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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 the human rights
of migrants, Jorge Bustamante*****Summary**

This is the third report submitted to the Human Rights Council by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, since his appointment in July 2005. The report summarizes the activities of the Special Rapporteur, including visits requested and undertaken, and communications and replies received. The thematic section of the report highlights some of the key challenges with regard to the criminalization of irregular migration, and outlines some elements for State responsibility with regard to the protection of irregular migrants. The conclusions and recommendations are offered to States in terms of the applicable legal framework for protection and the general trends observed.

* The present report is submitted late to reflect the most up-to-date information possible.

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Introduction

1. The present report is the third report to be submitted to the Human Rights Council by the Special Rapporteur on the human rights of migrants, and it covers activities carried out in 2007. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, in which the Commission established the mandate and defined its functions. At its sixty-first session, the Commission decided, in its resolution 2005/47, to extend the Special Rapporteur's mandate for an additional three years, and this mandate was renewed by the Human Rights Council pursuant to its resolution 5/1.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Country visits

2. Since his appointment to the mandate in July 2005, the Special Rapporteur has requested invitations to visit the following countries: Australia, Bahrain, Canada, Guatemala, Japan, Indonesia, Malaysia, Mauritania, Mexico, the Philippines, Qatar, the Republic of Korea, Senegal, South Africa, Spain and the United States of America.

3. Australia, Guatemala, Indonesia, Mexico, the Republic of Korea, South Africa and the United States of America have responded positively to the Special Rapporteur's request. The Special Rapporteur visited the Republic of Korea and Indonesia in December 2006.¹ From 30 April to 18 May 2007, the Special Rapporteur undertook an official visit to the United States of America.²

4. Visits to Mexico and Guatemala are scheduled to take place from 9 to 15 March and from 24 to 28 March 2008, respectively. Other visits to be undertaken in 2008 are under discussion. The Special Rapporteur would like to thank the Governments of the countries that have responded positively to his requests for visits and to urge the Governments that have not yet done so to reply to his requests.

B. Communications with member States

5. From 1 January to 31 December 2007, the Special Rapporteur sent a total of 25 communications alleging violations of the rights of migrants to 22 member States. Of the communications that were sent, 14 were in the form of urgent appeals, while the remaining communications were letters of allegation. Communications were sent to the following countries: Angola, Bulgaria, China, Congo, Ethiopia, Guatemala, Guinea, Iran (Islamic Republic of), Italy, Lebanon, the Libyan Arab Jamahiriya, Mexico, Mozambique, New Zealand, Saudi Arabia (2), Sweden, South Africa, Switzerland, Thailand, the United Kingdom of Great Britain and Northern Ireland (2), the United States of America (2) and Yemen.

¹ A/HRC/4/24/Add.2 and A/HRC/4/24/Add.3.

² A/HRC/7/12/Add.2.

6. Out of the 25 communications sent, the Special Rapporteur received only 12 responses from the concerned Governments. The Special Rapporteur would like to thank all Governments that have responded to his communications for their collaboration and would also like to remind Governments that have not responded, to do so and to address all concerns raised in each communication.

7. Out of the 25 communications sent, a total of 22 were sent jointly by the Special Rapporteur and the following special procedures mandate-holders: the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; the Special Representative of the Secretary-General on the situation of human rights defenders; the independent expert on minority issues; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

8. A summary of all communications sent during the period under review, including urgent appeals and letters of allegation, as well as government replies, are included in an addendum to this report.³

C. Other activities

9. In June 2007, the Special Rapporteur attended the Human Rights Council and took the opportunity of his stay in Geneva to meet and consult with staff from the Office of the United Nations High Commissioner for Human Rights (OHCHR), including staff assisting other mandates, members of the OHCHR Task Force on Migration, and the secretariat of the Committee on the Protection of All Migrant Workers and Members of Their Families (CMW). He also met with representatives of the diplomatic community, non-governmental and international organizations.

10. On 26 October 2007, the Special Rapporteur visited New York, where he presented his report to the Third Committee of the General Assembly. The Special Rapporteur noted that, although it is the sovereign right of all States to safeguard their borders and regulate their migration policies, States should ensure respect for the human rights of migrants while enacting and implementing immigration laws. He also noted that States should cooperate, with a view to fostering regular migration and investing to provide better opportunities to migrant workers in their countries of origin, instead of focusing only on security aspects, which are clearly not preventing migrants from reaching their countries of destination.

³ A/HRC/7/12/Add.1

11. Finally, the Special Rapporteur emphasized that, despite the fact that the International Convention on the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990, was one of the seven basic instruments defining a global human rights protection regime for migrant workers, a number of Governments still needed to be convinced that its ratification was necessary. He reiterated the need for a comprehensive approach to migrants' human rights in order to ensure that migrants had a framework for protection and enjoyed rights appropriate and adequate to their particularly vulnerable situations.

12. On International Migrants Day, 18 December, the Special Rapporteur issued a joint statement with the Chairperson of the Committee on Migrant Workers calling for wider ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

II. THEMATIC ISSUES: CRIMINALIZATION OF IRREGULAR MIGRATION

A. Protection afforded to irregular migrants

1. General trends and State responsibility

13. The Special Rapporteur observes the ongoing abuse of irregular migrants throughout the migration process (in the country or territory of origin, transit and destination) and therefore deems it important to put forth a discussion to highlight some of the violations against irregular migrants and the responsibility of the State to take measures to prevent such violations. The State has broad authority in determining admission, conditions of stay, and the removal of non-nationals. In addition, the State has the sovereign authority to take measures protecting its national security, and to determine the conditions upon which nationality is to be granted. This power to manage admission and expulsion has, however, to be exercised in full respect for the fundamental human rights and freedoms of non-nationals, which are granted under a wide range of international human rights instruments and customary international law.⁴

14. Although it is the sovereign right of all States to safeguard their borders and regulate their migration policies, States should ensure respect for the human rights of migrants while enacting and implementing national immigration laws. It is the responsibility of the State, regardless of the legal status of the migrant, to ensure that fundamental human rights norms are adhered to and that all migrants are treated with dignity. The Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), has long since noted that reports from States have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its

⁴ See International Organization for Migration, *International Migration Law, Developing Paradigms and Key Challenges*, Ryszard Cholewinski, Richard Perruchoud, Euan MacDonald, eds. (Asser Press, The Hague, 2007), and IOM, *Compendium of International Migration Law Instruments*, compiled and edited by Richard Perruchoud and Katarina Tomolova (Asser Press, The Hague, 2007).

jurisdiction”.⁵ States have the responsibility and, indeed, the obligation to respect and protect the human rights of all those within its territory, nationals and non-nationals alike, regardless of mode of entry or migratory status.⁶ In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of nationality or statelessness.

