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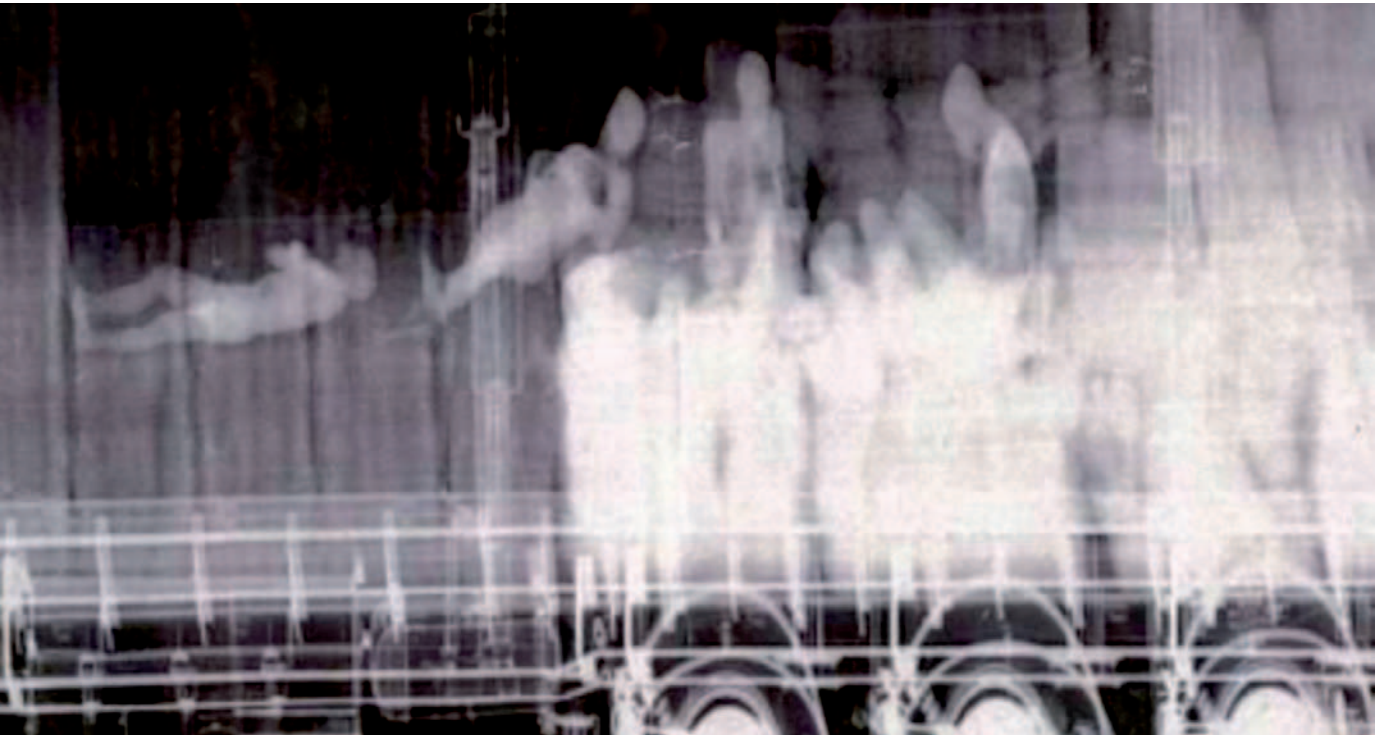
United Nations Office on Drugs and Crime

Toolkit to Combat Smuggling of Migrants

Tool 1

Understanding the smuggling of migrants

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Preface

Introduction

Virtually every country in the world is used by profit-seeking criminals for smuggling migrants—either as a country of origin, a transit country or a country of destination (or a combination thereof). Smuggled migrants are vulnerable to exploitation and their lives are often put at risk: thousands of people have suffocated in containers, perished in deserts or drowned at sea while being smuggled to another country. The smuggling of migrants and the activities related to it generate enormous profits for the criminals involved and fuel corruption and organized crime.

The Conference of the Parties to the United Nations Convention against Transnational Organized Crime in its decision 4/5 on the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, welcomed the efforts undertaken to provide guidance and information on best practices in the areas of training and capacity-building, as well as awareness-raising strategies to prevent and combat the smuggling of migrants. The Toolkit is an example of such efforts.

The Smuggling of Migrants Protocol sets out three clear goals:

- Preventing and combating the smuggling of migrants
- Protecting the rights of smuggled migrants
- Promoting cooperation among States parties to those ends

The goals of this *Toolkit* are the same. The promising practices and recommended resources included in it are by no means an exhaustive collection of successful, creative and innovative responses to addressing the smuggling of migrants. However, they provide examples of such initiatives and demonstrate the range of resources available to those involved in efforts to counter the smuggling of migrants.

The *Toolkit* is intended to provide guidance, showcase promising practices and recommend resources in thematic areas.

It is hoped that the *Toolkit* will inspire and help policymakers, law enforcement officers, judges, prosecutors, victim service providers and members of civil society to play their part in the global effort to combat the smuggling of migrants.

How to use the Toolkit

The *Toolkit* is intended to assist those working to prevent and combat the smuggling of migrants. It has been structured to serve a two-fold purpose:

The *Toolkit* as a whole provides an overview of the immense and multifaceted task of combating the smuggling of migrants.

Through the stand-alone tools contained in it, the *Toolkit* provides guidance on specific aspects of responding to the smuggling of migrants.

Each tool has been structured so that it can be consulted independently of the others; users who have an interest in a particular aspect of the smuggling of migrants can refer to those tools—or sections therein—that are of relevance. Cross references have been provided throughout to direct users to other sections that may be relevant.

Where possible, websites are indicated where users can either consult the complete text of documents referred to or find further information on a given topic. Users who do not have access to the Internet are encouraged to contact either the United Nations Office on Drugs and Crime (UNODC) or the organization concerned to arrange to receive a hard copy of the relevant resource.

The beginning of each tool contains an overview of its content. The full text of the Smuggling of Migrants Protocol and a glossary of some of the key terms used throughout the *Toolkit* are included in the annexes.

Finally, optimal benefit will be derived from the *Toolkit* if users contribute to its continual improvement. Therefore, a feedback form is included in the annexes. By sending in the completed form, users can contribute to the improvement of the next edition of the *Toolkit*.

Anti-Human Trafficking and Migrant Smuggling Unit
United Nations Office on Drugs and Crime

Contents

Acknowledgements

Overview

Tool 1, entitled "Understanding the smuggling of migrants", places the smuggling of migrants within the context of migration. Tool 1 is divided into two sections. The first section, entitled "Understanding migration", is further subdivided into subsections as follows:

1.1 examines the positive contributions made by migration to human development;

1.2 flags some key causes of migration;

1.3 highlights some gender-related aspects of migration;

1.4 discusses the impact of environmental conditions on the movement of people around the world;

1.5 considers some health issues relevant to migration;

1.6 highlights some key assumptions that can be made regarding the impact of the global financial crisis on migration;

1.7 places the smuggling of migrants within the context of the broader movement of people.

The second section, entitled "Understanding the smuggling of migrants", is divided as follows:

1.8 examines the technical definition of "smuggling of migrants" as set out in the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime;

1.9, on the other hand, discusses some of the activities that are not forms of smuggling of migrants;

1.10 and 1.11 consider phenomena related to the smuggling of migrants: 1.10 focuses on refugees and asylum-seekers and 1.11 on trafficking in persons;

1.12 distinguishes between the smuggling of migrants and trafficking in persons;

1.13 discusses the impact of the smuggling of migrants on the migrants themselves;

1.14 aptly portrays the smuggling of migrants as a criminal business, one that results in the loss of many lives.

Understanding migration

1.1   Migration and development

Migration is one of the great driving forces of human progress and development. The movement of people worldwide has resulted in many stories that have contributed to the shared history of humanity. People have moved all over the globe for a variety of reasons: to increase their economic opportunities; to provide their children with an education; to found a family; to embark on an adventure and to seek protection. Migration, in turn, has led to the proliferation of languages, cultures, cuisines and ideas on an international scale.

Global migration as it exists today is one of the massive by-products of globalization; the exploitation of this phenomenon by profit-seeking criminals has given it a darker side. The criminal activity of smugglers of migrants undermines the capacity of States to safeguard their own sovereignty and thereby reduces the opportunities available to migrants to move to other countries legally and safely. The cost of the smuggling of migrants is often measurable in terms of lives lost.

Positive links between migration and development

The money that migrants send home to family and friends in developing countries can have a positive impact on communities. Such remittances were estimated to have totalled $232 billion in 2005.

This money is used primarily to purchase consumer goods, stimulate local economies and help start small businesses, and this generally has a multiplier effect on national incomes. Through the receipt of remittances, many poor people can have access for the first time to financial services, such as those offered by banks, credit unions and microfinance institutions.

The report of the Secretary-General to the General Assembly on the relationship between international migration and development (A/60/871) (see "Recommended resources" below) raised the following points:

> "50.   The lure of a well-paid job in a wealthy country is a powerful driver of international migration. The attraction has intensified as income differentials among countries continue to grow. This holds true not only regarding the large and growing differentials between high- and low-income countries, but also with regard to the more dynamic and the less dynamic developing countries.

> "51.   Many advanced and dynamic economies need migrant workers to fill jobs that cannot be outsourced and that do not find local workers willing to take them at going wages. Population ageing also underlies this growing demand, as it gives rise to deficits of workers relative to dependants. And as younger generations become better educated, fewer in their ranks are content with low-paid and physically demanding jobs.

"52.   Migration may reduce wages or lead to higher unemployment among low-skilled workers in advanced economies, many of whom are themselves migrants who arrived in earlier waves. However, most migrants complement the skills of domestic workers instead of competing with them. By performing tasks that either would go undone or cost more, migrants allow citizens to perform other, more productive and better-paid jobs. They also maintain viable economic activities that, in their absence, would be outsourced. By enlarging the labour force and the pool of consumers and by contributing their entrepreneurial capacities, migrants boost economic growth in receiving countries.

