that early identification should not only focus on entry points to the country, like border points or transit centres, but also at locations where migrants and refugees might live or gather and can be reached. Identification is not necessarily a one-step process, but might take a longer time.<sup>60</sup>

### **Cooperation in cross-border trafficking cases**

61. Cooperation in cross-border trafficking cases involve the protection of victims or possible victims of trafficking in more than two countries.

62. In many European countries, this also means exchanging practices and learning how to legally challenge the transfer of victims of trafficking under Dublin procedures when this is done without consideration for the risks of re-trafficking and without the necessary and required safeguards.<sup>61</sup>

63. Within the Association of Southeast Asian Nations (ASEAN) region,<sup>62</sup> the high levels of cross-border trafficking raise practical questions about recognition by one State of

<sup>55</sup> IOM, “National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development” (2017), p. 4. Available at [https://publications.iom.int/system/files/pdf/national\\_referral\\_mechanisms.pdf](https://publications.iom.int/system/files/pdf/national_referral_mechanisms.pdf).

<sup>56</sup> See [www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf](http://www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf).

<sup>57</sup> Dutch Council for Refugees, “*The implementation of hotspot in Italy and Greece: A study*”, p. 16. Available at [www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016.pdf](http://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016.pdf).

<sup>58</sup> Healy and Forin, “Trafficking along migration routes”; and ASEAN, *Regional review*, pp. 44 and 63.

<sup>59</sup> See A/HRC/32/41/Add.1.

<sup>60</sup> Submission of La Strada International.

<sup>61</sup> *Ibid.*

<sup>62</sup> ASEAN, *Regional review on Laws*, p. 62.

victim status granted by another State.<sup>63</sup> Other referral and cooperation issues in transnational referrals<sup>64</sup> include: unassisted return, which can be stressful for trafficked persons, particularly if they fear retribution by their exploiter(s); inadequate referral of cases, which can result in people who are identified as trafficking victims in the destination country remaining unidentified for assistance upon their return home; broken links with established assistance services if authorities from one country return victims to their countries of origin; and a lack of cooperative case planning and management while victims of trafficking are abroad, meaning that they do not always receive a continuity of care upon their return home.

64. In Central America, regional coordination mechanisms — through the regional mechanism against trafficking and smuggling, the Regional Conference on Migration, the Caribbean Council and the Central American Council of Public Ministries — have developed regional and national protocols on this issue to follow up on human trafficking and migration issues in the region. The UNODC Regional Office for Central America and the Caribbean in Panama cooperates with these mechanisms through the preparation of guidelines on information-sharing on trafficking in border areas, addressed to Costa Rica, Guatemala, Honduras and Panama. It also performs bilateral and regional capacity-building activities and information exchanges on migratory movements among those countries, on regular and irregular migratory paths, with the objective of better identifying vulnerabilities and planning a coordinated response.

## VI. Conclusions and recommendations

### A. Conclusions

65. Current approaches to migration and the identification of victims and potential victims of trafficking are taking place in a context in which poisonous political discourse is leading many countries to adopt anti-migration and even racist positions. In these situations, the main concern of many Governments, including many European Governments, is to drastically limit or even block migration movements, with little attention paid to the human rights implications of such policies, and offering no significant solutions, so far, in terms of shared responsibility with countries of first arrival.

66. Today, some protection channels are partially in place, namely, for asylum and international protection, child protection, assistance measures for trafficked persons, and in very limited terms for smuggled persons. Yet, current international protection systems, screening procedures and national cooperation mechanisms have difficulties in adapting to the complex realities of today's large mixed movements of people arriving through a single entry point at the same time.

67. More specifically, procedures of accurate and early screening based on individual interviews and assessment carried out in a friendly setting, preferably by trained social workers, as well as mechanisms for referral to appropriate institutions, are not systematically established in the places of first arrival of the large influx of refugees and migrants. While there has been promising work in refining indicators of vulnerabilities to trafficking to facilitate detection and referral at an early stage upon arrival, such as the surveys developed by IOM in the Central and Eastern Mediterranean route,<sup>65</sup> there are also concerns over the use of specific profiling techniques in assistance and protection mechanisms and standardized sets of indicators, which might not be comprehensive and might lose sight of other types of vulnerabilities not specifically listed. Excessive profiling can further stigmatize target

<sup>63</sup> Ibid., p. 44.