15. Despite the international standards designed to offer protection to all individuals, the Special Rapporteur would like to draw attention to the increasing criminalization of irregular migration and the abuses of migrants during all phases of the migration process. This criminalization is linked in many countries to persistent anti-migrant sentiments, which is often reflected in policies and institutional frameworks designed to manage migratory flows, often in a purely restrictive manner. The Special Rapporteur has received reports of the criminal justice practices used by States to combat irregular migration, including greater criminalization of migration offences (as opposed to treating them as an administrative offence) and cross-national collaboration by police and other authorities, which have in certain cases resulted in increased violations against migrants.

16. These general trends can be grouped into two broad categories - externalization of migration control policies and criminalization of labour migration. Within these categories it is relevant to further examine three specific sub-issues: violations against irregular migrants pertaining to interception and rescue at sea, detention and expulsion, and smuggling and trafficking, which will be discussed in terms of the applicable legal framework for protection and the general trends observed. The Special Rapporteur would like to emphasize that this report is not intended to excuse irregular migration, nor encourage it, but rather to underscore the importance of States to adhere to international human rights standards during engagement with all migrants, whether documented or not. Accordingly, States should take measures to further promote legal migratory channels and provide assistance in the process.

2. Externalization of migration control policies

17. For decades, many States have responded to persistent irregular migration by intensifying border controls. State measures of border enforcement, anti-trafficking initiatives and immigration control measures have ranged from an increased use of the armed forces or military methods of policing the border, confiscation of the proceeds of trafficking, tougher sanctions against the employers of undocumented migrants and commercial carriers that bring to their borders foreigners without proper documentation, radar surveillance, and detention and expulsion of unwanted aliens.⁷ This has also involved, inter alia, fingerprinting, the erection of

⁵ Human Rights Committee, general comment No. 15: The position of aliens under the Covenant, paragraph 1, in reference to ICCPR article 2, paragraph 1.

⁶ Note also that article 16 of the ICCPR, as well as article 24 of the International Convention on the Protection of All Migrant Workers and Members of Their Families, in very broad terms, grant the right to recognition everywhere as a person before the law, which pertains to all people in any territory, regardless of status.

⁷ Maggy Lee, “Human trade and the criminalisation of irregular migration”, *International Journal of the Sociology of Law*, vol. 33: 1 (March 2005).

walls and the deployment of semi-military and military forces and hardware in the prevention of migration by land and sea. These measures have often been targeted at wide geographic areas on the borders or coast of a main receiving country or region - for example, the Australasian/South-East Asian rim, the United States of America/Mexico border, and the southern coast of Europe - representing broad zones of exclusion.⁸

18. In recent years, in an effort to further curb irregular migration and simultaneously address issues of national security, some States seem to be employing techniques in order to “externalize” border controls to countries of origin and transit, whereby they may utilize bilateral agreements and/or promises of aid in order to transform these targeted countries into a potential buffer zone to reduce migratory pressures on receiving States.⁹ This may involve supplying sending and/or transit countries with infrastructure and training in preventing irregular migration, potentially including, for example, naval and air patrol operations, radar systems, and other technology to be used in the securing of borders by intercepting migrants in the process and then subsequently detaining and expelling them. Under the auspices of these agreements, there have been reports of receiving countries financing, inter alia, detention centres, training programmes for police officers, and concerted expulsions involving charter flights. The Special Rapporteur is receiving reports of sending and transit States utilizing new, tougher immigration and visa regulations to restrict migratory flows, resulting in obstacles to movement and harassment at airports and border crossings.¹⁰

19. The concern is that these policies, while legitimately aimed at reducing irregular migration, and while often incorporated into bilateral agreements that can have significant positive aspects for the countries that are the recipients of the aid, have contributed to the criminalization of irregular migration insofar as they treat migration violations as a criminal rather than administrative offence without the proper human rights protections afforded to migrants in the process.¹¹ Moreover, these policies and the anti-migrant discourse that often accompany them have also in certain cases prompted and legitimized a notable increase in institutionalized discrimination, leading to further violations.

⁸ P. Green and M. Crewcock, “The war against illegal immigration: State crime and the construction of a European identity”, *Current Issues in Criminal Justice* 14 (2002), 87-101, in Lee, 3.

⁹ Hein de Haas, “The myth of invasion: irregular migration from West Africa to the Maghreb and the European Union”, October 2007, International Migration Institute, University of Oxford, <http://www.imi.ox.ac.uk/pdfs/Irregular%20migration%20from%20West%20Africa%20-%20Hein%20de%20Haas.pdf>, p. 52.

¹⁰ Haas, p. 53.

¹¹ For example, see Amnesty International, *Spain and Morocco: Failure to Protect the Rights of Migrants - One Year On*, London, 2006.