"53.   At the point of origin, deeper poverty does not lead automatically to higher migration. The poorest people generally do not have the resources to bear the costs and risks of international migration. International migrants are usually drawn from middle-income households. However, when migrants establish themselves abroad, they help friends and relatives to follow and, in the process, the costs and risks of migration fall, making it possible for poorer people, though not the poorest, to join the stream. Low-skilled migration has the largest potential to reduce the depth and severity of poverty in communities of origin.

"54.   Mounting evidence indicates that international migration is usually positive for countries both of origin and of destination. Its potential benefits are larger than the potential gains from freer international trade, particularly for developing countries."

Negative links between migration and development

"17.   The experience of migration has also evolved in some less positive ways. Migrants of both sexes are increasingly exposed to exploitation and abuse by smugglers and traffickers, sometimes losing their lives. Others find themselves trapped behind walls of discrimination, xenophobia and racism as the result of rising cultural and religious tensions in some societies. International cooperation can play a crucial role in protecting people against such evils."

Policy agenda: improved international cooperation through co-development

"71.   Member States now share a core set of migration-related goals which include: enhancing the development impact of international migration; ensuring that migration occurs mainly through legal channels; ensuring the protection of the rights of migrants; preventing the exploitation of migrants, especially those in vulnerable situations; and combating the crimes of smuggling of migrants and trafficking in persons. Governments should recommit to these goals and develop a strategy based on co-development to reach them."

Recommended resources

European Union-Africa Ministerial Conference on Migration and Development, Tripoli, 22 and 23 November 2006

The European Union-Africa Ministerial Conference on Migration and Development brought together Governments of European Union member States and States across

the African continent. The Conference was held for the purpose of discussing a comprehensive agenda of issues of mutual interest in the area of migration and development, as a basis for a strengthened partnership in this area, based, inter alia, on the African Common Position on Migration and Development.

More information is available from: www.africa-union.org/root/AU/Conferences/Past/2006/November/SA/EU/EU-AU.htm.

Global Forum on Migration and Development

On 14 and 15 September 2006, a High-level Dialogue on International Migration and Development was held within the framework of the General Assembly of the United Nations. Over 140 Member States discussed the global implications of international migration and the mutually beneficial interaction between migration and development. The High-level Dialogue made explicit the close relationship between development policies and migration policies, and reaffirmed the fact that good migration governance can contribute to development and that development policies can have an impact on migration. This complex relationship is of growing importance as the level of migration increases every year.

As a result of these discussions, a large number of United Nations Member States expressed their interest in continuing the dialogue on migration and development by means of an informal, voluntary and State-led global forum.

The first meeting of the Global Forum on Migration and Development was held in Brussels from 9 to 11 July 2007. The governmental discussions on 10 and 11 July were preceded by a meeting of civil society representatives on 9 July. This marked the start of a new global process designed to enhance the positive impact of migration on development (and vice versa) through the adoption of a more consistent policy approach, identifying new instruments and best practices, exchanging know-how and experience about innovative tactics and methods and, finally, establishing cooperative links between the various actors involved.

The second meeting of the Global Forum on Migration and Development, which was held in Manila from 27 to 30 October 2008, revolved around the central theme "Protecting and empowering migrants for development".

The third meeting of the Global Forum on Migration and Development, held in Athens from 2 to 5 November 2009, had as its overarching theme "Integrating migration policies into development strategies for the benefit of all".

For more information, see: www.gfmd-fmmd.org and www.gfmdathens2009.org.

Global Migration Group

The Global Migration Group is an inter-agency body bringing together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better-coordinated approaches to the issue of international migration. The Global Migration Group is particularly concerned with

improving the overall effectiveness of its members and other stakeholders in capitalizing upon the opportunities and responding to the challenges presented by international migration.

For more information about the Global Migration Group, see Tool 4, subsection 4.15, and visit www.globalmigrationgroup.org

High-level Dialogue on Migration and Development

The High-level Dialogue on International Migration and Development was held on 14 and 15 September 2006 at United Nations Headquarters in New York. In its resolution 58/208 of 23 December 2003, the General Assembly had decided to devote a high-level dialogue to international migration and development during its sixty-first session in 2006. The purpose of the high-level dialogue would be to discuss the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts. Additionally, the high-level dialogue focused on policy issues, including the challenge of achieving the internationally agreed development goals, including the Millennium Development Goals.

More information about the High-level Dialogue on Migration and Development is available at www.un.org/esa/population/migration/hld/index.html.

International Organization for Migration

International Organization for Migration (2009). *The MIDA Experience and Beyond*. Geneva.

Over the past 10 years, the experience of the International Organization for Migration (IOM) in assisting Governments through programmes, initiatives, studies and numerous conferences on Migration for Development in Africa (MIDA) and similar initiatives in Latin America and the Caribbean, and Asia and the Pacific, has demonstrated that migration can yield significant benefits as regards social and economic development.

In order to share good practices and lessons learned with a wider audience, IOM, in its study *The MIDA Experience and Beyond*, assessed those initiatives extending over several regions to enable their further development. The MIDA publication is intended to provide Governments and other stakeholders with a useful tool for building a more strategic and practical approach aimed at engaging diasporas and migrants in development efforts.

The contents are as follows:

- Chapter I: Enhancing the contribution to development by diasporas and migrants: an evolving concept and its context
- Chapter II: Strategic approaches and key phases of MIDA and similar programmes
- Chapter III: Monitoring and evaluation

- Chapter IV: New orientations in the field of migration for development
- Chapter V: Integrating migration into national and regional poverty reduction and development plans
- Chapter VI: Observations and recommendations

Available from http://publications.iom.int/bookstore/index.php?main_page=product_info &cPath=1&products_id=536&zenid=4285ded5fa41b457c60a2b7b8eccea39.

Migration Policy Institute

In addition to a Global Remittances Guide, the Migration Policy Institute—an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide—offers a wide range of resources focused on the link between migration and development.

Visit the Migration Policy Institute website at www.migrationpolicy.org and, specifically, at www.migrationpolicy.org/pubs/Migration_Development.php#GeneralResources.

Southern Africa Migration Group

One of the critical challenges facing Africa is how to harness the potential of internal and international migration in the interests of development. The Southern African Migration Programme (SAMP) is an international network of organizations founded in 1996 to promote awareness of migration-development linkages in the Southern African Development Community. SAMP engages in applied research on migration and development issues, provides policy advice and expertise, offers training in migration policy and management, and conducts public education campaigns on migration-related issues

www.queensu.ca/samp.2

United Nations resources on international migration

For reports of the United Nations Secretary-General and resolutions concerning international migration, visit www.un.org/esa/population/migration/index.html.

Richard Black and Jon Sward (August 2009). *Migration, Poverty Reduction Strategies and Human Development*. Human Development Research Paper 2009/38. New York: United Nations Development Programme.

This United Nations Development Programme (UNDP) publication looks at the impact of migration on human development and highlights the need for incorporation of migration into human development policies.

Available from http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_38. pdf.

United Nations. General Assembly. *International migration and development: report of the Secretary-General*. 18 May 2006. A/60/871.

United Nations. General Assembly. *International migration and development*. Resolution 63/225. 19 December 2009. A/63/49, vol. I: G.A. Official records, 63rd sess. Supplement No. 49.

Other resources

Commission of the European Communities. *Migration and development: some concrete orientations*. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels, 1 September 2005. COM(2005) 390.

Patrick Taran and others (2009). *Economic migration, social cohesion and development: towards an integrated approach*. Migration Collection. Strasbourg: Council of Europe.

In the final declaration of their Eighth Council of Europe Conference, European ministers responsible for migration affairs undertook to promote and protect the human rights of migrants, with special attention to gender equality and the rights of women; to strengthen dialogue and cooperation between receiving, transit and origin countries, particularly within Europe; and to promote coherence at all levels (international, national, regional and local) between migration, development and integration policies.

The ministers also agreed to manage economic migration with a view to promoting economic and social progress in receiving, transit and origin countries; to enhance social cohesion by improving the integration of migrants and persons of immigrant background and the reintegration of migrants who return to their countries of origin; and to strengthen the contribution of migrants and persons of immigrant background to development in receiving and origin countries and their involvement in co-development programmes.

This report was prepared to support the ministerial debate during the Conference. It examines the main dimensions and characteristics of migration in the member States of the Council of Europe, analyses policy challenges posed by contemporary migration and identifies an integrated policy agenda.

Available from http://book.coe.int/EN/ficheouvragephp?PAGEID=36&lang=EN&produit_aliasid=2402.

Stephen Castles and Raul Delgado Wise, eds. (2008). *Migration and Development: Perspectives from the South*. Geneva: International Organization for Migration. Available from http://publications.iom.int/bookstore/index.hp?main_page=product_info&cPath=1&products_id= 84.

1.2   Root causes of migration

Extreme poverty, lack of opportunities for education and work, inadequate access to health care, gender discrimination, natural disasters and conflicts, as well as the environmental degradation that makes areas unlivable, are among the many reasons why people may migrate.

The United Nations Development Programme (UNDP) notes that in more than 40 countries around the world, violent conflict has torn through farmland, villages and cities. Throughout the world today, there are some 35 million survivors of conflict—10 million refugees and 25 million internally displaced persons. Conflict has destroyed homes and livelihoods in countless communities; individuals have been exposed to sexual violence and maimed, tortured and killed.

Another cause of displacement leading to migration is natural disaster. Droughts, cyclones, floods and mudslides cause unimaginable devastation. In 2008 alone, more than 300 disasters killed more than 235,000 people, affected more than 200 million others and caused losses and damage worth $181 billion. Disasters take an enormous toll not only on lives, but also on livelihoods, homes, basic social services and community infrastructure. Moreover, such destruction typically has a disproportionate impact on the poorest and most vulnerable populations, including women, children, youth and the elderly.

An examination of the problems that the Millennium Development Goals set out to address offers insight into the root causes of migration.

Goal 1: Eradicate extreme poverty and hunger

- The World Bank's latest estimates show that 1.4 billion people in developing countries were living in extreme poverty in 2005.

- Recent increases in the price of food have had a direct and adverse effect on the poor and are expected to push many more people—an estimated 100 million—into absolute poverty.

