



General Assembly

Distr.: General
25 April 2024

Original: English

Human Rights Council

Fifty-sixth session

18 June–12 July 2024

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Trafficking in persons, mixed migration and protection at sea

Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally

Summary

In the present report, the Special Rapporteur on trafficking in persons, especially women and children, sets out the obligations that apply to maritime actors, to States and other maritime actors, including non-State actors, commercial vessels and international organizations, to ensure effective prevention of trafficking and protection of victims of trafficking at sea, including, in particular, child victims. She sets out the obligations to ensure accountability for the serious human rights violation and serious crime of trafficking in persons, and access to effective remedies for victims. Restrictions on safe, regular migration, restricted access to asylum, pushbacks risking refoulement, arrest and detention on disembarkation, and criminalization of human rights defenders engaged in search and rescue operations force people to take more dangerous, more risky journeys, leading to deaths and disappearances at sea. Thousands of migrants continue to die or go missing each year along perilous routes sea. Many of those who die or go missing are victims of trafficking. Effective measures to prevent trafficking in persons must include the expansion of safe, regular opportunities for migration, pathways to international protection, including effective access to asylum, rights-based family reunification and resettlement. The Special Rapporteur calls for urgent, effective and coordinated action by States and maritime actors to prevent trafficking in persons in the context of migration at sea and to protect victims and persons at risk of trafficking. Such action must be compliant with international law, recognizing the trauma and serious harm endured by victims of trafficking.



I. Introduction

1. At sea, victims of trafficking or persons at risk of trafficking are often perceived as being without rights, rightless. The rights of victims of trafficking and persons at risk of trafficking continue to exist at sea. Despite the disputes that arise, the often contested nature of jurisdiction and the increasing criminalization of migration, the normative framework of international law, as it applies to protection at sea, sets out a comprehensive range of obligations for maritime actors, including States, non-State actors, and international and regional entities. The obligations to prevent trafficking in persons and to identify, assist and protect victims of trafficking, without discrimination, continue to apply at sea. The failure to fulfil those obligations increases the risks of trafficking in persons and other serious violations of international law.

2. The often politicized and punitive responses to migration at sea, including restrictions on safe, regular migration, restricted access to asylum, pushbacks risking refoulement, arrest and detention on disembarkation, and criminalization of human rights defenders engaged in search and rescue operations, force people to take more dangerous, more risky journeys. Effective measures to prevent trafficking in persons must include the expansion of safe, regular opportunities for migration, pathways to international protection, including effective access to asylum, rights-based family reunification and resettlement. The prevention of trafficking in persons, and protection of victims, is a core, non-derogable human rights obligation, rooted in article 4 of the Universal Declaration of Human Rights, and requires continuing commitment and positive action by States. Trafficking in persons by its very nature threatens human dignity and the fundamental freedoms of its victims and “cannot be considered compatible with a democratic society”.¹ It is also an international crime.

3. In the Global Compact for Safe, Orderly and Regular Migration, States commit to international cooperation “to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations, standardized collection and exchange of relevant information, assuming collective responsibility to preserve the lives of all migrants, in accordance with international law” (para. 24). In the Progress Declaration of the International Migration Review Forum, States reaffirmed their “collective responsibility to preserve the lives of all migrants and take action to prevent loss of migrant lives”, expressing deep concern that “thousands of migrants continue to die or go missing each year along perilous routes on land and at sea” (para. 14). Many of those who die or go missing are victims of trafficking. Despite that reaffirmation of collective responsibility, according to the data collected by the Missing Migrants Project of the International Organization for Migration, at least 8,565 persons died on migration routes worldwide in 2023, making it the deadliest year on record. The 2023 death toll represents an increase of 20 per cent compared with 2022.

4. The Special Rapporteur highlights the Multistakeholder Pledge on Developing Comprehensive Responses to the Protection Challenges Faced by Refugees and Migrants Moving by Sea, presented at the Global Refugee Forum 2023, which aims at encouraging States and other stakeholders to ensure the protection of asylum-seekers, refugees, stateless persons and migrants moving by sea, in particular, in the context of mixed movements. As presented, the Pledge is in line with the recommendations contained in other relevant initiatives, such as the pledge on trafficking in persons, also presented at the Global Refugee Forum 2023.

5. The 2030 Agenda for Sustainable Development and its Sustainable Development Goals expressly included migration in three of its targets² and recognized the positive contribution of migrants for inclusive growth and sustainable development.³ Target 10.7 commits to facilitating orderly, safe, regular and responsible migration and mobility of

¹ European Court of Human Rights, *Rantsev v. Cyprus and Russia*, application No. 25965/04, Judgment, 7 January 2010, para. 282.

² Targets 8.8, 10.7 and 17.18. See also Goal 8 on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Goal 10 on reducing inequality within and among countries; and Goal 17 on systemic issues.

³ General Assembly resolution 70/1, para. 29.

people, including through the implementation of planned and well-managed migration policies. Continued progress towards the Sustainable Development Goals is essential to the prevention of trafficking in persons, and protection of victims, and must be a core commitment of the upcoming Summit of the Future, underpinned by the obligations arising under international human rights law, international refugee law and international law on trafficking in persons.

6. In the present report, the Special Rapporteur sets out the obligations that apply to maritime actors, to States, including port States and flag States, and other maritime actors, including non-State actors, commercial vessels and international organizations, to ensure effective prevention of trafficking, and protection of victims of trafficking at sea, including, in particular, child victims. She also addresses the obligations to ensure accountability for the serious human rights violation and serious crime of trafficking in persons, and access to effective remedies for victims, recognizing the particular difficulties that arise for victims of trafficking in the context of mixed migration at sea.

II. Protection gaps at sea

7. The protection gaps that arise at sea are not inevitable. They are the consequence of failures of international cooperation and shared responsibility. Information and reports received by the Special Rapporteur repeatedly highlight gaps in protection at sea. Confusion over which State or non-State actors have responsibilities, as well as the shifting of responsibility, has led to transfers of responsibility for the reception of asylum-seekers and the determination of asylum claims.⁴ In the Mediterranean Sea, concerns persist in relation to returns of migrants and refugees, including potential victims of trafficking, to Libya where there are continuing real risks of serious human rights violations.⁵

8. Of serious concern are the conclusions of the Independent Fact-Finding Mission on Libya, which stated that Libyan authorities, including the Directorate for Combating Illegal Migration, the Libyan Coast Guard and the Stability Support Apparatus, and third States had been on notice for years regarding the ongoing widespread and systematic attacks on migrants, including violations occurring at sea, in detention centres, along trafficking and smuggling routes and in trafficking hubs.⁶ Despite credible evidence of the real risks of trafficking in persons and other serious human rights violations, in accordance with memorandums of understanding between Libya and third States, the Libyan authorities have continued their policy of intercepting and returning migrants to Libya. The Mission further concluded that there were grounds to believe that the European Union and its member States, directly or indirectly, had provided monetary and technical support and equipment, such as boats, to the Libyan Coast Guard and the Directorate for Combating Illegal Migration that had been used in the context of interception and detention of migrants.⁷ The previous mandate holder issued a joint communication⁸ expressing concern that strengthening activities, institutions and mechanisms that would increase the interception of migrants at sea and their unlawful return to Libya, a State where they were at risk of slavery, trafficking, torture and other ill-treatment, and enforced disappearance, would constitute a violation of the principle of non-refoulement. Specifically, concerns were raised at the de facto delegation of search and rescue at sea to a State that might currently lack the capacity to properly carry out that role in respect of human dignity and international human rights norms.⁹

9. Failures of protection are not confined to one region. Concerns were raised by the previous mandate holder in relation to an alleged pushback policy implemented against

⁴ A/HRC/53/28, para. 30.