20. The policies seem to be taking place both at the regional and bilateral levels. For example, there have been reports that some Southern European States have intensified border controls and have attempted to externalize migration control policies by pressuring West and North African countries to prevent irregular migration and to sign readmission agreements in exchange for aid, financial support and work permits. There have also been reports of certain immigration controls which are being imposed to restrict northward migration from Mexico and countries in Central America through the United States-Mexico border, including those imposed by States in the region which serve as countries of transit. In this regard, the phenomenon of transnational gang networks, and the complex financing and law enforcement agreements used to combat them, are a particular challenge.¹²

21. These migration control policies have also had a series of unintended side effects in the form of increasing violations of migrants' rights in the region. Moreover, they have led to a diversification of trans-Saharan migration routes and attempted sea crossing-points (e.g. through Cape Verde and the Canary Islands), which now cover large stretches of the African coastline from Guinea to the Libyan Arab Jamahiriya.¹³ Organized crime networks involved in the smuggling of migrants into the United States have been similarly problematic as smugglers adjust their routes and increase the complexity of their efforts to account for the ever-increasing restrictions. There are persistent accounts of the dangers confronted by would-be migrants in transit in both of these regions, as well as in others, as increased measures in terms of infrastructure and surveillance may induce irregular migrants to take greater risks in circumventing the authorities.¹⁴ The Special Rapporteur remains concerned about the number of deaths occurring throughout the migration process.

22. In addition, there has been discussion about the effectiveness of such policies, which may have had unintended, perhaps even counterproductive, effects. For example, although many migrants are intercepted, detained and expelled in the process, satisfying the goal of preventing irregular migration, expulsion may not necessarily be a deterrent for future migration attempts as intended because migrants may try again through other avenues. There are cases of migrants who had planned to remain in the country of first destination¹⁵ but subsequently decide to continue on

¹² United States Agency for International Development (USAID), "Central America and Mexico gang assessment", April 2006.

¹³ Haas, pp. 52-54; Aderanti Adepoju, "Creating a borderless West Africa: Constraints and Prospects for Intra-Regional Migration", draft article of the "Migration without Borders" series, UNESCO, 1 January 2005, UNESCO, <http://unesdoc.unesco.org/images/0013/001391/139142e.pdf>.

¹⁴ United States Government Accountability Office, *GAO-06-770 Illegal Immigration: Border-Crossing Deaths Have Doubled Since 1995*, August 2006, <http://www.gao.gov/new.items/d06770.pdf> and BBC News, "Canaries migrant death toll soars", 28 December 2006 (<http://news.bbc.co.uk/2/hi/europe/6213495.stm>).

¹⁵ Often this is reflected in intraregional movement.

to a third country due to increasing repression by States - many of which are the recipients of aid and training and that are involved in the policies to externalize border controls. Finally, as explained above, the policies may have intensified smuggling efforts (in terms of diversification of routes and complication of strategies), and caused intermediaries (such as taxi and boat drivers, family members, for example) to inadvertently be deemed complicit in such smuggling efforts.

23. Despite these seemingly counterproductive effects, the management of migration flows depends on regional and bilateral cooperation, and many positive elements for social and economic development and enhanced security may arise from agreements between sending, transit and destination countries. The challenge remains to construct and implement such policies so that they both prevent irregular migration and protect migrants' rights. The promotion of increased collaboration can serve to prevent irregular migration if the migration control policies are adequately evaluated and implemented with a view to their effectiveness and with adequate consideration to the protection of all migrants in all phases of the movement process.

3. Criminalization of labour migration

24. The Special Rapporteur observes that the increasing criminalization of irregular migration, in the case of movement for economic purposes, does not adequately address issues of demand-driven labour and the needs of the receiving economies. A predominant push factor for migrating is perceived employment and, despite the reciprocal relationship between economies that may be able to absorb additional migrants, and labourers which move in search of employment based on perceived demand in the host country, it is often the irregular migrant which is penalized. This manifests itself in vulnerability to detention and subsequent expulsion if the irregular migrant is not able to gain regular status and is intercepted during the process, or loss of job and livelihood if the migratory process was (temporarily) successful.

25. Moreover, an inadequate understanding of the needs of a host society can lead to xenophobic sentiments towards the migrant population, even if the migrants are filling a labour gap which contributes to helping an ailing sector of the host economy. For example, there are situations where a host society, without fully comprehending the economic benefits of recruiting a particular labour group from abroad - often in the agricultural and medical fields, inter alia - has displayed aggressive attitudes towards these groups.¹⁶

26. Sharing information about the need for labour mobility and its contribution to the host economy may contribute to better integrating migrant populations into the host society. Where properly managed (including by regulating migration through increased legal channels and

¹⁶ A particularly salient example is the case of Haitian migration of sugarcane labourers to the Dominican Republic. See James Ferguson, "The Haitian minority in the Dominican Republic" and Maureen Achieng, "Managing Haitian migratory flows to the Dominican Republic" in *Intra-Caribbean Migration and the Conflict Nexus*, pp. 307-67. See also Mireille Kingma, *Nurses on the Move: Migration and the Global Health Care Economy* (Ithaca, Cornell University Press, 2005).

supporting new efforts for the compilation of disaggregated data of labour supply and demand), labour mobility can form part of strategies to ensure dynamism, flexibility and competitiveness of economies of host countries, as well as in countries of origin. Indeed, remittances have become an important source of income for many countries of origin, while many industries and service providers in host societies benefit from a migrant-based labour force.¹⁷

27. Despite the general agreement on the positive aspects of migration for development and the evolution of international forums for cooperation, the focus of States has largely been on the better management and control of the movement of migrants and their goods and services, rather than on the articulation and protection of their rights. One sees a trend toward viewing migrants as commodities, rather than as persons with rights and duties afforded to them through the international human rights framework.¹⁸ With the further promotion of legal migratory avenues and assistance programmes, inclusive of an articulated and implemented perspective on the rights of migrants, States will be able to better address the challenges of irregular migration. Various forms of inter-State cooperation, including bilateral and regional labour agreements, can generate more predictable labour mobility flows and commitments of cooperation involving the private sector, which can result in more effective recruitment and employment procedures, while enabling the monitoring required to limit migrant exploitation.

28. Despite the increase of regional integration mechanisms over the last two decades with provisions for the free movement of labour, for example in the Caribbean, West Africa, and South-East Asia, regular migration is still not at its full potential in many regions, which often serves to foster undocumented migratory flows as well as hamper the potential for competitiveness among regional economies.¹⁹ While regional integration processes may serve as useful building blocks in efforts to facilitate and better regulate labour mobility, challenges persist with respect to policy design and implementation.