- The proportion of children under age 5 who were undernourished declined from 33 per cent in 1990 to 26 per cent in 2006. However, by 2006, the number of children in developing countries who were underweight still exceeded 140 million.

Source: Fact sheet for goal 1 (www.un.org/millenniumgoals/poverty.shtml).

Goal 2: Achieve universal primary education

- Globally, 570 million children are enrolled in school. The number of children of primary school age who were out of school fell from 103 million in 1999 to 73 million in 2006. In that year, primary school enrolment in developing countries reached 88 per cent on average, up from 83 per cent in 2000.

- In sub-Saharan Africa, the net primary school enrolment ratio has only recently reached 71 per cent, even after a significant jump in enrolment that began in 2000. About 38 million children of primary school age in that region are still out of school.

- In Southern Asia, the enrolment ratio has climbed above 90 per cent, yet more than 18 million children of primary school age are not enrolled.

Source: Fact sheet for goal 2 (www.un.org/millenniumgoals/education.shtml).

Goal 3: Promote gender equality and empower women

- Of the 113 countries that failed to achieve gender parity in primary and secondary school enrolment by the target date of 2005, only 18 are likely to achieve the goal by 2015.

- Girls account for 55 per cent of the out-of-school population.

- Since 2000, the proportion of seats for women in parliaments increased only from 13.5 to 17.9 per cent. Women occupy at least 30 per cent of parliamentary seats in 20 countries, although none of those countries are in Asia.

Source: Fact sheet for goal 3 (www.un.org/millenniumgoals/gender.shtml).

Goal 4: Reduce child mortality

- Worldwide, deaths of children under 5 years of age declined from 93 to 72 deaths per 1,000 live births between 1990 and 2006.

- A child born in a developing country is over 13 times more likely to die within the first five years of life than a child born in an industrialized country. Sub-Saharan Africa accounts for about half the deaths of children under age 5 in the developing world.

- Between 1990 and 2006, about 27 countries—the large majority in sub-Saharan Africa—made no progress in reducing childhood deaths.

Source: Fact sheet for goal 4 (www.un.org/millenniumgoals/childhealth.shtml).

Goal 5: Improve maternal health

- Estimates for 2005 show that, every minute, a woman dies of complications related to pregnancy and childbirth. This adds up to more than 500,000 women annually and 10 million over a generation. Almost all of these women—99 per cent—live and die in developing countries.

- Maternal mortality shows the greatest disparity among countries: in sub-Saharan Africa, a woman's risk of dying from treatable or preventable complications of pregnancy and childbirth over the course of her lifetime is 1 in 22, compared with 1 in 7,300 in developed regions. The risk of a woman dying from pregnancy-related causes during her lifetime is about 1 in 7 in the Niger, compared with 1 in 17,400 in Sweden.

- Every year, more than 1 million children are left motherless and vulnerable because of maternal death. Children who have lost their mothers are up to 10 times more likely to die prematurely than those who have not.

Source: Fact sheet for goal 5 (www.un.org/millenniumgoals/maternal.shtml).

Goal 6: Combat HIV/AIDS, malaria and other diseases

- Every day, nearly 7,500 people are infected with HIV and 5,500 die from AIDS. Globally, an estimated 33 million people were living with HIV/AIDS in 2007.

- The number of people living with HIV rose from an estimated 29.5 million in 2001 to 33 million in 2007. The vast majority of those living with HIV are in sub-Saharan Africa, where about 60 per cent of adults living with HIV in 2007 were women.

- Malaria kills over 1 million people annually, 80 per cent of whom are children under age 5 in sub-Saharan Africa. There continue to be between 350 million and 500 million cases of malaria worldwide each year.

- An estimated 250 million antimalarial insecticide-treated bed nets are required to reach 80 per cent coverage in sub-Saharan Africa. To date, the funds committed will provide only 100 million nets—less than one half of the requirement.

Source: Fact sheet for goal 6 (www.un.org/millenniumgoals/aids.shtml).

Goal 7: Ensure environmental sustainability

- Some 1.6 billion people have gained access to safe drinking water since 1990. At this rate, the world is expected to meet the Millennium Development Goal target on drinking water. However, about 1 billion people still do not have access to safe drinking water, and 2.5 billion lack access to basic sanitation services.

- Currently, only 22 per cent of the world's fisheries are sustainable, compared with 40 per cent in 1975. Despite their importance to the sustainability of fish stocks and coastal livelihoods, only 0.7 per cent of the area of the world's oceans—about 2 million square kilometres—were put under protection.

- Some 2.4 billion people live without access to modern cooking and heating facilities, and 1.6 billion have no access to electricity.

Source: Fact sheet for goal 7 (www.un.org/millenniumgoals/environ.shtml).

Goal 8: Develop a global partnership for development

- Official development assistance continued to drop from an all-time high of $107.1 billion in 2005 to $103.7 billion in 2007. Aid flows need to increase by $18 billion per year to meet the promise made by the Group of Eight in 2005 to double aid by 2010—an additional $50 billion annually in global aid, of which $25 billion would be for Africa.

- For the average developing country, the burden of servicing external debt fell from almost 13 per cent of export earnings in 2000 to 7 per cent in 2006, creating a more favourable environment for investment and allowing developing countries to allocate more resources to reducing poverty.

- In developed countries, 58 per cent of the population used the Internet in 2006, compared with 11 per cent in developing countries and 1 per cent in the least developed countries.

Source: Fact sheet for goal 8 (www.un.org/millenniumgoals/global.shtml).

Recommended resources

Millennium Development Goals

www.un.org/millenniumgoals/index.shtml

United Nations Development Programme

Crisis prevention and recovery

www.undp.org/cpr/we_do/conflict_prevention.shtml

Natural disaster risk management

www.undp.org/cpr/we_do/integrating_risk.shtml

1.3   Migration and gender

There are many misconceptions about the role of gender in migration; policymakers often simplify issues by "engendering" human movement, misunderstanding trafficking as an issue that primarily affects women and children and smuggling as one that primarily affects men.

Although they may face different issues with respect to the smuggling of migrants, men and women are equally vulnerable. In many cultures, men are expected to be the primary bread-winners and are therefore under pressure to leave their homes in search of employment opportunities. On the other hand, the lack of opportunities for legitimate employment for women may also act as a push factor in migration.

The following questions regarding the link between gender and migration are from Susie Jolly and Hazel Reeves, *Gender and Migration: Overview Report* (Brighton, United Kingdom: Institute of Development Studies, 2005); and "Reading on safe mobility and HIV: II" (UNDP, 2007).

For countries of origin

- Are opportunities equal for women and men? Are women (or men) restricted to less skilled, lower-paid jobs?

- What compels women to migrate? Poverty? Seeking economic betterment? Gender discrimination? violence?

- Do gender norms and policies restrict women's ability to move or pressure men to move? How do gender dynamics influence migration decisions?

- Are women empowered by migration, rendered vulnerable or both?

- Are women affected differently than men by displacement? Where provisions and/or support is provided for the displaced, who is it provided to? Is providing it to the head of the family a discriminatory practice? Can it be provided in such a way as to promote gender equality?

- What level and type of development would give more women and men the choice to stay in their country of origin?

- Are there legal opportunities to migrate for both women and men? Are people entitled to "family reunification"? What about unskilled female migrant workers?

- Do gender norms and policies restrict women's ability to move through regular channels? Does this push women into more dangerous irregular channels?

- Whom are remittances sent to? Older women rather than younger women? The men in a family rather than the women? Who benefits from the remittances?

- Do women or men send more of their income in remittances?

- Who is empowered by migrating? Are women empowered? Are transgender people empowered?

- Do those women left behind gain more independence or a greater work burden?

- What jobs are open to women in the receiving country? As migrant workers, do women bring home new skills as much as men? Are women able to gain jobs in line with their qualifications and experience?

- What skills are exiting the sending country? Are the skilled workers who are leaving primarily women or men? What impact is this having on economic development in the home country?

- What increases the risks that women and men will contract HIV as migrants or as those left behind? Are women who end up as irregular migrants more at risk?

For destination countries

- Do restrictive immigration policies make men or women vulnerable?

- How does the sex-segregated labour market in the destination country affect who benefits from migration? Does this affect the opportunities for entry, whether regular or irregular?

- Once in a destination country, are economic and social expectations realized for men and women?

- Does migration change gender relations? In a positive or negative way?

- Are women and men migrants (and those they may leave behind) at greater risk of contracting HIV?

- How does migration affect the time when women migrants return home and how prepared they are for reunification?

- Are the opportunities for women and men to enter through regular channels the same? Are women being forced into irregular channels or into being trafficked?

- Are women migrants more vulnerable to exploitation and sexual violence in isolated workplaces, for example, as domestic labourers or sex workers?

- What legal rights do women and men have, including rights to citizenship and political participation?

- Is there access to health, education and other services for migrants (irregular and regular)? Is access to services dependent on legal status?

- Does migrant domestic labour liberate host-society women with respect to pursuing careers?

- Do men and women in the host society have different attitudes to migrants? Do they feel differently about women and men migrants?

General Assembly resolution 61/208, entitled "International migration and development"

   "*The General Assembly:*

   "7. *Calls upon* all relevant bodies, agencies, funds and programmes of the United Nations system and other relevant intergovernmental, regional and subregional organizations, within their respective mandates, to continue to address the issue of international migration and development, with a view to integrating migration issues, including a gender perspective and cultural diversity, in a more coherent way within the broader context of the implementation of internationally agreed development goals, including the Millennium Development Goals and respect for human rights;"

For the full text of the resolution, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 49* and corrigendum (A/61/49 and Corr.1), sect. IV.

Recommended resources

Marlou Schrover and others. *Illegal migration: how gender makes a difference*, Policy Brief No. 10. Amsterdam: International Migration, Integration and Social Cohesion (IMISCOE), August 2008. Available from www.imiscoe.org/publications/policybriefs/documents/PB10-Illegalmigration-gender-schrover.pdf.