<sup>64</sup> Ibid., p. 63.

<sup>65</sup> IOM, "Flow monitoring surveys: The human trafficking and other exploitative practices indication survey" (2017), available at [http://migration.iom.int/docs/Analysis\\_Flow\\_Monitoring\\_and\\_Human\\_Trafficking\\_Surveys\\_in\\_the\\_Mediterranean\\_and\\_Beyond\\_26\\_April\\_2017.pdf](http://migration.iom.int/docs/Analysis_Flow_Monitoring_and_Human_Trafficking_Surveys_in_the_Mediterranean_and_Beyond_26_April_2017.pdf).

groups and has not proven effective, as a very modest number of victims have been identified and protected in countries of first arrival.

68. In addition, officials in the places of first arrival often lack the capacity to identify quickly and at an early stage factual indicators of vulnerabilities, including to trafficking, and assess the credibility of the narrative of the person. Such officials should be trained to interview individuals using an appropriate and human-rights based methodology, check the credibility of their narrative and identify the most appropriate protection channel without infringing the right to apply for asylum or other forms of international protection. On the other hand, identification of trafficked persons and persons at risk from among asylum seekers should be integrated into asylum procedures.

69. Finally, the Special Rapporteur wishes to raise an alarm about the fact that results have been very modest regarding identification and assistance of trafficking victims and potential victims in the context of mixed migration movements. Therefore, an innovative model is needed, not primarily based on police operations or the decision-making of immigration authorities, but rather based on the assessment of every individual's background and personal conditions, in cooperation with civil society organizations. This entails the consideration of new protection schemes that should be focused not only on early identification of trafficking victims but also on a mechanism for the early referral and protection of persons in vulnerable situations. Refugees, asylum seekers and migrants in vulnerable situations are always at a high risk of falling prey to traffickers.

## **B. Recommendations**

70. In view of States' legal responsibility to identify, protect and assist victims and possible victims of trafficking in persons, especially women and children, in all circumstances, including in the context of mixed migration flows, the Special Rapporteur offers the recommendations below.

71. In relation to the protection of refugees, asylum seekers and migrants in vulnerable situations, including victims and potential victims of trafficking in persons, States should:

(a) Ensure that human rights are at the centre of efforts to address migration in all its phases, including responses to large and mixed movements, through the ratification and implementation of international and regional human rights instruments;

(b) Establish safe and legal migration channels, respecting the principle of non-refoulement and ensuring that migrants have access to the regular labour market in the host country, in cooperation with United Nations agencies and programmes and international organizations;

(c) Ensure that appropriate laws and procedures are in place to enable actors to protect and assist refugees and migrants, and review and suspend, amend or repeal any laws or other measures that have a negative or disproportionate impact on the human rights of refugees and migrants;

(d) Ensure that national legal frameworks and policies as well as bilateral/multilateral cooperation uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international law and standards. Ensure that organizations and individuals who rescue or assist people on the move are not criminalized or otherwise punished for doing so. Ensure that people who are rescued at sea or land are not returned to a country where they may be at risk of trafficking or other human rights violations.

72. The Special Rapporteur also offers the recommendations below to improve identification of victims and potential victims of trafficking on arrival, transit or destination.

73. With regard to identification or screening tools, procedures and facilities, States, international organizations and civil society should:

(a) Prioritize and establish dedicated and standardized procedures for the identification of indicators of vulnerability and assistance of victims and potential victims of trafficking through referral to protection services in areas of arrival of large influxes of people, in addition to international protection and child protection schemes. Implement individual screening and assessment procedures as soon as possible after migrants arrive. Ensure that experts in identification are present at borders to complete human rights-based screenings and referrals. Provide training to relevant border, migration and asylum authorities on the use of these indicators and referral measures;

(b) Develop standard screening forms that are sufficiently detailed to allow first responders to identify migrants in vulnerable situations early on and refer them to appropriate channels. Map all stakeholders likely to come into contact with the migrant population, especially health providers, migrant community leaders, social workers, labour inspectors and asylum caseworkers and ensure they are trained in identification and screening tools and coordination mechanisms in place for identification and referral;