29. For example, in West Africa, the Treaty of the Economic Community of West African States (ECOWAS) Protocol Relating to Free Movement of Persons, Residence and

¹⁷ IOM, International Dialogue on Migration, Intersessional Workshop on “Making Global Labour Mobility a Catalyst for Development”, Background Paper, October 2007. See also IOM, *World Migration Report 2005, Costs and Benefits of International Migration* (IOM, Geneva, 2005).

¹⁸ Jorge Bustamante, Special Rapporteur on the human rights of migrants, Statement to Third Committee, General Assembly, October 2007.

¹⁹ But, such mechanisms have often achieved greater mobility of persons through regional integration or trade regimes than has been achieved to date under Mode 4 of the World Trade Organization’s (WTO) General Agreement on Trade in Services (GATS), which remains limited in scope and number of commitments to a select category of highly skilled workers. See IOM, International Dialogue on Migration.

Establishment has not been fully implemented.²⁰ The free movement of persons is technically in effect (insofar as visas are not required for travel, mandatory residence permits have been abolished, and the subregional passport was adopted to replace national passports), but the parts on establishment and residence have not been put into effect, despite the close link to the right of free movement, integration of trade, tariff regimes and promotion of labour mobility in the subregion. National laws are still not harmonized with regional and subregional treaties and, in conjunction with investment codes, often restrict “foreigners” (including nationals of Community States), from participating in certain kinds of economic activities. “Community” citizens have been expelled by member States and sentiments against non-nationals persist, especially due to economic downturn, unemployment and political instability.

30. One finds another example with the Caribbean Single Market and Economy (CSME). All member States were required to remove existing restrictions on the rights of establishment, provision of services, movement of capital and movement of skills for the full implementation of the single market by 1 January 2006, or shortly thereafter. Even though the legal actions should have been taken for the implementation of free movement of skills, provision of services and the right of establishment by this date, mobility is still impeded by cumbersome administrative processes, significant variations in transposition of treaty requirements into domestic legislation (e.g. family reunion), and the absence of supportive regional instruments (e.g. accreditation body). As a result, progress on free movement has been slow and the full realization of free movement was not achieved as planned and will require from member States further action at the national and regional levels.²¹

31. The Association of Southeast Asian Nations (ASEAN) is the major political grouping in the South-East Asian region with links to East Asian and Pacific countries through the ASEAN Regional Forum (ARF). Through its associated ASEAN Free Trade Agreement (AFTA), it is working towards the establishment of an economic grouping on the model of the European Union, but progress has been slow. In 2002, ASEAN also adopted a Plan of Action for Cooperation on Immigration Matters, which includes: accelerating the freer flow of skilled labour and professionals in the region; the establishment of mechanisms and infrastructure to facilitate travel within the region; strengthening collaboration to combat trafficking and crimes of violence against women and children; and strengthening regional capacity to address transnational crime. Supplementing initiatives by these general regional groupings are other

²⁰ Article 3 (2) (d) (iii) of the Treaty of the Economic Community of West African States (ECOWAS) encourages removal of obstacles to the free movement of persons among member States; article 2 (1) of the ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment states that Community citizens have the right to enter, reside and establish in the territory of member States.

²¹ Ryszard Cholewinski, Jillyanne Redpath, Sophie Nonnenmacher and John Packer, “The international normative framework with reference to migration in the greater Caribbean”, in *Intra-Caribbean Migration and the Conflict Nexus*, Taryn Lesser, Berta Fernandez-Alfaro, Lancelot Cowie and Nina Bruni, eds. (Human Rights Internet, Ottawa, 2006), p. 45.

regional initiatives focusing on migration, but none has yet to fully bring about the free movement of persons which would alleviate some of the concerns about irregular migration in the region.²²

32. These are just three examples of regional mechanisms that can better regulate demand-driven migration, thereby reducing irregular intraregional migration flows, but much can be done at the bilateral level to facilitate permanent regularized labour mobility for all skill levels, as well as temporary and circular migration schemes. In a time of increased mobility, enhancing the gains from labour migration and facilitating their more equitable distribution requires comprehensive and coherent State policies, capacity-building and bilateral and multi-stakeholder cooperation.²³

33. Central to this approach is the recognition of the scope of demand-driven migration as an inadequate understanding of the relationship between migration and its economic drivers has led to manifestations of xenophobia, whether in institutional policies or at the society/community level. A clearer picture of the economic needs of a given State and the gaps that labour mobility can fill, through regularized channels and with adherence to basic human rights standards, may contribute to the generation of a shift from such xenophobic tendencies in host societies.

B. Criminalization issues in focus

1. Interception and rescue at sea

34. The phenomenon of migrants travelling by sea in search of safety, refuge or simply better economic conditions is not new. The term “boat people” has now entered into common parlance, with asylum-seekers, refugees, and migrants trying to reach the closest destination by boat, in the Mediterranean, the Caribbean and the Pacific regions, for example. Since the vessels used are often overcrowded and unseaworthy, rescue at sea, disembarkation and processing of those rescued has re-emerged as an important but challenging issue for States, international organizations, the shipping industry and, of course, the vulnerable migrants themselves. Moreover, in an effort to restrict these flows, destination States have increasingly resorted to interception practices within the broader context of migratory control measures. In both cases reports indicate that adequate protection safeguards and attention to the human rights of those rescued or intercepted have not always been evident.²⁴

²² Christine Inglis, “Migration without borders: the Asia-Pacific in an uncertain world”, draft article of the Migration without Borders series, UNESCO, 19 January 2005.

²³ IOM, International Dialogue on Migration.

²⁴ United Nations Office of the High Commissioner for Refugees, “Background Note on the Protection of Asylum Seekers and Refugees Rescued at Sea”, March 2002, final version as discussed at the expert round table Rescue-at-sea: Specific aspects relating to protection of asylum-seekers and refugees, held in Lisbon on 25-26 March 2002. See also UNHCR and International Maritime Organization (IMO), *Rescue at Sea: A guide to principles and practice applied to migrants and refugees*, September 2006 (www.unhcr.org/publ/PUBL/450037d34.pdf).