This policy brief presents illegal migration specifically within the framework of a gender-based analysis. It argues that to understand a migrant's choice to migrate illegally and to remain with illegal status in the receiving country, his or her position prior to migration must be considered; that women often experience unfavourable conditions in their country of origin; and that the institutionalized perception of female illegal migrants as being at risk and male illegal migrants as posing a threat creates different circumstances for the men and women who try to migrate illegally. The brief is based on the IMISCOE publication *Illegal Migration and Gender in a Global and Historical Perspective*, Marlou Schrover and others, eds. (Amsterdam, Amsterdam University Press, 15 April 2009).

Piper, Nicola. *Gender and migration*. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. Singapore: Asia Research Institute, September 2005. Available from www.gcim.org/attachements/TP10.pdf.

United Nations Population Fund (2006). *State of World Population 2006: A Passage to Hope—Women and International Migration* (Sales No. E.06.III.H.1).

This report examines the scope and breadth of female migration, the impact of the funds that female migrants send home to support families and communities and their disproportionate vulnerability to trafficking, exploitation and abuse. Available from www.unfpa.org/publications/detail.cfm?ID=311.

United Nations Development Programme. *Readings on safe mobility and HIV: II*. 2007. Available from http://data.undp.org.in/hiv/IEC/Vol_2.pdf.

International Organization for Migration. *An Action Oriented Training Manual on Gender, Migration and HIV*. Geneva, 2009. Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=515.

1.4 Migration and the environment

Natural disasters can have a sudden impact on migration, causing enormous population displacement. Moreover, the gradual deterioration of environmental conditions caused by climate change and man-made factors can also have a long-term impact on the movement of people. Besides phenomena such as desertification, land degradation and deforestation, there is the key issue of sea-level rise, which will have a significant impact on the movement of people. In this regard, it has been estimated that approximately 44 per cent of the world's population lives within 150 kilometres of a coastline and that a rise in sea level of only 10 centimetres, for instance, could flood most of Bangladesh and completely submerge many island States in Asia and the Pacific.

Another major issue is desertification, particularly in the Sahel region of Africa, owing partly to aridification, or decreased rainfall and extended periods of drought. The catastrophic impact of this phenomenon entails decreased food security and a threat to income.

Traditional means of livelihood are also being threatened by environmental degradation. The Inuit, for instance, are affected by an increase in mudslides resulting from the thawing of permafrost around the Arctic pole. If Himalayan glaciers continue to melt, up to 1 billion people in South Asia could face a critical shortage of freshwater.

Temperature rises can affect crops and gradual environmental change can affect small-scale farming, fishing and livestock-herding and thus all the people who depend on these forms of agriculture for their livelihood. Where ecosystems are less able to sustain human populations, communities endeavour to adapt, including by migrating temporarily, seasonally or permanently.

Recommended resources

International Organization for Migration. *Climate Change, Environmental Degradation and Migration: Addressing Vulnerabilities and Harnessing Opportunities.* Geneva, 2009.

This publication includes the report of a conference entitled "Climate change, environmental degradation and migration: addressing vulnerabilities and harnessing opportunities", which was held on 19 February 2008 in Geneva. Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=503&zenid=81d3ff17068fea21c006a6744b1206e2.

International Organization for Migration. *International Dialogue on Migration, No. 10. Expert Seminar: Migration and the Environment.* Geneva, 2008.

This publication includes material from a two-day expert seminar on migration and the environment organized by IOM with the co-sponsorship of the United Nations Population Fund (UNFPA) and held in Bangkok on 22 and 23 February 2007.

It provides an account of some of the main issues discussed during the seminar, including:

> *(a)*   Definitional issues;
>
> *(b)*   Some   critical   dimensions   of   the   migration   and   environment   nexus, including:
>
> > (i)   The impact of gradual environmental change on migration;
> >
> > (ii)   The impact of extreme environmental events on migration;
> >
> > (iii)   The effects of migration on the environment;
> >
> > (iv)   The association with conflict potential;
>
> *(c)*   Improving data and research for informed policymaking and action;
>
> *(d)*   Possible policy responses and interventions;
>
> *(e)*   The main challenges and lessons learned and their implications for the way forward.

Participants in the Expert Seminar discussed the possibility of using an all-inclusive definition of "environmental migrants". One working definition elaborated by IOM reads as follows:

> "Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad."

Migration and climate change

The Global Migration Group offers several publications, reports and links on migration and climate change, at www.globalmigrationgroup.org/climate_change_and_migration.htm.

1.5 Migration and health

Migration is inextricably linked with health and health-care services: poor health conditions and poor services are a contributing factor to migration.

As noted in subsection 1.2 above, the health situation in some countries is dire. Some 80 per cent of the 1 million people who die from malaria annually are children under age 5 in sub-Saharan Africa. The fact that 1.4 billion people in developing countries are living in extreme poverty (according to 2005 World Bank statistics) highlights the fact that for many people, health care may not be affordable and when they live in remote areas, may not be physically accessible. Further, the health-care services that are available (where affordable and accessible) may not be adequate to meet people's health-care needs.

This state of affairs has also contributed to another phenomenon, namely, the significant movement of health-care workers to places where there are better working conditions. This movement of people with health-care capacity has had the effect of strengthening health-care systems in the countries to which they migrate but it has also meant the creation of a severe brain drain in respect of qualified health practitioners within the health-care systems that they have left, which has in turn exacerbated the health-care crisis as a driving force of migration.

Such health-care issues are never more evident than in the context of HIV/AIDS, which, as mentioned above (also in subsection 1.2), results in the loss of a huge number of lives each year. Every day, nearly 7,500 people are infected with HIV and 5,500 die from AIDS. This contributes to migration in several ways. As a root cause of migration, the threat to health and life is also a driving force for people who wish to live in an area where they will not be so vulnerable to infection with HIV and for people who, if they are already infected, wish to live in an area where they will have access to adequate health care. The stigmatization that many people living with HIV or AIDS or both endure is another influential factor motivating the desire to migrate. The fact that, in cases of death caused by AIDS, the people left behind often find themselves without a primary caregiver and family units and support systems may be destroyed can be another impetus for migration.

HIV/AIDS may definitely be considered a driving force for migration and mobility in certain parts of the world. In Southern Africa, for instance, high rates of death or disability (particularly in labour sectors such as the mining industry) create a need for new migrant workers. Loss of household income through the death or disability of a former migrant worker promotes migration, as their families must seek other means to earn an income. People with HIV/AIDS (especially those with AIDS-related infectious diseases) may have to move in order to be cared for by their families or to escape the discrimination and stigmatization that they experience within their communities. Widows or widowers (who may themselves be HIV-positive) may migrate upon the death of their partners, to seek either support from

family members or new sources of livelihood. Orphans (who may themselves be HIV-positive) commonly migrate to live with relatives or to seek income-earning opportunities.

Vulnerability of mobile populations to HIV/AIDS

People who have already begun to migrate can be particularly vulnerable to contracting HIV/AIDS, depending on the particular migrant and the circumstances of his or her migration. Generally, there are four key linkages through which migration is tied to the spread of HIV/AIDS:

- Migrants' multi-local social networks create opportunities for wider sexual networking

- Mobility and transience can encourage or make people vulnerable to high-risk sexual behaviour

- Mobility makes people more difficult to reach through interventions (preventative education, condom provision, HIV testing and counselling, post-infection treatment and care)

- Migrant communities are often socially, economically and politically marginalized, in terms both of legal rights and protection and of discrimination and xenophobia.

These linkages show that mobile populations are more likely to be exposed to infection and less likely to have access to health care and treatment and a support network when they are sick or dying.

In drawing attention to these connections between HIV/AIDS and human mobility, it is essential not to characterize migrants as bearers of disease. Attempts to "keep them out" with stricter migration controls or to ignore their HIV/AIDS intervention needs will only marginalize them further and increase clandestine flows of people, and will perhaps increase the role played by smugglers of migrants in irregular migration. For more on health considerations, see Tool 8, subsection 8.6.

In the publication *Readings on safe mobility and HIV: II* (UNDP, 2007), it is noted that mobile populations may be more vulnerable to unsafe sex practices as a result of:

- Isolation

- Discrimination and difference in languages and cultures

- Separation from regular sex partners

- Desire for intimacy, comfort and pleasure in a stressful environment

- Sense of anonymity

- Power dynamics in buying and selling sex

- Lack of access to health and social services, including information and condoms

- Lack of negotiating power in sex, including transactional sex

- Disruption and displacement caused by conflict, which may lead to changes in sexual behaviour, an increase in sexual abuse, decreased access to health services, and increase in circumstances in which sexual favours are demanded in exchange for food or something else.

Migrants are sometimes stigmatized as carriers of disease. It is important to highlight that migration does not necessarily expose persons to HIV infection: rather, HIV infection depends on the conditions in which migration takes place.

Recommended resources

Platform for International Cooperation on Undocumented Migrants. *Undocumented and seriously ill: residence permits for medical reasons in Europe*. Brussels, 2009. Available from www.medimmigrant.be/uploads/Undocumented_and_Seriously_Ill_Report_Picum.pdf.

United Nations Development Programme. *Readings on safe mobility and HIV: II*. 2007. Available from http://data.undp.org.in/hiv/IEC/Vol_2.pdf.

Global Migration Group

For more information on migration and health, visit the resource page of the Global Migration Group at www.globalmigrationgroup.org/migration_and_health.htm.

International Organization for Migration. An *Action Oriented Training Manual on Gender, Migration and HIV*. Geneva, 2009. Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=515.

Joint United Nations Programme on HIV/AIDS

The Joint United Nations Programme on HIV/AIDS (UNAIDS) is an innovative joint venture of the United Nations family, uniting the efforts and resources of 10 United Nations system organizations in the response to AIDS with a view to providing worldwide assistance in preventing new HIV infections, caring for people living with HIV and mitigating the impact of the epidemic. UNAIDS helps mount and support an expanded response to AIDS—one that engages the efforts of many sectors and partners from government and civil society.

Co-sponsors of UNAIDS include the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Office on Drugs and Crime (UNODC), the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the World Bank. UNAIDS has established five focus areas to enable a more effective global response to AIDS:

- Mobilizing leadership and advocacy for effective action on the epidemic
- Providing strategic information and policies to guide efforts in the AIDS response worldwide
- Tracking, monitoring and evaluation of the epidemic, as the world's leading resource for AIDS-related epidemiological data and analysis
- Engaging civil society and developing partnerships
- Mobilizing financial, human and technical resources to support an effective response.

www.unaids.org

1.6   Migration and the global financial crisis

In many countries around the world, the current economic crisis and recession have led to an increase in unemployment, underemployment and economic instability, thereby aggravating the conditions that render people and communities vulnerable to trafficking in persons and the smuggling of migrants.