⁵ See, for example, Office of the United Nations High Commissioner for Human Rights (OHCHR), “‘Lethal disregard’: search and rescue and the protection of migrants in the central Mediterranean Sea” (Geneva, 2021).

⁶ A/HRC/52/83, para. 46.

⁷ Ibid.

⁸ See communication ITA 4/2017, p. 3. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁹ Ibid.

irregular migrants in the Bay of Bengal.¹⁰ The Special Rapporteur highlights significant changes of practice in relation to disembarkation in Indonesia, in line with Presidential Regulation No. 125 of 2016. Notably, search and rescue missions were carried out on various occasions for vessels in distress and six boats with 809 Rohingya refugees were allowed to safely disembark (between January and August 2023) in Indonesia. In addition, the Special Rapporteur notes that it is reported that protection-sensitive anti-trafficking screenings were conducted in the designated reception centres.¹¹

10. Joint communications were issued in relation to the disappearance of 58 Venezuelan migrants who were on board two boats bound for Trinidad and Tobago. The special procedure mandate holders expressed alarm at the smuggling and trafficking in persons from the Bolivarian Republic of Venezuela to Trinidad and Tobago, as well as the existence of consolidated human trafficking networks for labour and sexual exploitation in the region, which could amount, under certain circumstances, to forced labour and sexual slavery. Further concern was expressed at the criminalization of irregular migration, which resulted in persons in vulnerable situations taking dangerous migration routes and therefore exposed them to the risk of being trafficked.¹² In a communication to the Kingdom of the Netherlands,¹³ allegations were forwarded in relation to the disappearance of 15 Venezuelan migrants who had boarded a boat headed to Curaçao and the continued existence of consolidated trafficking routes and networks operating between the Bolivarian Republic of Venezuela and Curaçao.¹⁴ A related communication¹⁵ was issued to the Bolivarian Republic of Venezuela concerning the disappearance of 73 migrants, including possible victims of trafficking, following their departure from the country on boats travelling to Curacao and Trinidad and Tobago.

11. In the report on her visit to Bangladesh, the Special Rapporteur highlighted the key role of the Coast Guard of Bangladesh in identification and assistance of victims of trafficking at sea.¹⁶ A memorandum of understanding between the Coast Guard of India and the Coast Guard of Bangladesh provides for cooperation in search and rescue operations in relation, inter alia, to trafficking in persons, with the objective of ensuring both the safety of lives and “good governance” at sea. The Special Rapporteur expressed grave concern at the high number of people rescued at sea, who may be victims of trafficking, and the tragic loss of many lives at sea. She stressed the importance of referral pathways to ensure that victims of trafficking or persons at risk of trafficking were referred for assistance and protection, and not detained or punished on disembarkation, following search and rescue operations. In her report, the Special Rapporteur also expressed concern at the increasing numbers of people, mostly Rohingya, taking perilous journeys on the Andaman Sea.¹⁷ According to data from the Office of the United Nations High Commissioner for Refugees (UNHCR), more than 3,500 Rohingya attempted the deadly sea crossings in boats across the Andaman Sea and the Bay of Bengal in 2022, representing a 360 per cent increase compared with 2021. The Special Rapporteur highlighted the urgent need for a comprehensive regional response and shared responsibility on the part of the international community. During her visit to Cox’s Bazar, the Special Rapporteur heard accounts of victims of trafficking being rescued at sea, including child victims, who were subsequently brought to police stations and detained for several days, with no psychosocial, medical or legal assistance provided. She heard accounts directly from child victims, Rohingya refugees in Cox’s Bazar, who were rescued at sea while travelling to Malaysia, having been recruited for purposes of child marriage. The testimonies given included accounts of child victims of trafficking being detained in police stations alongside adults, without protection or assistance, following deeply traumatic experiences at

¹⁰ Communications IDN 5/2015 and [THA 3/2015](#).

¹¹ UNHCR Regional Bureau for Asia and Pacific, “Rohingya refugees fleeing over land and sea – quarterly update as of 31 August 2023”, p. 4.

¹² Communication TTO 1/2020, p. 3.

¹³ Communication NLD 2/2020.

¹⁴ *Ibid.*, p. 2.

¹⁵ Communication VEN 8/2020 (in Spanish).

¹⁶ [A/HRC/53/28/Add.1](#), para. 37.

¹⁷ *Ibid.*, para. 59.

sea, including witnessing the drowning and disappearance of family members, other children and young persons.

12. The Special Rapporteur highlights the critical situation of Rohingya refugees, many of whom are at risk of trafficking at sea, including child refugees. In its quarterly update, dated December 2023, on Rohingya refugees fleeing over land and sea, the UNHCR Regional Bureau for Asia and Pacific reported a total of 6,500 persons attempted land and sea movements in 2023, including nearly 4,500 Rohingya refugees embarking on perilous sea journeys and 569 persons reported deceased or missing. The year 2023 was reported by UNHCR as the deadliest year on record for maritime movements in the region since the 2015 Andaman Sea crisis.¹⁸ It is reported that, of the 6,500 individuals travelling by land and sea, nearly all the 569 persons reported as dead or missing were from maritime movements. Compared with 2022, the number of persons embarking on sea journeys increased by 21 per cent, while the number of dead or missing rose by 63 per cent. It was expected that the pattern of increased “perilous maritime movements” would continue in 2024, in the Andaman Sea and the Bay of Bengal.

13. It is estimated that one Rohingya has died or gone missing for every eight persons attempting the journey in 2023, making the Andaman Sea and Bay of Bengal one of the deadliest stretches of water in the world.¹⁹ An estimated 66 per cent of those embarking on those journeys are women and children, the majority departing from Bangladesh and, to a lesser extent, Myanmar.

14. The Special Rapporteur highlights that at least seven known tragic accidents at sea occurred, resulting in 250 confirmed deaths and 319 persons missing between January and December 2023. It is a serious concern that widespread physical abuse, including gender-based violence, was reported by the survivors of those incidents.²⁰ The lack of accountability and limited investigations into credible evidence of trafficking in persons, in addition to the limited assistance and protection to victims and persons at risk of trafficking among Rohingya refugees crossing the Andaman Sea and Bay of Bengal is a very serious concern, requiring urgent attention from United Nations entities, regional bodies and States.

15. The Special Rapporteur highlights the political commitments made by all member States of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in the eponymous declaration in 2016. However, the continuing absence of a regional mechanism for predictable search and rescue and safe disembarkation has led to varied and ad hoc responses and continuing violations of States’ obligations to prevent trafficking in persons and to assist and protect victims of trafficking.