35. In addition to the international human rights framework, there is an applicable legal framework for rescue at sea in international maritime law, which stipulates the requirements for assistance afforded to those travelling by sea. Legal developments which have taken place with regard to the international law of the sea include the entering into force of the United Nations Convention on the Law of the Sea (UNCLOS), and recent amendments to the Safety of Life at Sea (SOLAS) and the Search and Rescue (SAR) Conventions, as well as their implementing guidelines issued by the International Maritime Organization (IMO). These conventions explicitly contain the obligation to come to the assistance of persons in distress at sea, and this obligation is unaffected by the status of the persons in question, their mode of travel or the numbers involved.²⁵

36. There are also norms which govern the obligation of a State to stop and search vessels suspected of involvement in smuggling or trafficking by sea, but these interception measures must be in line with international human rights principles and they oblige States to ensure the protection - “humanitarian handling” or “humane treatment” - of all persons on board, regardless of their status.²⁶ Indeed, a stated purpose of the Protocol against the Smuggling of Migrants by Land, Sea and Air is to protect the rights of smuggled migrants and it limits the criminal liability of migrants found to be the object of interception efforts.²⁷

²⁵ See for example, paragraph 2.1.10 of chapter 2 of the annex to SAR, 1979, which states, “Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.” Regulation 15 of chapter V of the annex to SOLAS obliges each State to “ensure that any necessary arrangements are made for coast watching and for the rescue of persons in distress at sea around its coasts”. Article 98 (1) of UNCLOS, 1982, states that every State shall require the master of a ship flying its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers, inter alia, to render assistance to any person found at sea and in danger of becoming lost. Some of these provisions have become so universally recognized as to be considered customary international law.

²⁶ See article 12 of the IMO circular “Interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea”, adopted by the Maritime Safety Committee in 1998, which authorizes a State which has reasonable grounds to suspect that a ship “is engaged in unsafe practices associated with the trafficking or transport of migrants” to inspect the ship. Article 17 of the same document calls for the State to “ensure the safety and the humanitarian handling of the persons on board”. Article 9 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime similarly calls on States to “ensure the safety and humane treatment of the persons on board” and article 16 ensures further safeguards for protection.

²⁷ See the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime, articles 2 and 5, respectively.

37. Despite these norms, the Special Rapporteur expresses concern about the numerous reports received over the last few years concerning migrants who have been intercepted, detained or who have lost their lives at sea, in particular in the Mediterranean and Gulf regions. The current Special Rapporteur and his predecessor, Ms. Gabriela Rodríguez Pizarro, have entered into constructive dialogue with a number of countries, with regard to specific cases involving hundreds of individuals rescued at sea; the concerns of the Special Rapporteur and the responses of Governments were published in their periodic reports.²⁸

38. Among the problems identified is the lack of individual assessment of migrants intercepted at sea, often resulting in detention and expulsion of groups without due process, and accompanying ill-treatment. This may include a lack of sensitivity to the rights of asylum-seekers, for instance mandatory detention and their return to countries where they may risk persecution or torture.²⁹ There have also been challenges in distinguishing migrants from those responsible for smuggling and trafficking.

39. In certain incidents, States have called upon countries of origin to identify possible collaborators in smuggling or trafficking networks among those rescued, and then charging certain irregular migrants with a criminal offence without due process, even though they may have been victims of trafficking or objects of smuggling practices, rather than perpetrators. This potentially exposes individuals fleeing persecution in their countries of origin to the risk of involuntary return under the pretext that they are involved in trafficking or smuggling. In addition, the Special Rapporteur has received reports of criminal charges being brought against those involved in the rescuing or inadvertent transport of irregular migrants, such as fishermen.

40. All these violations concerning migrants who travel by sea contribute to the phenomenon of the increasing criminalization of irregular migration, putting both the migrants and the rescuers at risk of potential abuses. It is important that States take measures so that those intercepted and rescued at sea are processed on an individual basis and afforded due process, and that persons claiming international protection are allowed to enter the national asylum procedure.³⁰

²⁸ See E/CN.4/2002/94 of 15 February 2002; E/CN.4/2003/85/Add.1 and Add.1/Corr.1 of 30 January 2003, the report of the Special Rapporteur, Gabriela Rodríguez Pizarro, on communications with Governments; E/CN.4/2006/73/Add.1, the communications report submitted in 2006; A/HRC/4/24, the report of the Special Rapporteur on the human rights of migrants and A/61/324, the interim report of the Special Rapporteur on the human rights of migrants to the General Assembly.

²⁹ Note the principle of non-refoulement, enshrined in article 33 (1) of the Geneva Convention relating to the Status of Refugees (Refugee Convention), and a rule of customary international law. A similar principle is found in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

³⁰ UNHCR, "Background note: The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by UNHCR", 28 November 2007.

2. Detention and expulsion

41. Migrants are particularly vulnerable to detention, or restriction on their freedom of movement/deprivation of their liberty, usually through enforced confinement, either in the receiving country or during transit (by land or sea). In the interception of migrants lacking documentation, many States employ administrative detention of irregular migrants in connection with violations of immigration laws and regulations, which are not considered to be a crime and may include, inter alia, overstaying a permit or non-possession of valid identification or visa documents. The objective of administrative detention is to guarantee that another administrative measure, such as deportation or expulsion, can be implemented. Sometimes administrative detention is also employed on the grounds of public security and public order, inter alia, or when an alien is pending a decision on refugee status or on admission to or removal from the State.³¹

42. In some cases, however, national immigration regulations are often made into measures that criminalize and punish in an attempt to discourage irregular migration. Undocumented migrants therefore become particularly vulnerable to criminal procedures, which are by definition punitive in nature, for many of the same infractions as administrative detention would encompass, such as irregularly crossing the State border, leaving a residence without authorization, or breaching or overstaying conditions of stay.