With businesses closing down, employers requesting fewer foreign workers and Governments halting the recruitment of new foreign labour, many people will take greater risks to migrate. Traffickers in persons and smugglers of migrants are likely to take advantage of increased vulnerabilities resulting from the crisis and to exploit people's willingness to take risks as they become more desperate for jobs.

In destination countries, an increased demand for cheaper goods and services is putting pressure on the protectionist environment, leading to greater vulnerability to exploitation of both regular and irregular migrants. Additional vulnerability may arise owing to increased competition with national workers for scarce jobs and diminished investments in community welfare. National workers may benefit from more support than foreign workers. Even under difficult conditions, however, the rights of smuggled migrants and of the victims of trafficking in persons must be upheld and trafficked victims appropriately identified and supported.

Evidence

There are currently no figures available to suggest that there has been a shift in respect of the criminal activities that characterize trafficking in persons and smuggling of migrants since the onset of the global economic and financial crisis. Some figures indicate that candidates for migration—be it legal or illegal—are likely to postpone their migration decisions, while those already present in a country—whether legally or illegally—may stay there waiting for the crisis to pass. Others note that no mass returns of migrant workers have been observed, but new outflows from some countries of origin have slowed down.

However, in reflecting on the root causes of trafficking in persons and smuggling of migrants, one is inclined to fear that an increase has already occurred or will occur as vulnerability increases. In addition, the impact of the crisis in terms of the decrease in public spending on activities to combat these crimes, protect the victims and uphold the rights of migrants, and the impact on investment in social services, at both the household and national levels, may be evident for many years to come.

Experience and knowledge to date of trafficking in persons have shown it to be a dynamic practice, one that manifests itself in multiple and increasing forms of exploitation. To identify and take action against such exploitation entails a global struggle. A common characteristic,

however, is the criminal ingenuity shown in bypassing systems of enforcement to mistreat human beings and taking advantage of their vulnerability to satisfy a demand and, ultimately, make a profit. Experience has shown that traffickers respond quickly in terms of change with mechanisms appropriate for maximizing profit, while the anti-trafficking community has been limited in its ability to track and respond to the changed tactics of traffickers.

Challenges, gaps and further areas of research

Coherent and comprehensive policies are needed to ensure that the rights of migrant workers are protected in any situation and, more particularly, in the situation that we are familiar with today.

Member States are encouraged to continue strengthening and prioritizing their efforts to implement comprehensive policies designed to combat trafficking in persons and smuggling of migrants while ensuring that the rights of trafficked victims and of smuggled migrants are strengthened within the context of wider development policies. Special vulnerabilities of child and women migrants need to be given due attention.

Monitoring of and research on the effects of the crisis on vulnerability would need to be carried out systematically.

Policy implications

1.   Member States are encouraged to fully implement all relevant conventions dealing with trafficking in persons, smuggling of migrants, human rights, forced labour, refugees and children, and ensure they are fully utilized in cases of trafficking in persons and smuggling of migrants.

2.   Member States should review their legislation with a view to implementing in practice all conventions relevant to prosecuting traffickers and smugglers, identifying victims of trafficking in persons, and protecting the rights of those victims and of smuggled migrants, while paying particular attention to vulnerable groups.

3.   Member States should strengthen the skills and capacity of criminal justice agencies responsible for combating trafficking in persons and smuggling of migrants and social welfare agencies responsible for protecting the rights of those trafficked and smuggled, so as to ensure that they are equipped to proactively detect the involvement of criminals and/or organized crime and can take appropriate measures.

4.   All actors engaged in combating trafficking, including criminal justice agencies and social welfare agencies, should have the capacity to identify victims of trafficking in persons and to ensure that the rights of those victims and of smuggled migrants are protected, while taking into account the special vulnerabilities of children.

5.   Member States should ensure cooperation at the national, intraregional and interregional levels in combating trafficking in persons and smuggling of migrants, while ensuring that the rights of victims of trafficking and smuggled migrants are upheld.

Recommended resources

United Nations Office on Drugs and Crime. *Fact Sheet on the Impact of the Economic Crisis on Trafficking in Persons and Smuggling of Migrants*. Available from www.unodc.org/documents/human-trafficking/Impact_of_GFC_on_TIP_and_SOM.pdf.

Michael Fix and others. *Migration and the global recession*. Washington, D.C.: Migration Policy Institute, 2009.

In this report commissioned by the BBC World Service, the Migration Policy Institute explores the impacts of the financial crisis on migration flows, remittances and migrants themselves. The report asserts that:

- The recession has dampened the movement of economic migrants to major immigrant-receiving regions and, contrary to a widely held perception, immigrants are seeking to stay in their adopted country rather than return home, despite high unemployment

- Remittances have largely dropped but some regions are experiencing increased or steady remittances

- The recession has had a heavy impact on migrants, with repercussions for both sending and receiving countries.

Available from www.migrationpolicy.org/pubs/MPI-BBCreport-Sept09.pdf.

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). *The impact of the global economic crisis on illegal migration to the EU*. Warsaw, 2009. Available from www.frontex.europa.eu/gfx/frontex/files/justyna/frontex_raport.pdf.

Ibrahim Awad. *The Global Economic Crisis and Migrant Workers: Impact and Response*. Geneva: International Labour Organization, 2009. Available from www.ilo.org/public/english/protection /migrant/download/global_crisis.pdf.

International Organization for Migration. *The impact of the global financial crisis on migration*. IOM Policy Brief, January 2009. Available from www.egypt.iom.int/Doc/IOM_Policy_Brief_Financial_Crisis.pdf.

Global Migration Group and International Labour Organization. *Fact-sheet on the economic crisis, labour migration and migrant employment*. September 2009. Available from www.globalmigrationgroup.org/pdf/ILO_Fact-sheet_3_final.pdf.

Global Migration Group and International Labour Organization. *Fact-sheet on the impact of the economic crisis on immigration policies*. September 2009. Available from www.globalmigrationgroup.org/pdf/ILO_FactSheet_1_final.pdf.

Global Migration Group and International Labour Organization. *Fact-sheet on the economic crisis and migrant workers: regional differences*. September 2009. Available from www.globalmigrationgroup.org/pdf/ILO_Fact-sheet_2_final.pdf.

Global Migration Group and Economic Commission for Latin America and the Caribbean. *Fact-sheet on the economic crisis and migration in Latin America and the*

Caribbean. October 2009. Available from www.globalmigrationgroup.org/pdf/ECLAC_FactSheet_final.pdf.

Global Migration Group and Economic Commission for Asia and the Pacific. *Fact-sheet on the impact of the economic crisis on migration in Asia-Pacific*. October 2009. Available from www.globalmigrationgroup.org/pdf/ESCAP_FactSheet_final.pdf.

Global Migration Group and Economic Commission for Western Asia. *Fact-sheet on the economic crisis and international migration in the Arab region*. October 2009. Available from www.globalmigrationgroup.org/pdf/ESCWA_FactSheet_final.pdf.

Global Migration Group and Office of the United Nations High Commissioner for Human Rights. *Fact-sheet on the impact of the economic crisis on the human rights of migrants*. October 2009. Available from www.globalmigrationgroup.org/pdf/OHCHR_Fact-Sheet_final.pdf.

Global Migration Group and International Organization for Migration. *Fact-sheet on the impact of the economic crisis on return migration*. October 2009. Available from www.globalmigrationgroup.org/pdf/IOM_Fact-Sheet_1_final.pdf.

Global Migration Group and United Nations Population Fund. *Fact-sheet on the impact of the economic crisis on female migration*. September 2009. Available from www.global-migrationgroup.org/pdf/UNFPA_Fact_Sheet_final.pdf.

Global Migration Group and United Nations Children's Fund. *Fact-sheet on the impact of the economic crisis on migration and children's rights*. October 2009. Available from www.globalmigrationgroup.org/pdf/UNICEF_Fact_Sheet_1_final.pdf.

Global Migration Group and United Nation Children's Fund. *Fact-sheet on the economic crisis and migration, remittances and children left behind*. October 2009. Available from www.globalmigrationgroup.org/pdf/UNICEF_Fact_Sheet_2_final.pdf.

Global Migration Group and United Nations Office on Drugs and Crime. *Fact-sheet on the impact of the economic crisis on trafficking in persons and smuggling of migrants*. October 2009. Available from www.globalmigrationgroup.org/pdf/UNODC_Fact-Sheet_final.pdf.

Koser, Khalid. *The global financial crisis and international migration: policy implications for Australia*. Sydney: Lowy Institute for International Policy, 2009. Available from www.lowyinstitute.org/Publication.asp?pid=1077.

1.7 The smuggling of migrants as a migration phenomenon

As more and more people seek to migrate in search of a better life for themselves and their families—sometimes fleeing lack of employment opportunities and sometimes extreme poverty, natural disaster or persecution—a demand is created for services to help them do so.

Not all persons who wish to migrate have legally sanctioned opportunities to do so. Profit-seeking criminals take advantage of this fact by smuggling migrants. One reason why the smuggling of migrants occurs is that borders exist; and generally, the numbers of those motivated to migrate far exceeds the limited possibilities for crossing borders. Meanwhile, the abilities of States to control immigration are limited and migration policies often fail to achieve their objectives.

Borders and border control measures

Research has shown that restrictive immigration laws, the tightening of asylum policies and reinforced border control measures do not necessarily result in a reduction of irregular migration. In response to improved border control measures, more irregular migrants resort to services provided by profit-seeking smugglers. This in turn fosters the "networkization" and "professionalism" of smugglers of migrants as well as an increase in the prices that they charge for their services, particularly for sophisticated operations such as "visa smuggling" which can be employed to bypass border controls. At the same time, strong law enforcement responses have contributed to the establishment of a variant form of the smuggling of migrants where smugglers offer services that, though low in cost, exact a high price in terms of the dangers they pose to the health and lives of those smuggled. This has resulted in a rise in the death toll in recent years.