16. During her visit to Colombia in 2023, the Special Rapporteur visited several border areas, including the Gulf of Urabá (Apartadó and Necoclí),²¹ and observed the precarious conditions, lack of safe accommodation and serious risks of trafficking, in particular for women, families and children desperate to pay the exorbitant fees charged for onward travel to Mexico, Panama and the United States of America. The fees charged vary depending on the routes taken through the Darién Gap. Those with limited resources – often Haitians and Venezuelans – are forced to take longer and more dangerous paths, while those with more resources can take safer routes.

17. The serious risks of trafficking in persons and other human rights violations resulted in the issuing, on 11 April 2023, of binational early warnings by the Office of the Ombudsman (Colombia) for the Antioquia and Chocó departments.²² Concerns persist, however, at the limited follow-up to the early warnings and the continued lack of resources and protection pathways, in practice, for victims and persons at risk of trafficking. Specific risks of trafficking in persons arise at the main ports of the Gulf of Urabá, such as Necoclí

¹⁸ See <https://data.unhcr.org/en/documents/details/106455>.

¹⁹ See UNHCHR, “UNHCR: Urgent action needed to address dramatic rise in Rohingya deaths at sea”, 23 January 2024.

²⁰ See <https://data.unhcr.org/en/documents/details/106455>.

²¹ In 2023, Migration Colombia reported that, of the 539,959 migrants in an irregular situation arriving in Colombia, 343,112 left the country through Necoclí.

²² See <https://alertasstg.blob.core.windows.net/alertas/014-23.pdf>.

and Turbo, where migrants arrive to travel by sea to Acandí (municipality bordering Panama), Capurganá (town in Acandí) or directly to Panamanian towns (by using unregulated sea routes). Those three municipalities are located in an area controlled by an illegal armed group that controls the mixed movement routes. The Special Rapporteur highlighted the specific risks for unaccompanied children of trafficking for purposes of exploitation in criminal activities, sexual exploitation and forced labour. The Special Rapporteur notes that continued limited pathways for regular migration lead to people taking more dangerous routes and contribute to the expansion of criminal activities in the region. Changes in migration and asylum laws and policies in the United States and Mexico have contributed to fluctuations in the numbers of refugees and migrants taking the sea routes and the onward dangerous journey through the Darién Gap.²³ The Special Rapporteur highlights the urgency of more support for host communities and a greater role for development actors and international financial institutions in supporting States in fulfilling protection obligations and taking action to prevent trafficking in persons.

18. The Special Rapporteur recalls the resolution on missing migrants and refugees in Africa and the impact on their families of the African Commission on Human and Peoples' Rights, in which the Commission "calls on the African Union (AU) to engage the European Union (EU) within the framework of the AU-EU Partnership for the EU to review its migration policies and practices to avoid their adverse consequences for African migrants, including enforced disappearances and death on the Mediterranean".²⁴ Despite such calls, disappearances and deaths have continued with impunity.

III. Shared responsibility and questions of jurisdiction

19. Disputes regarding jurisdiction and a lack of willingness to accept responsibility contribute to increased risks and failures of prevention and protection at sea. It is critical to recall that States are responsible for the human rights of all persons within their jurisdiction, including within their territory and at borders and where they exercise effective power, control or authority,²⁵ including at sea and on vessels.²⁶ Any State exercising effective control over a vessel, including through search and rescue operations, is responsible for securing the human rights of passengers, regardless of their migration status.²⁷ Those include positive obligations to identify, assist and protect victims of trafficking, to prevent trafficking in persons and to ensure accountability for trafficking in persons at sea. In situations in which States have overlapping or transnational authority at sea, for example on the high seas or in designated search and rescue areas, all States must fulfil their obligations arising under international human rights law, including obligations relating to trafficking in persons.²⁸ States are required to coordinate effectively and to act together to realize those protection obligations, including to ensure that persons in distress at sea are taken to a place of safety. However, in practice, States often seek to avoid human rights obligations towards migrants at sea, including by transferring responsibility to other States and non-State actors. Reports of migrant vessels in distress in the Mediterranean experiencing difficulties in seeking to contact the European Border and Coast Guard Agency (Frontex) or the search and rescue authorities of individual European States are well documented.²⁹

20. As the Special Rapporteur has previously highlighted in relation to jurisdiction and the scope of application of obligations relating to trafficking in persons, the positive

²³ See www.cfr.org/article/crossing-darien-gap-migrants-risk-death-journey-us.

²⁴ African Commission on Human and Peoples' Rights resolution 486.

²⁵ [A/HRC/47/30](#), para. 38. See also [A/HRC/53/28](#), para. 39.

²⁶ Committee on Enforced Disappearances, general comment No. 1 (2023), para. 31.

²⁷ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (Geneva, 2014), principles 8 and 10 and guideline 4. See also United Nations Convention on the Law of the Sea, art. 98 (1).

²⁸ [A/HRC/47/30](#), para. 38.

²⁹ (OHCHR), "Lethal disregard": search and rescue and the protection of migrants in the central Mediterranean Sea", pp. 9–12. See also European Union Agency for Fundamental Rights, "June 2023 update – search and rescue operations in the Mediterranean and fundamental rights", 11 October 2023.

obligations on States to identify and protect victims of trafficking or persons at risk of trafficking arise also in the context of interceptions at sea and in the context of duties to rescue persons in distress at sea. The Special Rapporteur recalls the recommendation of the Human Rights Committee to review the policy and practices during interceptions at sea, including on-water assessments, to ensure that all persons under the State party's jurisdiction who are in need of international protection have access to fair and efficient asylum procedures within the territory of the State, including access to legal representation where appropriate, and to legal remedies.³⁰ The Special Rapporteur highlights the evolving functional concept of jurisdiction, and specifically the special relationship of dependency that may arise in such contexts, and its relevance in determining whether persons directly affected by decisions taken by States, in a manner that was reasonably foreseeable in light of relevant legal obligations, are subject to its jurisdiction. In situations in which jurisdiction is established, the specific obligations of prevention and of protection of victims of trafficking arise and must be implemented without discrimination. As the European Court of Human Rights has stated, "the special nature of the maritime environment cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction".³¹ As such, international human rights law, and international law on trafficking in persons, continue to apply to those States for which jurisdiction is established. That includes the obligation of States on non-refoulement, as protected under international human rights and refugee law and customary international law, and the prohibition of collective expulsions. Without such continued protection of the law, the consequence would be that victims of trafficking, not having managed to reach the borders of a State, would not be entitled to an examination of their personal circumstances before being expelled, unlike those travelling by land. That would clearly be contrary to the object and purpose of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the international law prohibition of refoulement.

IV. Search and rescue operations

21. First and foremost, for victims of trafficking at sea, the right to life must be ensured, as a fundamental and non-derogable human right set out in the International Covenant on Civil and Political Rights and other international human rights treaties. As the Human Rights Committee stated in its general comment No. 36 (2018), the right to life is a right that should not be interpreted narrowly (para. 3). The Committee further noted that a State's obligation to respect the right to life includes an obligation to take action in the case of foreseeable threats to the right to life and in life-threatening situations, even in situations in which those threats and situations are not caused directly by the State.