43. The Working Group on Arbitrary Detention holds the view that criminalizing the irregular entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and can lead to unnecessary detention.³² Moreover, often irregular migrants detained for immigration offences considered a criminal offence by the receiving State should be given the opportunity to appeal before an independent judiciary, but are not afforded such protection in practice. In such cases, detention of migrants may become arbitrary.³³ Arbitrary arrest and detention is expressly prohibited in international and regional human rights law and migrants' nationality or lack of legal status in the destination country cannot excuse States from their obligations under international law to ensure due process guarantees and dignified and humane treatment while migrants are held in detention.

³¹ Much of this section draws from the work of the former Special Rapporteur on the human rights of migrants, Gabriela Rodríguez Pizarro and the work of the Working Group on Arbitrary Detention. See OHCHR, "Administrative detention of migrants", Migration Discussion Papers, <http://www2.ohchr.org/english/issues/migration/taskforce/disc-papers.htm> based on report E/CN.4/2003/85.

³² See report of the Working Group on Arbitrary Detention, E/CN.4/1999/63 of 18 December 1998.

³³ OHCHR, Fact Sheet No. 26, The Working Group on Arbitrary Detention, <http://www.unhcr.ch/html/menu6/2/fs26.htm#IV>, pursuant to resolution 1991/42, as clarified by resolution 1997/50.

44. Despite these standards, the Special Rapporteur has received numerous reports that in certain cases detention can become prolonged and the detainees subject to ill-treatment. In certain cases irregular migrants have been denied the right to communication, have been subject to physical or sexual assault, have been mixed with detainees charged with criminal offences, and often suffer from a lack of attention to the specific needs of children, women, asylum-seekers and other vulnerable groups.³⁴

45. There seem to be enormous differences between immigration regulations among States, making oversight of detention conditions and States' adherence to international standards in this practice a challenge.³⁵ Some States entirely lack a legal regime governing immigration and asylum procedures that, when in place, can help to manage detention practices. Others have enacted immigration laws but often they do not provide for a legal framework for detention. Some States have legislation which provides for a maximum period of detention, whereas others are lacking such a time limit.

46. Some national laws do not provide for judicial review of administrative detention of migrants. In other instances, the judicial review of administrative detention is initiated only upon request of the migrant. In these cases, lack of awareness of the right to appeal, lack of awareness of the grounds for detention, difficult access to relevant files, lack of access to free legal counsel, lack of interpreters and translation services, and a general absence of information in a language detainees can understand on the right to instruct and retain counsel and the situation of the facilities where they are being held can prevent migrants from exercising their rights in practice. In the absence of lawyers and/or interpreters, migrants can often feel intimidated and obliged to sign papers without understanding their content.

47. Migrants and asylum-seekers are sometimes detained at airport transit zones and other points of entry, under no clear authority, either with the knowledge of government officials at the airport or simply on the instructions of airline companies before being returned to their countries. The difficulty or impossibility of reaching any outside assistance impedes the exercise of the right of the persons concerned to challenge the lawfulness of the State's decision to be detained and returned and to apply for asylum, even in the presence of legitimate claims. In practice, some States misleadingly label migrant detention centres as "transit centres" or "guest houses" and "detention" as "retention" in the absence of legislation authorizing deprivation of liberty.

48. Often the legislative criteria of a given State allow for a high degree of discretion in ordering administrative detention: foreign nationals can be detained when immigration officers have "reasonable" grounds to believe that the person is inadmissible, is a danger to the public,

³⁴ Numerous international standards with regard to detention can be found in, inter alia, the ICCPR, CMW, the Vienna Convention on Consular Relations, the Convention on the Rights of the Child. See Amnesty International, "Migration-related detention: a research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees", November 2007.

³⁵ See the various reports to the Commission on Human Rights of the Working Group on Arbitrary Detention (www2.ohchr.org/english/issues/detention/annual.htm).

that the individual is unlikely to appear for an examination or a hearing, or where the officer is not satisfied about the identity of the person. Some anti-terrorism legislation allows for the detention of migrants on the basis of vague, unspecified allegations of threats to national security. The high degree of discretion and the broad power to detain accorded to immigration and other law enforcement officials, often coupled with a lack of adequate training, can give rise to abuses and to human rights violations. The failure to provide legal criteria can result in de facto discriminatory patterns of arrest and return of irregular migrants.

49. Moreover, there have been reports of searches that target the removal of migrants living in a host country. In some cases States have resorted to police “raids” on private homes in migrants’ neighbourhoods, arresting and detaining all residents who cannot show documents of legal residence, leading to separation of children from their arrested parents, including children born in such countries. All cases of expulsion should be decided upon on an individual basis and States should ensure that no collective expulsions take place.³⁶

50. With such diversity in national policy and law governing detention and expulsion, it is important that irregular migration be seen as an administrative offence and irregular migrants processed on an individual basis. Where possible, detention should be used only as a last resort and in general irregular migrants should not be treated as criminals. The often erratic and unlawful detention of migrants is contributing to the broader phenomenon of the criminalization of irregular migration.

3. Smuggling and trafficking

51. The Special Rapporteur observes the continued abuse of irregular migrants who are involved, whether deliberately or inadvertently, in smuggling and trafficking operations. Over time the process of human trade has become more complex, whereby smugglers and traffickers may use a combination of deceptive, clandestine, or even legal modes of migration, switching strategies at different stages of the journey, and involving both legitimate and illicit actors at the governmental and non-governmental levels (inter alia, border officials, intermediaries, recruitment agencies, police officers, tourist agents, transport entrepreneurs and airline employees).³⁷ The facilitation of cross-border movements has increased to such an extent that the networks rely on many players who may not be actively and knowingly participating in smuggling or trafficking activities as such. There is a concern that, in the process of preventing the proliferation of such networks and intercepting those involved, irregular migrants may not receive adequate protection.

³⁶ The prohibition on the collective expulsion of non-nationals is arguably a recognized principle of international customary law. Indeed, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is the most protective instrument for irregular migrants in international human rights law and affords additional rights, such as elaborate individualized protection against expulsion, which is limited to lawfully resident migrants in other instruments, such as ICCPR. See ICMW, article 22, and ICCPR, article 13, and the discussion in Cholewinski, et al., pp. 10-14.