Virtually every country in the world is affected by the smuggling of migrants, as a country of origin, transit or destination or even as all three.

Smuggling of migrants in the context of irregular migration

The smuggling of migrants can be considered within the wider context of irregular migration. Generally the motivations of smuggled persons are no different from those of irregular migrants: they wish to improve their lives and the lives of their family or to escape from a situation of persecution.

Relationships that smuggled migrants have with the person or people smuggling them vary significantly; in some situations, the smuggler will act simply as a facilitator by enabling the migrants to reach a destination they themselves have chosen. In other situations, the smuggler controls every aspect of the smuggling process, including the final destination. Often, migrants

in this situation will become stranded along the way and consequently unable to reach a particular destination or to return home. In other situations, the migrant and the smuggler will negotiate extensively over matters of travel and destination.

Vulnerability of migrants to smugglers of migrants

Many migrants intend to migrate independently of smugglers of migrants. However, as circumventing the restrictions on movement becomes more challenging and as environments in the course of the journey become more unfamiliar, migrants may resort to the services of smugglers of migrants. The more a migrant feels displaced (for example, not knowing the local language is a key alienating factor en route), the greater his or her need for assistance and services will be.

Recommended resources

Heckman, Friedrich. *Towards a better understanding of human smuggling*. Policy Brief No. 5. Amsterdam: European Network of Excellence on International Migration, Integration and Social Cohesion (IMISCOE), November 2007.

IMISCOE migration researchers have made efforts to better understand the phenomenon of smuggling of migrants. This policy brief reports on some key results of their research. Unique data were collected to enable the researchers to acquire greater insight into trends within smuggling and smuggling processes. The brief focuses on the key factors that influence the response to the smuggling of migrants and the dramatically increasing death toll among smuggled migrants.

Available from www.imiscoe.org/publications/policybriefs/documents/PB5-Heckman.pdf.

Khalid, Koser. *Irregular migration, state security and human security*. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. University College London, September 2005. Available from www.gcim.org/attachements/TP5.pdf.

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

Understanding the smuggling of migrants

1.8 What is the smuggling of migrants and related conduct?

Becoming aware of the constituent elements of smuggling of migrants and related conduct is the precondition for identifying, investigating and prosecuting such conduct.

Article 3, paragraph *(a)*, of the Protocol against the Smuggling of Migrants by Land, Sea and Air,[1] supplementing the United Nations Convention against Transnational Organized Crime[2] (hereafter referred to as the Smuggling of Migrants Protocol) defines the smuggling of migrants as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

Article 6 of the Smuggling of Migrants Protocol requires the criminalization of this conduct. In addition, article 6, paragraph 1, requires States to criminalize conduct "[e]nabling a person who is not a national or a permanent resident to remain in [a] State ... without complying with the necessary requirements for legally remaining in the State by ... illegal means" "in order to obtain ... a financial or other material benefit".

To summarize, article 6 requires States to establish as an offence or as offences the following conduct:

The procurement of the illegal entry	+	of a person into a State party of which the person is not a national	+	in order to obtain, directly or indirectly, a financial or other material benefit
Enabling a person to remain in a country	+	where the person is not a legal resident or citizen without complying with requirements for legally remaining	+	in order to obtain, directly or indirectly, a financial or other material benefit

In short, the combination of the following elements constitutes smuggling of migrants and related conduct:

1. Either the procurement of the illegal entry or illegal residence of a person
2. Into or in a country of which that person is not a national or permanent resident
3. For the purpose of financial or other material benefit.

Furthermore, article 6 of the Smuggling of Migrants Protocol requires States to criminalize producing, procuring, providing or possessing fraudulent travel or identity documents when committed for the purpose of enabling smuggling of migrants.

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[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.

[2] Ibid., vol. 2225, No. 39574.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 offers an overview of the smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc. org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. Sales No. E.05.V.2.

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

1.9   What cannot be characterized as the smuggling of migrants?

It is important to underline the fact that the criminalization of smuggling of migrants and related conduct covers only those who profit from smuggling of migrants through financial or other material gain. The Smuggling of Migrants Protocol highlights the fact that such criminalization is not to cover person and entities, such as family members and non-governmental or religious groups, who facilitate the illegal entry of migrants for non-profit reasons.

Non-criminalization of smuggled migrants

A person cannot be charged with the crime of smuggling for having been smuggled. This does not mean that he or she cannot be prosecuted for having smuggled others, or for the commission of any other crime.

The Smuggling of Migrants Protocol also does not intend to criminalize migration as such. In this regard, article 5 states that the migrants themselves must not be held responsible for the crime of smuggling only because of having been smuggled:

> "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol."

This article was included to make it explicit that no one who has been smuggled should be penalized with reference to this Protocol for the fact that they have been objects of smuggling.

It should also be noted that refugees often have to rely on smugglers to flee persecution, serious human rights violations or conflict. They should not be criminalized for making use of smugglers or for their illegal entry (article 31 of the 1951 Convention relating to the Status of Refugees).[3]

Case study

Sicilian trawler and the Office of the United Nations High Commissioner for Refugees help in the rescue of 27 Somalis

Sicilian fishing boat captain Gaspare Marrone was fishing with his crew south of Italy's Lampedusa Island when they spotted a boat in distress. The Sicilians started bringing the 30 Somali passengers on board, but in the process the boat capsized and 3 people became unaccounted for. Nicola Asaro, another Sicilian captain fishing in the area, called the UNHCR Senior Regional Public

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[3] Ibid., vol. 189, No. 2545.

Information Officer, Laura Boldrini, by satellite phone and told her that Marrone and his crew were trying to mount a rescue operation but were having difficulties. Boldrini passed the information (including coordinates of Marrone's fishing boat) to the Italian coast guard and navy, who sent help. Marrone detached his boat from the tuna pen it was towing and rescued 20 men and 7 women. The migrants were taken to Porto Empedocle in Sicily after they had been moved onto a navy vessel.

Both Asaro and Marrone were presented with Per Mare awards for their efforts. The Per Mare Award was established in response to a trend whereby boat people in distress in the Mediterranean are often ignored by commercial vessels, whose crews fear facing investigations for their role in illegal migration.

Recommended resources

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

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This publication is currently being prepared. For more information, visit www.unodc. org or contact ahtmsu@unodc.org.

United Nations. L*egislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2.)

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

1.10   Related concepts: refugees and asylum-seekers

Everyone has the right to seek asylum in another country.

Article 1 of the 1951 Convention relating to the Status of Refugees, as amended by the 1967 Protocol thereto,[4] defines a refugee as:

> "A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

A refugee cannot be repatriated, because of the principle of non-refoulement (for a further discussion, see subsection 8.11).

An asylum-seeker is a person seeking to be admitted into a country as a refugee and awaiting a decision on his or her application for refugee status under relevant international and national instruments. In case of a negative decision, he or she must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or related grounds.

Refugees and asylum-seekers sometimes use the services of smugglers of migrants. Where they have used the services of a smuggler of migrants, this shall in no way jeopardize their right to seek asylum, as is made clear by article 19, paragraph 1 of the Smuggling of Migrants Protocol, which states:

> Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

Recommended resources

Office of the United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on 14 December 1950 by the United Nations General Assembly in its resolution 428 (v). The Office is mandated to lead and coordinate international action

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[4] Ibid., vol. 606, No. 8791.

to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or resettle in a third country. It also has a mandate to help stateless people. UNHCR offers several resources and publications on its website.

www.unhcr.org

International Organization for Migration. *International Migration Law: Glossary on Migration.* Geneva, 2004.

The IOM Glossary on Migration was produced to serve as a guide to the terms and concepts applied in the migration field, in an effort to provide a useful tool for the furtherance of international cooperation and the common understanding of migration issues.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=2_8 &products_id=198

Office of the United Nations High Commissioner for Refugees. "The asylum-migration nexus: refugee protection and migration perspectives from ILO." Paper presented at the second meeting of the UNHCR Global Consultations on International Protection, Geneva, 28 and 29 June 2001.

This paper is intended as a contribution to the discussion of the nexus between refugee and migration issues. It is presented from the perspective of a standards-based international organization committed to upholding protection of human rights of migrant workers and members of their families, as defined by ILO and other international norms.

www.unhcr.org/refworld/topic,4565c2251a,470a33e22,3f33797e6,0.html

Global Migration Group. *International migration and human rights: challenges and opportunities on the threshold of the 60th anniversary of the Universal Declaration of Human Rights.* New York, 2008.

This guide is the collaborative result of the 14 members of the Global Migration Group: the International Labour Organization (ILO), IOM, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Conference on Trade and Development (UNCTAD), the Department of Economic and Social Affairs of the United Nations Secretariat, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), UNHCR, the United Nations Children's Fund (UNICEF), the United Nations Institute for Training and Research (UNITAR), the United Nations Office on Drugs and Crime (UNODC), the United Nations regional commissions and the World Bank.

Chapter II describes categories of migrants and provides a regional overview of migration.

www.globalmigrationgroup.org

1.11 Related concept: trafficking in persons

Constituent elements

Article 3, paragraph *(a)*, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereafter referred to as the Trafficking in Persons Protocol),[5] defines trafficking in persons as follows:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In basic terms, for a person to be guilty of trafficking in persons the following must be present (and evidenced):

- Act: the recruitment, transportation, transfer, harbouring or receipt of a person
- Means: the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits
- Purpose: exploitation, which includes the exploitation of the prostitution of others and other forms of sexual exploitation, forced labour, slavery or practices similar to slavery and the removal of organs.

The Trafficking in Persons Protocol defines the crime of trafficking in persons as comprising three constituent elements, as outlined in the matrix on the next page.

The issue of consent

Article 3, paragraphs *(b)-(d)*, of the Trafficking in Persons Protocol states that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant once it is demonstrated that deception, coercion, force or other prohibited means have been used; that consent, therefore, cannot be used as a defence to absolve a person from criminal responsibility; and that, in trafficking cases involving children, it is sufficient to prove the action and the purpose.

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[5] Ibid., vol. 2237, No. 39574.