22. States have an obligation to ensure that maritime actors can fulfil their duties towards persons in distress at sea, including victims of trafficking and persons at risk of trafficking. It is essential, therefore, that maritime actors are fully supported in meeting their search and rescue obligations under international law. As required by international maritime law and the law of the sea, masters of ships are required to assist those in distress at sea.³² Those obligations must be implemented without discrimination or regard to the status of the persons being rescued and, as such, equally apply to victims of trafficking and persons at risk of trafficking.³³ Flag States are required, under the United Nations Convention on the Law of the Sea, to require the master of a ship flying its flag to render assistance and to proceed with all possible speed to the rescue of persons in distress (art. 98). Similarly, the International Convention for the Safety of Life at Sea requires masters of ships at sea, who are in a position to be able to provide assistance, to assist persons in distress, specifying that: "This obligation to provide assistance applies regardless of the nationality or status of such persons or the

³⁰ CCPR/C/AUS/CO/6, para. 34 (b).

³¹ European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, application No. 27765/09, Judgment, 23 February 2012, para. 178.

³² A/HRC/47/30, para. 50.

³³ Ibid.

circumstances in which they are found.”³⁴ The Special Rapporteur recalls also the Guidelines on the Treatment of Persons Rescued at Sea.³⁵

23. Flag States, coastal States and States responsible for the coordination of search and rescue zones, and their search and rescue units, have further obligations to provide assistance to all in distress at sea or to ensure that assistance is provided.³⁶ Furthermore, States have obligations towards masters of private ships that render assistance to persons in distress at sea, to facilitate their efforts and continued safe journeys.³⁷ Fulfilment of those obligations is essential to the protection of victims of trafficking and the prevention of trafficking in persons.

24. Coastal States are required, under the International Convention on Maritime Search and Rescue, to establish national search and rescue zones in cooperation with neighbouring States and to take primary responsibility for responding to search and rescue incidents that occur within their region. That may include deployment of national vessels, coordination of responses with other States or delegating responsibility to private, commercial or other non-State actors to respond and render assistance.³⁸ Specifically, the Convention requires States providing the overall coordination of search and rescue zones to “take urgent steps to provide the most appropriate assistance available and, where such assistance is rendered, to take primary responsibility for ensuring effective co-ordination and co-operation so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety”.

25. The Special Rapporteur highlights the Progress Declaration, in which States committed to develop and implement transparent, safe and predictable arrival procedures on land and at sea for all migrants, including procedures for rescued people, promoting responsibility-sharing in providing a place of safety and to develop and implement procedures and agreements on search and rescue of migrants, with the primary objective of protecting migrants’ right to life, that uphold the prohibition of collective expulsion, guarantee due process and individual assessments, enhance reception and assistance capacities, and ensure that the provision of assistance of an exclusively humanitarian nature for migrants is not considered unlawful.³⁹ However, as evidenced by the continuing alarming numbers of refugees and migrants dying or disappearing at sea, progress has not been made.

26. The Special Rapporteur highlights general comment No. 1 of the Committee on Enforced Disappearances (para. 6), in which the Committee states that restrictive and dehumanizing border governance directly contribute to the disappearance of migrants. Those practices include immigration detention, pushbacks and chain pushbacks on land or at sea, the systematic failure of search and rescue,⁴⁰ and collusion between State agents and organized criminal groups engaged in trafficking in persons.⁴¹

27. The Special Rapporteur recalls that victims of trafficking at sea may also be victims of enforced disappearances and, as such, the obligations arising for States and all maritime actors arising in the context of enforced disappearances must be ensured. The Special Rapporteur highlights the recently adopted African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers. The Guiding Principles aim to support African Union member States in fulfilling their legal obligations to guarantee the rights of all migrants, without discrimination as to status, and apply at all stages of the migration process

³⁴ International Convention for the Safety of Life at Sea, chap. V, regulation 33 (1).

³⁵ Maritime Safety Committee resolution MSC.167(78).

³⁶ International Convention on Maritime Search and Rescue, annex 2.1.3 and chap 2, para. 2.1.9.

³⁷ See, for example, International Convention on Maritime Search and Rescue, art. 3.1.9.

³⁸ International Convention on Maritime Search and Rescue, as amended by Maritime Safety Committee resolution MSC.155(78), annex, chap. 3, para. 3.1.9.

³⁹ General Assembly resolution 76/266, annex, para. 65.

⁴⁰ See OHCHR, “‘Lethal disregard’: search and rescue and the protection of migrants in the central Mediterranean Sea”; and Noemi Magugliani and Jean-Pierre Gaudi, “Migrant crossings in the Channel: non-assistance, securitisation, and accountability under international law”, *Opinio Juris*, 21 December 2021.

⁴¹ [A/HRC/36/39/Add.2](#), paras. 34–43. See also Human Rights Commission of Malaysia and Fortify Rights, “*Sold Like Fish: Crimes against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015* (2019).

(principle 2 (5)). Specifically, principle 9 (4) provides that: “States shall establish or reinforce mechanisms for searching for migrants who have gone missing or disappeared within their territory and on the high seas.”

28. The Special Rapporteur highlights the commitment made by States engaged in the Bali Process, including to victim-centred and protection-sensitive strategies and to further capacity-building of the relevant agencies in search and rescue operations.⁴²

29. The Special Rapporteur highlights also that effective protection of the right to life imposes procedural obligations under international human rights law, including obligations to conduct effective investigations and to ensure accountability for alleged failures of protection. In *Safi v. Greece*,⁴³ the European Court of Human Rights found that the steps taken by the authorities, namely the initiation of criminal proceedings against coastguard personnel, were insufficient, leading to the finding of a violation of the procedural aspect of article 2. The Human Rights Committee found a violation of the due diligence obligations arising under article 6 (1) of the International Covenant on Civil and Political Rights due to a failure to respond promptly to a distress call, in the absence of a clear explanation for that failure.⁴⁴ The high numbers of deaths and disappearances of migrants and refugees crossing the Mediterranean Sea has been an ongoing serious concern, raising urgent questions of how and whether States and other actors, including Frontex, are meeting their obligation to ensure the protection of the right to life and other fundamental rights. Following the deaths and disappearances of an estimated 600 persons in the *Adriana* shipwreck on 14 June 2023, an investigation was launched by the European Ombudsman into the compliance of Frontex with its fundamental rights obligations concerning search and rescue in the context of its maritime surveillance activities, in particular in relation to the *Adriana* shipwreck. The Ombudsman concluded, inter alia, that there was a need for greater clarity on roles and responsibilities and, importantly, on the nature of Frontex’s cooperation with national authorities and, significantly, that there was a failure to ensure Frontex’s fundamental rights monitors were sufficiently involved in decision-making on maritime emergencies detected during Frontex’s surveillance activities.⁴⁵

V. Identification, assistance and protection: disembarkation and places of safety

30. The Special Rapporteur recalls that a place of safety must be interpreted as meaning a place that can ensure protection of the rights of those disembarked, including, specifically, the rights of victims and potential victims of trafficking, as well as the prevention of trafficking in persons, “since the notion of ‘safety’ extends beyond mere protection from physical danger and must also take into account the fundamental rights dimension of the proposed place of disembarkation”.⁴⁶ States are required to ensure respect for human rights principles, including access to relevant procedures, the prohibition of refoulement and avoiding serious harm or other risks.⁴⁷

31. The positive obligation on States to identify victims of trafficking and persons at risk of trafficking continues to apply at sea, including during search and rescue operations. It also applies at disembarkation, imposing obligations on both flag States and port States. The obligations on States to identify and protect victims of trafficking and persons at risk of trafficking are positive obligations, not dependent on self-identification, and must take account of the trauma endured by victims of trafficking, ensuring gender equality, the best

⁴² Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime, (para. 5), reinforced by the 2023 Adelaide Strategy for Cooperation.