(c) Expand current indicators used in the identification procedures of trafficking in persons to address profiling and systematically include indicators of migrants' situations of vulnerabilities that can lead to a risk of trafficking, based on the experience acquired by national agencies, international organizations and civil society. Such indicators should take into account risks occurring during or as a result of the migratory journey and/or at destination, such as those stemming from lack of financial resources, irregular status, use of migrant smuggling services, torture and extortion, sexual violence and sexual and labour exploitation;

(d) Facilitate victims' identification during search and rescue operations and at disembarkation points, by creating safe and confidential spaces to carry out individual interviews. Such interviews should be performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support, also in order to separate potential victims from traffickers;

(e) Allocate sufficient resources to ensure that places for arrival, disembarkation, reception centres and settings meet human rights standards for reception and assistance in accordance with the OHCHR and Global Migration Group Principles and Guidelines on the human rights protection of migrants in vulnerable situations;<sup>66</sup>

(f) Ensure that women, girls, men and boys vulnerable to sexual and/or labour exploitation are promptly identified and referred to gender-sensitive services on arrival, and in transit and destination countries;

(g) In transit and destination countries, establish a clear firewall between labour inspection, immigration control and law enforcement. Ensure labour inspection is proactive and adequately resourced;

(h) Develop adequate, human rights-based and gender-sensitive information material available in a language migrants understand, to ensure access to specialized services.

74. With regard to children, States, international organizations and civil society should:

(a) Ensure that children, especially unaccompanied and separated children, are promptly identified, registered and referred to the child protection system; and ensure that such identification procedures take into account the age, gender and maturity of the child, as well as the circumstances of his or her journey;

<sup>66</sup> Available at [www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf](http://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf).

(b) Adopt proactive protection measures based on the best interest of the child in line with international law, as well as Committee on the Rights of the Child general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, including by appointing properly trained and resourced guardians and establishing measures for protection and transition to adulthood;

(c) Ensure that a child-sensitive age assessment is performed only in cases of doubt regarding the child's age. In case of uncertainty, the person should be considered a child.

75. In order to improve the identification of trafficked children or those at risk at airports and sea and land border crossings, States should enhance coordination among law enforcement officials and entities such as airline staff, other transport providers, child protection services and those who work with other vulnerable groups.

76. With regard to the identification of victims and potential victims from among the asylum-seeking population States should:

(a) Integrate identification of trafficking victims and potential victims into asylum procedures, including in the context of accelerated procedures;

(b) In accordance with the UNHCR Guidelines on International Protection No. 7, consider trafficking in the country of origin, destination or transit, and the risk of trafficking, re-trafficking or reprisals from traffickers, as grounds to be granted international protection;

(c) Develop regular coordination between the asylum procedures and the trafficking protection systems in order to ensure that people identified as at risk of trafficking during asylum procedures are referred to the trafficking protection system and — when both grounds are recognized — have access to both refugee status and protection as victims or potential victims of trafficking.

77. With regard to the identification of victims and potential victims in return procedures, States should ensure that risks of trafficking and re-trafficking are adequately evaluated when a decision is made on return, including if the person is returned to the first country of arrival or a third country, and ensure that no person, regardless of their status, is returned to a place where there are substantial grounds to believe that they would be at risk of being subject to torture or other cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations, including a risk of being trafficked or subject to reprisals from the traffickers and their networks.

78. With regard to cooperation and referral mechanisms, States should:

(a) Establish cooperation mechanisms for referral of victims of trafficking in persons and clearly determine the roles and responsibilities of all stakeholders within the mechanism, including coordination between international organizations and national and local protection services. Ensure assistance is provided unconditionally, and is non-discriminatory, culturally appropriate, gender-responsive and sensitive to disability and age;

(b) Reinforce or create mobile multidisciplinary teams for identification and referral of trafficking victims or potential victims, the composition of which can be adapted to the circumstances of the case;

(c) Develop or strengthen measures to ensure coordination and referral between different protection systems, including protection against trafficking, child protection and international protection. Ensure that such measures are promptly implemented upon disembarkation and during the registration and reception procedures.

79. National and local social authorities and civil society organizations should be involved in procedures to detect trafficking cases and indications of the risk of trafficking, as well as in the organization of assistance, protection and support for

**victims or potential victims in cases where a high number of people are identified. Such measures must not be made conditional on the initiation of criminal proceedings, the legal qualification of the crime or the cooperation of victims with law enforcement authorities.**

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