The simple fact is that no person can consent to being exploited, because in the case of adults, consent has been negated through the use of improper means, and in the case of children, their vulnerable position makes it impossible for them to provide consent in the first place.

Trafficking in persons: matrix of the elements of the offence					
Recruitment		Threat or use of force		Exploitation of the prostitution of others	
Transportation		Other forms of coercion		Sexual exploitation	
Transfer		Abduction		Labour exploitation	
Harbouring	+	Fraud	+	Slavery or other slavery-like situations	= Trafficking in persons
Receipt of persons		Deception		Organ removal etc.	
		Abuse of power			
		Abuse of a position of vulnerability			
		Giving or receiving of payments or benefits to secure the consent of a person having control over another person			

Article 3, paragraphs *(b)-(d)*, of the Trafficking in Persons Protocol

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* of this article shall be irrelevant where any of the means set forth in subparagraph *(a)* have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph *(a)* of this article;

(d) "Child" shall mean any person under eighteen years of age.

The following case studies illustrate the various circumstances in which trafficking in persons can occur:

Case study: trafficking in persons

In a European country, an investigation was conducted into trafficking of citizens from another European country for the purpose of exploiting them at tomato plantations.

Evidence showed that the traffickers placed advertisements in newspapers for workers needed to pick tomatoes. Persons providing information on working conditions and departure dates over the phone introduced themselves using false personal data. Phone numbers featured in job offers were changed frequently. The charge for the journey was about €150; workers were charged another €150 upon arrival. Transport was provided by private companies as well as by individual carriers.

Recruited workers were transported directly to plantations, where work organization and supervision were in the hands of people of the same nationality as the workers, as well as other nationalities. Workers were enslaved in the holdings, and subjected to physical and psychological violence. In order to prevent them from contacting anyone on the outside, during the working day they were surveyed by guards and at night they were locked in the premises where they slept; in many cases, their mobile phones and documents were taken away.

One of the methods used to force the people recruited to work was to charge them during the first few weeks of their stay abroad, with excessive fees for, inter alia, accommodation and electricity and for going shopping. The charges were so high and the earnings so low that the victims did not manage to cover the alleged debt, even after a few months. The work was organized in such a way as to make it impossible for them to meet the requirement of picking a certain number of tomatoes within a certain time, resulting in a fine charged by the exploiter; thus, the indebtedness of the victim kept increasing. The victims were accommodated in premises completely unfit for humans, mainly ruined buildings with no water, electricity or furnishings; in many cases, victims were forced to live in tents. The "guards" carried guns and were extremely brutal.

Recommended resources

There are several tools and publications addressing the issue of trafficking in persons.

United Nations Office on Drugs and Crime Anti-Human Trafficking and Migrant Smuggling Unit

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners*. New York, 2009.

This Training Manual was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime. While the purpose of the Manual is to support prevention of trafficking in persons, the lessons learned presented therein are applicable to the issue of smuggling of migrants.

For more information about the Training Manual, visit www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html

United Nations. *Toolkit to Combat Trafficking in Persons* (Sales No. E.08.V.14).

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC *Toolkit to Combat Trafficking in Persons* seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas from around the world.

PDF version:

www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside

Online version:

www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html

United Nations. *Combating Trafficking in Persons: A Handbook for Parliamentarians* (Sales No. E.09.V.5).

The Inter-Parliamentary Union (IPU) and UNODC, in the framework of the Global Initiative to Fight Human Trafficking (UN.GIFT), launched the publication *Combating Trafficking in Persons: A Handbook for Parliamentarians*. As public awareness of trafficking in persons grows, people are demanding that action be taken to end it. Parliamentarians—as elected representatives—have the responsibility and power to ensure that laws and other measures are put in place and implemented to that end. The *Handbook* is intended to inspire them to enact sound laws and adopt good practices that will strengthen national responses to trafficking in persons.

www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf

United Nations. *International Framework for Action to Implement the Trafficking in Persons Protocol*. New York, 2009.

The International Framework for Action is a technical assistance tool that supports United Nations Member States in the effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The International Framework for Action consists of a narrative part and a set of tables. The narrative describes key challenges that may arise in the implementation of the Trafficking in Persons Protocol and proposes general measures that can be taken in order to address these challenges more effectively. The set of tables details these measures further, within the context of five pillars encompassing practical actions designed to support the implementation of the Trafficking in Persons Protocol.

www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

United Nations. *Model Law against Trafficking in Persons* (Sales No. E.09.V.11).

The *Model Law against Trafficking in Persons* has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims and the establishment of cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

The effectiveness of legal frameworks and anti-trafficking legislation.

Background paper prepared for the Vienna Forum to Fight Human Trafficking, Vienna, 13-15 February 2008. Available from www.unodc.org/documents/human-trafficking/Marika-Misc/BP023TheEffectivenessofLegalFrameworks.pdf.

This paper provides an overview of domestic implementation of the Trafficking in Persons Protocol and raises some key discussion issues.

Global Initiative to Fight Human Trafficking

The Global Initiative to Fight Human Trafficking (UN.GIFT) was conceived to promote the global fight against trafficking in persons, on the basis of international agreements reached at the United Nations. UN.GIFT was launched in March 2007 by UNODC with a grant made on behalf of the United Arab Emirates. It is managed in cooperation with the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Organization for Security and Cooperation in Europe (OSCE). UN.GIFT works with all stakeholders—Governments, business, academia, civil society and the media—as they support each other's work, create new partnerships and develop effective tools with which to fight trafficking in persons.

www.ungift.org

1.12 Distinguishing between the smuggling of migrants and trafficking in persons

It is important to distinguish between trafficking in persons and smuggling of migrants for three reasons:

- The constituent elements of these offences are different

- The response required and the assistance needed will vary, depending on the offence

- Whether one is recognized as a smuggled migrant or as a victim of trafficking will have serious implications for the person concerned.

What are the main differences between trafficking in persons and smuggling of migrants?

In a significant number of cases it may be difficult to distinguish between a case of trafficking in persons and a case of smuggling of migrants. The distinctions between smuggling and trafficking are often very subtle and they sometimes overlap. Identifying whether a case is one of trafficking in persons or smuggling of migrants can be very difficult for a number of reasons:

- Some trafficked persons might start their journey by agreeing to be smuggled into a country illegally, but later in the process, may find themselves deceived, coerced or forced into an exploitative situation (for instance, one where they are compelled to work for extraordinarily low wages to pay for the transportation).

- Traffickers may present an "opportunity" that sounds more like smuggling to potential victims. They could be asked to pay a fee in common with other people who are smuggled. However, the intention of the trafficker from the outset is the exploitation of the victim. Charging the "fee" is part of the deception and a fraudulent way to make a little more money.

- Smuggling may not be the planned intention at the outset but a "too good to miss" opportunity to traffic people presents itself to the smugglers/traffickers at some point in the process.

- Criminals may both smuggle and traffic people, employing the same routes and methods of transporting them.

In short, what begins as a situation of smuggling of migrants may develop into one of trafficking in persons.

There are three basic differences between smuggling of migrants and trafficking in persons, as summarized below:

1.   Exploitation

One important indicator of whether a case is one of smuggling of migrants is the means by which the offenders generate their income. The primary source of profit and thus also the primary purpose of trafficking in persons is exploitation. In contrast, the smuggler has no intention of exploiting the smuggled migrant after having enabled him or her to illegally enter or stay in a country. Smugglers of migrants are usually paid in advance or upon the arrival of the smuggled migrant, by the smuggled migrant or by intermediaries. It must also be noted that smuggled migrants sometimes do not pay the entire smuggling fee at the outset of the process; the fact that payment is pending renders them vulnerable to exploitation by the smugglers. In other words, the relationship between smuggler and smuggled migrant usually ends after illegal entry or illegal residence has been achieved. In contrast, in the process of trafficking in persons, profits are generated mainly through exploitation. The exploitation phase might last for several years.

Exploitation could even include "selling" a victim at some point before they begin to be exploited at their final destination; however, they are being "bought" to be exploited.

2.   Illegal entry or illegal residence ("transnationality")

Smuggling of migrants always has a transnational dimension involving at least two countries. The objective of the smuggling of migrants or related conduct is always to facilitate the illegal entry of a person from one country into another country or their stay in that country. Trafficking in persons, on the other hand, may occur across borders but it may also be carried out within a single country, in which case a person is simply taken to another location for the purpose of exploitation. Indeed, victims of trafficking are often trafficked within their home country.

3.   Consent

Smuggling of migrants does not necessarily involve the victimization of the smuggled migrant. Smuggling of migrants generally involves the consent of those being smuggled. However, often other crimes are committed against smuggled migrants during the smuggling process, such as violence or crimes entailing endangerment of the smuggled migrants' lives. Smuggled migrants might withdraw their consent during a smuggling operation (for instance, if they deem the conditions of transportation too dangerous) but may subsequently be forced to continue to participate in the smuggling process (for instance, by being forced to enter a leaking boat or a crowded truck).

In contrast with the smuggling of migrants, trafficking in persons is always a crime against a person. Either victims of trafficking never give their consent—for instance, if they have been abducted or sold—or, if they have given their consent initially, that initial consent became meaningless, by virtue of the fact that the traffickers have used deception or violence to gain control over their victims.