⁴³ European Court of Human Rights, *Safi v. Greece*, application No. 5418/15, Judgment, 7 July 2022.

⁴⁴ *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017). para. 8.5.

⁴⁵ See www.ombudsman.europa.eu/en/case/en/63451.

⁴⁶ Council of Europe Parliamentary Assembly resolution 1821 (2011) on the interception and rescue at sea of asylum seekers, refugees and irregular migrants, para. 9.5.

⁴⁷ UNHCR and others, Joint Statement on Place of Safety, “The concept of place of safety under international law and the respect of the rights of migrants and refugees rescued at sea by all States” (May 2022).

interests and rights of all children, and non-discrimination on grounds such as disability, race, religion, nationality or migration status.

32. Disembarkation to a place of safety requires ensuring that all necessary measures to prevent trafficking in persons, and to ensure effective protection of the rights of victims of trafficking, are carried out. Those include the positive obligation to identify, assist and protect victims of trafficking.

33. Disembarkation to a place of safety requires that the rights of victims of trafficking to assistance and protection are ensured. As required by international human rights law, victims of trafficking have a special status in international law and rights to specialized assistance, including medical and psychosocial assistance, reproductive and sexual health services, safe accommodation and legal assistance. Protection measures must be ensured. Assistance provided to victims must be inclusive and accessible, including access to information on their rights, the medical, psychological, social and legal services available to them and how to access them, as well as to safe and appropriate accommodation.⁴⁸ Trafficking victims must be provided immediately with unconditional assistance, by trained and qualified personnel.

34. The obligation to ensure disembarkation to a place of safety requires ensuring that the positive obligation to identify victims of trafficking and persons at risk of trafficking can be fulfilled, as required by international human rights and anti-trafficking law. Too often, weak identification and referral processes at sea, and on disembarkation, lead to failures of protection. Victims of trafficking face restricted access to essential services, both in the place in which they are identified and in their place of origin, for reasons of: cost and language delivery of services; lack of gender or cultural sensitivity and trauma-informed practices; and failure of first responders to conduct appropriate risk assessments and referrals”.⁴⁹

35. For persons with disabilities, the limited accessibility of information, assistance and protection services, and access to justice, leads to failures of identification and gaps in protection at sea and on disembarkation. A focus only on physical or visible disabilities in screening or referral processes contributes to weak identification and protection gaps.

36. In a joint letter to the Presidents of the European Commission, the European Parliament and the European Council, the Special Rapporteur expressed concerns in relation to the European Union’s new pact on migration and asylum. Specifically, concerns were raised that the proposed pre-entry screening procedures, permitting automatic detention, “of all third-country nationals who have crossed the external border in an unauthorised manner ... as well as those disembarked after a search and rescue operation”,⁵⁰ were not compatible with international and regional human rights law. In her report on refugee protection, internal displacement and statelessness, the Special Rapporteur highlighted the obligation to ensure comprehensive identification, assistance and protection measures for victims of trafficking and potential victims.⁵¹ The Special Rapporteur highlights the importance of early identification of victims and the possible impact of psychological trauma. She also highlights the positive obligation on States to identify victims of trafficking and emphasizes that this duty is not dependent on self-identification by a victim of trafficking. As the European Court of Human Rights has stated: “there may be different reasons why victims of human trafficking and different forms of sexual abuse may be reluctant to cooperate with the authorities and to disclose all the details of the case. Moreover, the possible impact of psychological trauma must be taken into account.”⁵²

⁴⁸ Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), para. 40.

⁴⁹ Ibid.

⁵⁰ Communication OTH 144/2023, p. 4.

⁵¹ A/HRC/53/28, paras. 15–20.

⁵² European Court of Human Rights, *S.M. v. Croatia*, application No. 60561/14, Judgment, 25 June 2020, para. 344. Article 4 of the European Convention on Human Rights requires States to adopt a range of measures to prevent trafficking and to protect the rights of victims: “Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery” (*V.C.L. and A.N. v. United Kingdom*, application Nos. 77587/12 and 74603/12, Judgment, 16 February 2021, para. 153).

37. The Special Rapporteur has previously highlighted the urgency of ensuring safe disembarkation policies and practices that fulfil the obligation to identify, assist and protect victims of trafficking, in particular children. In the report on her visit to Bangladesh, the Special Rapporteur commended all those involved in search and rescue at sea and in disembarkation to coastal areas and highlighted the positive obligation on the State and all actors to identify victims of trafficking and to ensure referral for specialized assistance and protection, including protection from the risks of re-trafficking.⁵³ The Special Rapporteur also recognized the work carried out in providing best interests determinations for Rohingya children identified as possible victims of trafficking prior to return to families, but expressed concern that the involvement of family or community members and limited trust in authorities, as well as fear of reprisals, might lead to ongoing gaps in protection, underreporting and failures in the identification of victims of trafficking.⁵⁴

38. Measures taken to ensure protection of the rights of victims of trafficking on disembarkation should include pathways to residence and stay, including pathways to long-term residence and citizenship. Permission to stay should not be conditional upon cooperation in criminal proceedings.

39. The Special Rapporteur welcomes the findings of the Supreme Court of Cassation of Italy in the *Sea-Watch* case, in which it upheld the dismissal by the Tribunal of Agrigento of charges brought against the Captain of the *Sea-Watch*, Carola Rackete. The Court concluded that the obligation to rescue persons in distress at sea included the obligation to ensure disembarkation to a place of safety. Importantly, they held that a ship at sea could not be considered a “safe place” because it did not allow for the respect of the fundamental rights of rescued people on board.