³⁷ Lee, pp. 2-3.

52. Furthermore, due to such complexities, in certain cases there seems to be a largely superficial distinction between the two practices, as well as confusion about their definition and scope. In principle, trafficking is generally considered a crime against human beings, and routinely involves coercion, deception, abduction, debt bondage, abuse of power and financial gain for those who facilitate and profit from the trade, and general exploitation of the victims of trafficking. It can imply threats to personal safety, sexual and reproductive health, and can entail abuse and degrading treatment during the process. By contrast, smuggling of migrants has been seen essentially as a crime against States, whereby the procurement of the illegal entry into a country of a non-citizen is seen as a violation of States' sovereign power to refuse entry and expel aliens.³⁸

53. In principle, smuggling is not, at least initially, a coercive practice because the potential migrant enters into a contract with the smuggler. However, smuggling practices have become much more comprehensive, as anti-migration policies have become more restrictive, opening up migrants to infinite abuses, inter alia, sexual exploitation, physical assault, debt servitude, and abandonment. As such, smuggled migrants are often susceptible to violations which they may not have foreseen before agreeing to be smuggled. Moreover, in certain cases, smuggled migrants can also become victims of trafficking, further blurring the distinction and causing a false hierarchy of victimization.³⁹

54. In this regard, the notion of consent to being smuggled becomes ever-more complex. Once an irregular migrant is intercepted, it is up to the State in question to determine the migrant's level of complicity in the mode of irregular entry, leaving much latitude for assignment of culpability or, by contrast, victimization, which impacts the level of protection that migrants may receive. That is, an irregular migrant that is thought to have consented to being smuggled may be perceived as deserving less protection than a victim of trafficking who may be perceived to have been unknowingly exploited. These distinctions are further complicated by discriminatory sentiments pertaining to country of origin or assumptions based on race and gender.⁴⁰

55. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Crime, contain a saving clause providing for the continued application of human rights, humanitarian law, and, where

³⁸ Ibid., p. 4.

³⁹ Ibid., p. 5.

⁴⁰ Women involved in sex work or prostitution, whether consensually or not, may suffer further stigmatization. See Kamala Kempadoo, "Sex work migration and human trafficking: problems and possibilities", in *Intra-Caribbean Migration and the Conflict Nexus*, 167-185.

applicable, refugee law.⁴¹ But, while these branches of law continue to apply to irregular migrants, in practice such migrants continue to be vulnerable to exploitation and abuse due to their lack of legal status in a country.⁴²

56. The purposes of the Trafficking Protocol are to prevent and combat trafficking in persons, especially women and children, to protect and assist the victims of trafficking, and to promote cooperation among States in order to meet these objectives.⁴³ The Trafficking Protocol provides that consent to exploitation is irrelevant where any of the “means” set out in the definition are used and calls upon States to establish the involvement of individuals in the process of trafficking as a criminal offence and mandates a number of measures to be taken to prevent and combat trafficking, unilaterally and in cooperation with other States.⁴⁴ Such measures include information exchange and training of relevant officials, strengthening border controls, and the security of travel or identity documents.

57. Despite these protections, victims of trafficking, often misinformed, commit administrative infractions, such as irregular entry, use of false documents and other violations of immigration laws and regulations, which make them liable to detention and contribute to their criminalization. Furthermore, the law of some States punishes as criminal offences irregular entry, entry without valid documents or engaging in prostitution, including forced prostitution. Victims of trafficking are thus often detained and deported without regard for their specific needs for protection and without consideration for the risks they may be exposed to if returned to their country of origin.⁴⁵

58. The purposes of the Smuggling Protocol are to prevent and combat the smuggling of migrants, and promote cooperation among States parties to that end, while protecting the rights of migrants. In particular, it calls for special protection of migrants in the context of the right to life, the right not to be subject to torture or other cruel, inhumane and degrading treatment, as well as draws attention to the special needs of women and children. However, it is clear that the protection afforded to smuggled migrants is considerably less than that provided for victims of trafficking under the Trafficking Protocol, specifically because smuggled migrants are considered to have consented to the practice. The Smuggling Protocol’s emphasis is on strengthening border controls and, while there is a prohibition on an individual from being

⁴¹ Trafficking Protocol, article 14, and Smuggling Protocol, article 19.

⁴² See the discussion in Cholewinski, et al., pp. 24-28.

⁴³ Trafficking Protocol, article 2.

⁴⁴ Ibid., articles 3 (b) and 5.

⁴⁵ See report of the Special Rapporteur on the human rights of migrants, Gabriela Rodríguez Pizarro, E/CN.4/2003/85.

prosecuted simply for being smuggled - it specifies that migrants shall not become liable to criminal prosecution for being the “object” of smuggling - it is significant that irregular entry remains a criminal offence in many countries.⁴⁶

59. In contrast with the definition of trafficking, although smuggling can be abusive and dangerous, its definition does not necessarily denote the occurrence of exploitation or a violation of human rights. In practice, however, the distinction between the two can be hard to draw and, as explained above, migrants who initially consent to being smuggled may end up in exploitative situations.⁴⁷ Due to the ambiguities in such practices, and not least owing to the proliferation of networks as a response to ever more restrictive anti-immigration policies, it is particularly important that States receive irregular migrants perceived to be involved in trafficking and smuggling practices on an individual basis, investigating to the fullest extent their potential complicity, and providing for them guarantees of due process.

III. CONCLUSIONS AND RECOMMENDATIONS FOR THE PROTECTION OF IRREGULAR MIGRANTS

60. **The Special Rapporteur encourages States to view irregular migration as an administrative offence, reversing the trend toward greater criminalization, and to incorporate the applicable human rights framework into their bilateral and regional arrangements for managing migration flows and protecting national security interests, as well as to harmonize their national laws and policies with international human rights norms. At the core of immigration policies should be the protection of migrants, regardless of their status or mode of entry. As such, the Special Rapporteur offers the following recommendations for the formation or reform of regional and bilateral cooperation mechanisms and agreements, as well as the enhancement of national training and analysis programmes and policy measures.**

Incorporating a human rights framework

61. **States should incorporate the applicable human rights framework into their bilateral and regional arrangements for managing migration flows and protecting national security interests. Specific attention should be paid to detainees, smuggled migrants, victims of trafficking, children, women, asylum-seekers and other vulnerable groups. Policies designed for the readmission and reintegration of returnees should ensure that migrants seeking international protection are not forcibly returned without guaranteeing their rights to seek asylum.**

62. **States should incorporate international human rights norms into their national immigration laws and policies. In this context, States who have not yet done so should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the first comprehensive international treaty focusing on**

⁴⁶ Smuggling Protocol, article 5, and see Lee, p. 4.