VI. Rights of the child

40. The Special Rapporteur is particularly concerned at the risks of trafficking in children, and failures to ensure protection of child victims at sea and on disembarkation. Unaccompanied and separated migrant and refugee children are particularly at risk. Urgent action is needed by States to ensure that the international legal obligations towards children, as set out in the Convention on the Rights of the Child and general comment No. 6 (2005) of the Committee on the Rights of the Child, are ensured in the prevention of trafficking and the protection of child victims of trafficking at sea. The Special Rapporteur highlights the obligations arising under the Convention on the Rights of the Child, specifically with respect to unaccompanied and separated asylum-seeking and migrant children, noting that, as recognized by the Committee on the Rights of the Child, there is often a link between trafficking and the situation of separated and unaccompanied children.⁵⁵ Specifically, those include the obligations to ensure non-discrimination and the best interests of the child. Those obligations continue to apply in the context of search and rescue operations, disembarkation and protection. The Special Rapporteur highlights concerns that asylum-seeking, migrant and refugee children, particularly those who are unaccompanied and separated from families and caregivers, are at high risk of trafficking, including at sea and on disembarkation. However, they are frequently hosted in unsafe accommodation centres, hotels or temporary lodgings, without guardians or protective environments. Child victims of trafficking may also be subject to detention in some States, in violation of the rights granted to children, who need special protection under international law, and contrary to the principle of non-punishment.⁵⁶ Concerns in relation to pre-entry screening procedures allowing for detention of children have been raised by the Special Rapporteur in relation to the new pact on migration and asylum, stressing the obligations arising under the Convention on the Rights of the Child and

⁵³ [A/HRC/53/28/Add.1](#), para. 60.

⁵⁴ *Ibid.*

⁵⁵ Committee on the Rights of the Child, general comment No. 6 (2005), para. 23.

⁵⁶ Statement delivered by the Special Rapporteur to the Working Group on Trafficking in Persons (Conference of the Parties to the United Nations Convention against Transnational Organized Crime), 2 October 2023 (Vienna). Available at www.ohchr.org/sites/default/files/documents/issues/trafficking/statements/Recommendations-Statement-2023-COP-WG.pdf.

article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which requires each State party to “take into account ... the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care”. The Committee on the Rights of the Child has clearly stated that the immigration detention of any child is a violation of a child’s rights and always contravenes the principle of the best interests of the child.⁵⁷ As such, the obligation to ensure a place of safety on disembarkation for child victims of trafficking and children at risk of trafficking cannot be ensured if there is a real risk of arbitrary detention and of failure to ensure that the principle of non-punishment is implemented without discrimination.

41. The Special Rapporteur has previously highlighted the obligations, under the Convention on the Rights of the Child and its Optional Protocols, arising from a State exercising effective control outside its borders, including in international waters or other transit zones where States put in place migration control mechanisms. Those obligations apply during interceptions at sea and continue to apply with respect to those children who come under a State’s jurisdiction while attempting to enter its territory.⁵⁸ As such, the obligation arising under article 35 of the Convention on the Rights of the Child to “take all appropriate national, bilateral and multilateral measures to prevent the ... traffic in children for any purpose or in any form” applies. It imposes positive obligations on the State in relation to identification, assistance, protection and non-refoulement during interceptions at sea, search and rescue operations and disembarkation to a place of safety.

42. The Special Rapporteur is concerned that adolescent refugee and migrant children, including child victims of trafficking, are often not given equal protection by States. She highlights the obligation under the Convention on the Rights of the Child to respect and ensure the rights of all children without discrimination of any kind (art. 2). The protection of child rights in the context of any removal or transfer proceedings must be ensured. The non-refoulement obligations under the Convention on the Rights of the Child apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of States parties’ action or inaction.⁵⁹

VII. Safe disembarkation: access to asylum and international protection

43. The Special Rapporteur is concerned at increasing restrictions on access to asylum and use of accelerated asylum procedures. States must guarantee access to protection and assistance, including to asylum procedures, for those intercepted or rescued at sea who are victims of trafficking or persons at risk of being trafficked. States are required to ensure that trafficked persons or potential victims of trafficking are informed of and effectively enjoy the right of access to fair, efficient, trauma-informed and clear asylum procedures without discrimination or any preconditions.⁶⁰

⁵⁷ Committee on the Rights of the Child, “Report of the 2012 day of general discussion; the rights of all children in the context of international migration”, para. 32. Available at www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf.

⁵⁸ Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 12. See also *S.B. et al. v. France* (CRC/C/86/D/R.77/2019).

⁵⁹ Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 46.

⁶⁰ Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), para. 88.

44. The Special Rapporteur recalls the complex nature of the harms of trafficking in persons, highlighting that related asylum claims “are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims”.⁶¹

VIII. Rights of persons with disabilities

45. The Special Rapporteur stresses the obligations of States and non-State actors to ensure that the rights of victims of trafficking with disabilities are ensured in all actions relating to the prevention of trafficking, the protection of victims of trafficking and persons at risk of trafficking, and accountability. The Convention on the Rights of Persons with Disabilities and other international human rights law instruments impose both negative and positive obligations that continue to apply in the context of responses to trafficking in persons at sea. Specifically, those include obligations in relation to accessibility, access to justice, equal protection of the law, non-discrimination, ensuring legal capacity, freedom of movement, liberty and security of the person and privacy. The specific risks of trafficking that may be encountered by children with disabilities and women with disabilities must be addressed, recalling articles 6 and 7 of the Convention on the Rights of Persons with Disabilities and relevant international human rights and anti-trafficking law. The Special Rapporteur is particularly concerned that search and rescue operations and designation of places of safety for disembarkation do not currently ensure the rights of victims of trafficking or persons at risk of trafficking with disabilities. Such concerns have been raised by the Special Rapporteur in relation to the new pact on migration and asylum, including specifically in relation to the proposed screening regulation, and failures to recognize all forms of disabilities in accordance with the obligations arising under the Convention on the Rights of Persons with Disabilities.

IX. Non-refoulement and the prohibition of collective expulsions

46. As is well established, the prohibition of refoulement and collective expulsion is not limited to the territory of a State, but also applies to extraterritorial State action, including action occurring on the high seas. “This is true under international refugee law, as interpreted by the Inter-American Commission on Human Rights, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations General Assembly and the House of Lords, and under universal human rights law, as applied by the United Nations Committee against Torture, and the United Nations Human Rights Committee.”⁶²

47. The prohibition of refoulement applies wherever a State exercises jurisdiction or effective control over the persons concerned, including at sea and on vessels.⁶³ The prohibition of refoulement and the prohibition of collective expulsion apply also on the high seas.⁶⁴ The Special Rapporteur recalls that States must “ensure that maritime border surveillance operations and border control measures do not affect the specific protection

⁶¹ Group of Experts on Action against Trafficking in Human Beings, *5th General Report on GRETA's Activities: Covering the Period from 1 October 2014 to 31 December 2015* (Strasbourg, Council of Europe, 2016), para. 116; and “Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection (Strasbourg, Council of Europe, 2020), para. 38: “early legal counselling and specialised assistance in accordance with Article 12 of the Convention is essential if victims of trafficking are to be enabled to present an asylum claim effectively”.

⁶² European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, Concurring Opinion of Judge Pinto De Albuquerque.

⁶³ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013), para. 51; Human Rights Committee, general comment No. 31 (2004), para. 10; and European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, paras. 76–82.

⁶⁴ European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*; and *N.T. and N.D. v. Spain*, application Nos. 8675/15 and 8697/15, Judgment, 13 February 2020, paras. 178, 185 and 187.

afforded under international law to vulnerable categories such as ... victims of trafficking or at risk of being trafficked”.⁶⁵

48. The Special Rapporteur recalls that the obligation of non-refoulement and the prohibition of collective expulsion applies to protect any person, citizen or non-citizen, without discrimination subject to the de jure or de facto control of a State party, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person concerned under ordinary or emergency law.⁶⁶

49. The Human Rights Committee has repeatedly highlighted concerns in relation to pushbacks at sea, which do not comply with the international obligation of non-refoulement (International Covenant on Civil and Political Rights, arts. 6, 7 and 13).⁶⁷ The absence of individualized screening and inadequate identification procedures during interdictions in the Caribbean Sea has reportedly led to forced returns, without individualized assessments of risk and protection needs.⁶⁸

50. In the context of trafficking in persons, the risk of persecution on return is particularly acute and may arise from the risks of reprisals by those involved in trafficking and from risks of re-trafficking (including by family and community members, armed groups or criminal networks). Gender plays a central role in determining and shaping the incidence, risk and severity of persecution.⁶⁹

51. The obligation of non-refoulement includes a well-established due diligence obligation of States to prevent mistreatment by third parties, including private actors or other States operating within their jurisdiction or effective control. The Special Rapporteur notes that in a situation in which a State provides material support or assistance to another State to carry out search and rescue operations, there is an obligation to take all reasonable measures to ensure that the State performing the operations complies with the prohibitions of refoulement and collective expulsion. Individualized risk assessments must be carried out and essential procedural safeguards established to ensure effective protection of victims of trafficking and persons at risk of trafficking. The obligation of individualized assessments is essential to the prohibition of collective expulsions, and to the positive obligation to identify and protect victims of trafficking or potential victims thereof.⁷⁰

X. Access to justice, effective remedies and the obligation of prompt effective investigations

52. The Special Rapporteur highlights the obligation to ensure access to justice and effective remedies to victims of trafficking, despite the additional obstacles that may arise in relation to trafficking in persons in the context of mixed migration at sea. The right to an effective remedy, and the duty of States to carry out effective investigations to combat impunity and to ensure accountability for the serious crime and serious human rights violation of trafficking in persons, persists in the context of trafficking that occurs at sea.

⁶⁵ Council of Europe Parliamentary Assembly resolution 1821 (2011), para 9.12.

⁶⁶ Committee against Torture, general comment No. 4 (2017), para 10.

⁶⁷ [CCPR/C/CYP/CO/5](#), para. 31.

⁶⁸ See, for example, Michael Feltovic and Robert O'Donnell, “Coast Guard migrant interdiction operations are in a state of emergency”, United States Naval Institute, February 2023. On interception on the high seas, the prohibition of collective expulsion and the right to an individualized assessment, see: *Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Report No. 51/96, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.95 Doc. 7 rev., para. 180. In the same decision, the Commission also found that the prohibition of non-refoulement was applicable to interceptions on the high seas, thereby rejecting the contrary position of the Supreme Court of the United States in *Sale v. Haitian Centers Council*, Case No. 92-344, Opinion, 21 June 1993.

⁶⁹ [A/HRC/53/28](#), para. 54; and Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), para. 88.

⁷⁰ European Court of Human Rights, *J.A. and Others v. Italy*, application No. 21329/18, Judgment, 30 March 2023, in which the Court found a violation of article 4 of Protocol No. 4: “the refusal-of-entry and removal orders issued in the applicants’ case did not have proper regard to their individual situations” (para. 115).

53. Victims of trafficking encounter significant difficulties in securing access to remedies, including compensation. Those difficulties include limited access to legal aid and interpretation services on disembarkation, and failures in law enforcement investigations. Compensation is rarely awarded to victims due to the absence of State compensation funds, the lack of confiscated assets from perpetrators of the crime and the lack of legal assistance to secure compensation for victims. Ensuring effective investigations requires prompt measures by States, including by flag and port States and rescue coordination centres, and effective international cooperation, including enhanced mutual legal assistance.

XI. Role of human rights defenders and civil society

54. The Special Rapporteur expresses serious concern at the criminalization of human rights defenders assisting migrants and refugees in distress and on disembarkation. The Special Rapporteur notes the concerns raised in relation to Act No. 4825/2021 adopted in Greece, which imposes limitations on private persons and non-governmental organizations volunteering to work on search and rescue operations, which have been described as a “de facto prohibition of civilian search and rescue”.⁷¹ The Special Rapporteur notes the reports of the third cycle of the universal periodic review that included concerns in relation to: the legal framework for migrants’ rights defenders; and the situation of those involved in search and rescue activities.⁷²

55. The Special Rapporteur stresses the importance of ensuring an enabling environment for civil society and protection of human rights defenders, including those defenders assisting migrants and refugees. Policies and practices to combat trafficking in persons frequently refer to partnerships with civil society. The importance of partnerships with civil society is included in international and regional instruments relating to trafficking in persons, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which specifically includes provision for cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, in the provision of assistance to and protection of victims (art. 6 (3)).

56. Civil society actors who protect the safety and rights of migrants, including trafficked persons and those at risk of trafficking, are human rights defenders and entitled to the full protection of the international human rights system. Indeed, the Global Compact for Safe, Orderly and Regular Migration recognizes their contributions to ensuring safe, orderly and regular migration.⁷³ However, threats and risks to those human rights defenders are particularly acute in the context of mixed migration movements at sea, where States often impair or criminalize their search and rescue operations. In 2018, the Special Rapporteur and a number of other special procedure mandate holders called upon the European Union to “ensure that acts of solidarity with migrants by civil society organizations and human rights defenders, including during search and rescue operations and at border crossing, are not criminalized”.⁷⁴

XII. The principle of non-punishment

57. The Special Rapporteur recalls that the principle of non-punishment applies to all unlawful acts committed as a consequence of being trafficked, including immigration-related offences. The Committee on the Elimination of Discrimination against Women and other treaty bodies have repeatedly called upon States parties to ensure the application of the non-punishment principle, in particular in relation to immigration offences, highlighting States’ obligations to ensure the identification of victims and effective access to remedies for victims. In the Global Compact on Safe, Orderly and Regular Migration, the General

⁷¹ [A/HRC/52/29/Add.1](#), para. 41.

⁷² See [A/HRC/49/5](#) and [A/HRC/49/5/Add.1](#). See also [A/HRC/52/29/Add.1](#), para. 10.

⁷³ General Assembly resolution 73/195, annex, para. 15 (j).

⁷⁴ Communication OTH 64/2018, p. 4.

Assembly called upon States to facilitate access to justice and safe reporting without fear of detention, deportation or penalty.

58. The obligation of non-discrimination in international human rights law is critical to the principle of non-punishment and to its application across all anti-trafficking measures. The intersections of gender, race and ethnicity, migration status and poverty are visible in failures to implement the principle of non-punishment. The obligations arising under international human rights law to eliminate direct, indirect and structural racial discrimination are particularly relevant to the application of the non-punishment principle in the context of mixed migration. The Recommended Principles and Guidelines on Human Rights at International Borders provide that measures taken to address irregular migration or trafficking in persons should not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds.