⁴⁷ Cholewinski, et al., p. 27.

the protection of migrant workers' rights and on the link between migration and human rights; it provides very useful guidance for States on how to ensure that migration takes place in humane and equitable conditions. In particular, States should review their expulsion procedures and harmonize them with the Convention, which offers the most comprehensive protection for non-nationals in this regard.

63. States should review their national policies to harmonize them with existing regional and subregional agreements on labour mobility. This should be done with a view to evaluating which national policies are restrictive in this sense, and what practical implications restrictive national frameworks have for the human rights of migrants, both documented and not, as well as for the obstacles it places on promoting the free movement of labour which might have positive consequences for the national economy.

64. All cases of persons involved in the interception of migrants at sea, whether irregular migrants or those involved in the rescue or transport of migrants found to be irregular, should be treated on an individual basis and granted the basic right to due process. Persons believed to be smuggled or trafficked should be brought before an independent judge without the involvement of the country of origin; States should renew their cooperation in protecting witnesses and victims who assist in identification and prosecution of smugglers and traffickers. Persons claiming international protection should be allowed to enter the national asylum procedure without delay.

65. States should take measures to review their national laws applicable to the detention of migrants to ensure that they are harmonized with international human rights norms that prohibit inhumane treatment and ensure due process. States should take measures to ensure that detention of irregular migrants is not arbitrary and that there is a national legal framework to govern detention procedures and conditions. States should develop and implement systems of alternatives to detention in the context of flows of undocumented migration - which could provide strong procedural safeguards including the obligation to have a judge decide on the legality of detention and on the continuing existence of reasons for detention - and generally permit detention only as a last resort.

Building national capacities

66. States should further develop and implement training and awareness-raising programmes for border authorities, officials at detention centres, police and military officers, and government officials on the human rights afforded to irregular migrants during all phases of the migration stage including, inter alia, interception and rescue at sea, detention and expulsion, and smuggling and trafficking, where applicable.

67. States should consider establishing an independent body at the regional level that can help monitor the effectiveness of certain policies contributing to the externalization of border controls. This might be in the form of enhancing the capacity of an already existing academic or policy institute or by forming stronger ties with the data and monitoring sections of existing regional systems of human rights protection (e.g. the Inter-American System for Human Rights, the Council of Europe, or the African Commission on Human and Peoples' Rights), where applicable.

68. States should take measures to further promote legal migratory channels to encourage regular labour mobility flows, including schemes for temporary and circular migration and the movement of skilled and semi-skilled labour under regional mechanisms for the free movement of labour. Where provisions for the free movement of persons already exist at the regional level, States should take measures to ensure the proper institutional structures are in place to implement such provisions, with particular regard to the human rights protections afforded to migrants.

69. States should take all measures to inform officials involved in potential interdiction at sea operations of the rights and protections afforded to migrants in transit, including those that are irregular. The rescue of persons in distress at sea is not only an obligation under maritime law but also a humanitarian necessity, regardless of the legal status of those found or their reasons for travelling by sea. Trafficked persons and other vulnerable groups such as separated children and asylum-seekers should receive specific assistance, including necessary health care at reception.

70. States should take measures to inform potential migrants about the risks associated with smuggling and trafficking operations, as well as the rights afforded to migrants even if in an irregular situation, particularly if detention is used. Particular attention should be paid to the gender-specific stigmatization associated with irregular migration and to the exploitation of children in all forms.

71. States should take measures to further understand and inform border officials, detention centre officials, and police and military officers about the distinctions between smuggled migrants, victims of trafficking, and other irregular migrants who potentially fall into both categories. All efforts should be made to fully and without prejudice investigate cases on an individual basis, provide due process guarantees and consular assistance, and to provide assistance to irregular migrants in their safe return, where applicable.

Data and analysis

72. States should bolster their ability to analyse data about migration policy. In support of individual States' domestic policies, laws and practices that have cross-border effects, an observatory could be established to compile accurate statistical and related data and to provide independent, impartial and expert analyses of key aspects of migration policy in order to discern their successes and deficiencies.

73. States should take further measures to enhance annual quantitative data on labour demand by host countries, which is the driving force behind economic migration, in an effort to better regulate the supply of labour migrants with the needs of host countries. Host countries and countries of origin each need to identify, respectively, current and projected labour supply shortages and surpluses by economic sector, occupation, region and province; furthermore, differentiation between labour shortages that are structural and those that are seasonal or otherwise temporary is important for designing and implementing effective labour migration policies.

74. States should devise plans for policymakers to explore the relationship between labour supply and demand and xenophobia at the institutional and community levels. Further consideration needs to be given to better integrating statistics into flexible, inclusive, and sustainable decision-making processes to govern admission, employment and residence status of migrants, as well as communication/education campaigns on the benefits of migration to the local and national economy. Recognition of demand-driven labour migration should mitigate the potential for anti-immigrant sentiments and rhetoric.

75. States should take measures to review, compile and share information on irregular maritime migration. For bilateral and multilateral agreements to restrict irregular maritime migration States, relevant intergovernmental organizations and non-governmental actors should establish mass information campaigns to inform those in transit of the risks associated with such travel and improve communication among officials when migrants are intercepted at sea, including the risks associated with overland travel en route to the prospective embarkation point. Empirical data on the scale and scope of irregular maritime migration, interception, rescue at sea, disembarkation and treatment of persons who have disembarked should be harmonized and more systematically compiled by Governments and international agencies.