XIII. Conclusion and recommendations

59. Urgent, effective and coordinated action is required by States and maritime actors to prevent trafficking in persons in the context of migration at sea and to protect victims of trafficking and persons at risk of trafficking. Such action must be compliant with international law, recognizing the trauma and serious harms endured by victims of trafficking. Accountability must be ensured, through strengthened international cooperation, prioritizing the rights of victims.

60. The Special Rapporteur recommends that States:

(a) Strengthen action to prevent trafficking in persons, by expanding access to safe, regular migration pathways and to refugee protection, ensuring protection of human rights, so as to reduce the risks for migrants and refugees taking dangerous journeys by sea;

(b) Ratify and implement international law of the sea instruments establishing the duty to rescue and regulating the conduct and coordination of rescue at sea operations through the establishment of search and rescue regions and maritime rescue coordination centres;

(c) Ratify and implement instruments of international refugee law and human rights law providing safeguards for the rights of those in distress or rescued at sea, ensuring disembarkation to places of safety through enhanced coordination among all maritime actors, States and maritime rescue coordination centres;

(d) Ensure effective implementation of the non-punishment principle for all victims of trafficking without discrimination, regardless of their nationality or migration status, including ensuring that trafficked persons are not detained for immigration-related offences and recalling the obligation of non-penalization of asylum-seekers for their mode of entry;

(e) Strengthen training and capacity-building to inform standard operating procedures on the protection of victims of trafficking, in the standard training curricula for members of the naval forces, coastguards and other entities responsible for coordinating or conducting rescue at sea operations and disembarkation;

(f) Ensure that measures to combat trafficking in persons comply with international human rights and international refugee law, including the principle of non-discrimination;

(g) Ensure the development and implementation of protection-sensitive, gender-sensitive and rights-based disembarkation policies, procedures and mechanisms, enabling the identification, assistance and protection of victims of trafficking and persons at risk of trafficking;

(h) Establish mechanisms for screening and referral of victims of trafficking at places of disembarkation, providing access and referral pathways to specialized trauma-informed assistance and protection services, health services, including

reproductive and sexual health services and psychosocial assistance, and safe accommodation for victims of trafficking, regardless of the migration status of victims and without such assistance being conditional on cooperation in criminal justice proceedings;

(i) Ensure that the rights of victims of trafficking with disabilities are respected and fulfilled, through accessible information, assistance and protection services, and measures to ensure effective access to justice. Such assistance and protection measures should not be conditional on cooperation with criminal justice investigations;

(j) Ensure effective access to asylum and other forms of international protection, without discrimination on grounds of migration status, nationality, race or other grounds, and pathways of admission and stay, recognizing the humanitarian needs and rights of victims of trafficking and persons at risk of trafficking;

(k) Provide access to statelessness determination procedures and grant legal status and protection to stateless victims of trafficking and persons at risk of trafficking;

(l) Recalling the importance of partnerships with civil society actors, ensure an enabling environment for civil society and human rights defenders, recognizing their significant role in search and rescue, the provision of assistance to victims of trafficking and persons at risk of trafficking and the prevention of trafficking at sea;

(m) Provide legal aid and early legal assistance on disembarkation to trafficking victims, strengthening access to justice for all, taking into account age, gender and disability, among other relevant factors;

(n) Ensure provision of sufficient financial and other resources for host communities, local authorities in ports and coastal areas where disembarkations take place, to ensure protection of the rights of victims of trafficking, including adequate resourcing of child protection services, and dedicated accommodation for victims;

(o) Take all necessary measures to identify, assist and protect child victims of trafficking and children at risk of trafficking, in accordance with the principle of non-discrimination, ensuring the best interests of the child as a priority in all measures to combat trafficking. Such measures should include ensuring effective access to child protection services on disembarkation. For unaccompanied and separated children, such measures must include timely appointment of guardians, safe accommodation, legal assistance, access to asylum or other international protection, rights-based family reunification, child-sensitive investigations and access to justice. In cases of disputes about age, a presumption of childhood should operate;

(p) Ensure provision of trained and qualified professional staff among members of the naval forces, coastguards and other entities responsible for coordinating or conducting rescue at sea, to identify victims of trafficking in a timely manner and ensure access to assistance and protection services, without discrimination;

(q) Ensure that the rights of victims of trafficking to privacy are ensured, respecting international human rights law;

(r) Recalling that trafficking in persons is a form of gender-based violence, and a form of sexual violence in conflict, and recalling Security Council resolution 2467 (2019), ensure the provision of survivor-centred measures to combat trafficking in persons, assistance to and protection of victims and persons at risk, as well as meaningful engagement with survivors in the design and implementation of such measures;

(s) Strengthen measures to ensure effective investigations of the serious human rights violation and serious crime of trafficking in persons, recalling that trafficking in persons is also an international crime and ensuring investigations into State and non-State actors who may be engaged in or complicit in trafficking in persons;

(t) Where material or other assistance and resources are provided to States to carry out search and rescue operations, ensure that all measures are taken to comply

with international human rights and international refugee law, including in relation to trafficking in persons;

(u) Ensure that disembarkation is facilitated to places of safety, recalling that designation of a place of safety requires ensuring compliance with international human rights law, including obligations to identify, assist and protect victims of trafficking and to prevent trafficking in persons;

(v) Ensure effective implementation of the obligation of non-refoulement and prohibition of collective expulsions, recognizing the obligation to provide individualized assessments of risk and protection needs for all victims of trafficking and persons at risk of trafficking;

(w) Strengthen capacity of all maritime and law enforcement actors to combat technology-facilitated trafficking at sea, including effective prevention and accountability measures;

(x) Strengthen measures to ensure access to justice and effective remedies for victims of trafficking, including through legal assistance and by ensuring the independence of judges and lawyers;

(y) Take measures to combat corruption by State actors complicit in or directly engaged in trafficking in persons and ensure accountability;

(z) Ensure respect and protection of the rights of victims of trafficking and their relatives who are also victims of enforced disappearances, including rights to truth and justice, reparation and guarantees of non-repetition.

61. To United Nations entities and other international organizations, international courts and tribunals:

(a) Ensure training and provision of trained and qualified personnel to identify, assist and protect victims of trafficking and persons at risk of trafficking, at sea and on disembarkation in all reception settings;

(b) Ensure meaningful engagement with survivors of victims of trafficking and support for their roles in design and implementation of measures to combat trafficking in persons;

(c) Revise and update standards and guidelines for the protection of refugees and migrants moving by sea, to include standards and guidelines specifically relating to victims of trafficking and persons at risk of trafficking, such as the “Rescue at sea: a guide to principles and practice as applied to refugees and migrants”;⁷⁵

(d) Ensure that United Nations-mandated accountability processes, such as investigative and fact-finding processes, specifically address the obligations of accountability relating to trafficking in persons, including in the context of mixed migration at sea.

⁷⁵ International Maritime Organization, International Chamber of Shipping and UNHCR, “Rescue at sea: a guide to principles and practice as applied to refugees and migrants” (2015).