The following case study illustrates a case of trafficking in persons that from the victim's perspective started as migration.
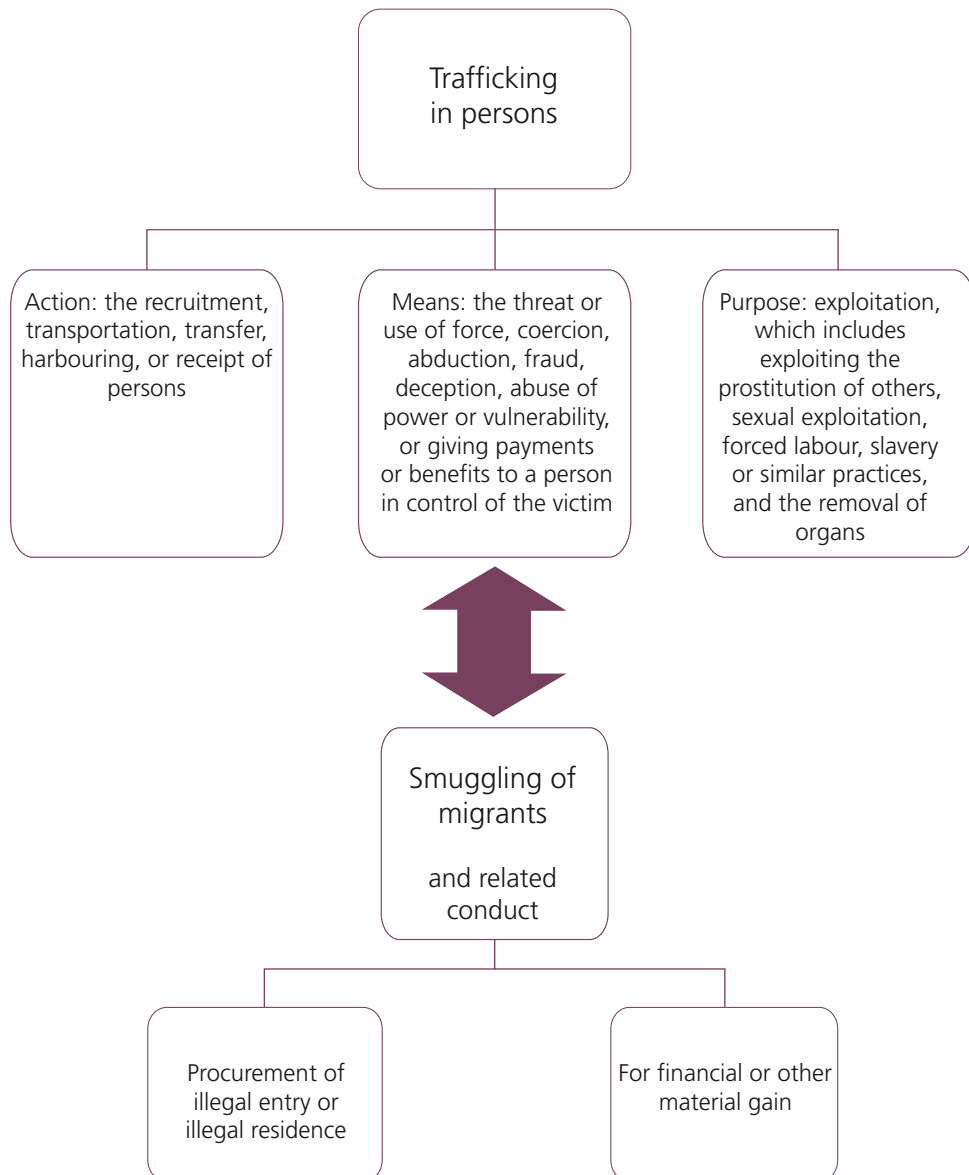
Case study: "Nok"

Nok is a 20-year-old woman from South-East Asia. She is widowed and supports her two small children by selling vegetables. One day, her friend Pat approaches her. Pat says she can find Nok a job as a domestic worker in a neighbouring country, where she can make 10 times her current monthly earnings. Pat also promises to make all her travel arrangements and to pay for her trip if Nok agrees to repay her once she starts her new job.

Deciding that the extra income will benefit her family, Nok leaves her children in the care of her mother and begins her journey by bus in the company of Pat. Nok has no passport, but Pat assures her that she will not need one since she has friends at the border. Some miles before the border, they leave the bus and wait at a roadside cafe until they are joined by a truck driver named Tim. Nok is surprised to see Pat pay Tim a significant sum of money before they both get into the truck with him and continue their journey to the border. They cross the border without any problems, just as Pat promised. It is the only time Nok knowingly crosses a border on her journey. Tim is friendly, but asks that Nok travel in the truck's closed rear compartment so as to avoid problems at the next border. It is dark, hot and very uncomfortable in the back of the truck, but Nok agrees, since she has no passport and can rely only on his advice and trust in her friendship with Pat. It is a long trip, and Nok's journey in the rear compartment of the truck comes to an end in an empty field beside a wide river where Pat and the driver Tim meet four men.

The four men then take Nok across the river. Nok is told that she is now in the country she was destined for. She is ordered to get in the back of a truck that is waiting at the side of the river. In the back of the truck are seven other women. Nok is afraid, no longer believing that she is to be given the job she was promised, and when she refuses to get into the vehicle one of the men threatens her with a gun. The four men travel together in the cab of the vehicle. Nok and the other women are taken to a private house in an urban area of a major city. Over a period of several weeks, the four men repeatedly abuse the women physically and sexually. They do not allow them to leave the premises. One man tells Nok that if she escapes, the police will put her in prison for being in the country without a passport and she will never see her children again. He also threatens to track down and traffic her children if she even tries to escape. Other men visit the house, and Nok is forced to have sex with them, for which her four captors receive payment. She is not allowed to retain any of the money or leave the building.

**Trafficking in persons and smuggling of migrants
(as criminalized by international law)**

Trafficking
in persons

Action: the recruitment,
transportation, transfer,
harbouring, or receipt of
persons

Means: the threat or
use of force, coercion,
abduction, fraud,
deception, abuse of
power or vulnerability,
or giving payments
or benefits to a person
in control of the victim

Purpose: exploitation,
which includes
exploiting the
prostitution of others,
sexual exploitation,
forced labour, slavery
or similar practices,
and the removal of
organs

Smuggling of
migrants

and related
conduct

Procurement of
illegal entry or
illegal residence

For financial or other
material gain

Recommended resources

United Nations. *Toolkit to Combat Trafficking in Persons* (Sales No. E.08.V.14).

This Toolkit provides guidance, showcases promising practice and recommends resources in thematic areas from around the world. Tool 1.2 of this resource explores the difference between trafficking in persons and the smuggling of migrants.

www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_1-2.pdf

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 examines the differences between smuggling of migrants and trafficking in persons.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners*. New York, 2009.

This Training Manual was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime. While the purpose of the Manual is to support prevention of trafficking in persons, the lessons learned set out therein are applicable to smuggling of migrants. Chapter 1 of this training manual examines the various definitions of trafficking in persons and smuggling of migrants.

For more information about the Training Manual, visit www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html.

United Nations. *Model Law against Trafficking in Persons* (Sales No. E.09.V.11).

The UNODC *Model Law against Trafficking in Persons* has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims and the establishment of cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

1.13 The impact of smuggling on smuggled migrants

During the journey from their countries of origin, migrants can be subject to inhumane conditions. Migrants are often treated as commodities and forced to hide in containers meant for goods as they travel across borders. Smugglers are more concerned with avoiding their own detection than they are with the safety of the people they are smuggling, often leaving for dead those who are too weak or infirm to travel. Migrants travelling by sea are often exposed to extremely dangerous conditions in vessels that are not seaworthy and on which there is no access to adequate food, water and sanitary conditions. Every year, thousands of people die trying to achieve a better life because of hazardous travel conditions and the ruthlessness of the people whose help they sought to reach their goal.

Many migrants spend several weeks, months or even years migrating. They may end up stranded at one or several points along the way. Families' expectations in origin countries, pressure of smugglers who need to be paid and debts that are incurred en route all combine to make the option of returning home an unlikely one. Some migrants, however, have the psychological determination to overcome all obstacles in order to reach a place where they have greater opportunities for a better life.

Often in the places where migrants become stranded, they will be absorbed into a community of other clandestine migrants, governed by its own rules and social codes. Often such communities are organized on the basis of hierarchic power structures.

Case study: crossing the Gulf of Aden

In its June 2008 report entitled "No choice: Somali and Ethiopian refugees, asylum-seekers and migrants crossing the Gulf of Aden", Médicins Sans Frontières reported on the extreme hardship endured by people.

Every year, thousands of people flee from conflict, violence, drought and poverty in Somalia and other stricken countries in the Horn of Africa, across the Gulf of Aden, in search of relative safety in Yemen. Some 30,000 people undertook this journey in 2007 and another 20,000 made it through alive in the first five months of 2008. Many of the refugees and migrants attempting this journey used the services of smugglers of migrants to cross the treacherous Gulf of Aden. The smugglers operating this route are notorious for their brutality and fatality rates are very high.

In September 2007, Médicins Sans Frontières organized a project on the southern shores of Yemen whose objective was to provide medical, psychological and humanitarian assistance to new arrivals. Six thousand refugees and migrants were assisted by Médicins Sans Frontières between September 2007 and April 2008.

The testimonies collected by Médicins Sans Frontières revealed harrowing ordeals. Patients told of death; of more than 100 people crammed into boats designed to carry 30 or 40, many in

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windowless storage places in the hold; and of people forced to sit in the same position without moving and deprived of food and water. Many patients suffered pains from sitting in the same position for several hours; some patients reported pain in their buttocks and genitals from sitting in seawater and urine-soaked clothes; and some men had experienced loss of skin from their scrotum. Others experienced trouble breathing because other people had been sitting on them. Conditions in the hold (designed for fish) were worse: people felt as though they were suffocating; others had to sit in seawater, urine, faeces or vomit. When some people asked to come back up on deck, the smugglers would charge them more money for being allowed to do so, or charge them more money only to push them back down, or simply beat them for asking in the first place.

Beatings (of men, women and children) with implements such as sticks, pipes, belt buckles and, sometimes, even rifle butts and knives were reported in 9 out of 10 boats.

Médicins Sans Frontières reported on the medical and humanitarian consequences of the journey across the Gulf of Aden, including the abuses by smugglers. Patients were treated for:

- Injuries resulting from severe beatings

- Dehydration

- Respiratory problems

- Trauma:

    – Many patients presented general body pains and headaches: physical manifestations of the psychological consequences of the journey

    – Loss of loved ones during the journey

    – For a further discussion of trauma, see Tool 8, subsection 8.3.

- Sexually transmitted infections:

    – Médicins Sans Frontières stated that the increased incidence of sexually transmitted infections could be an indicator of sexual and gender-based violence

    – Smuggled migrants may be particularly vulnerable to HIV infection.

Recommended resources

Médicins Sans Frontières. *No choice: Somali and Ethiopian refugees, asylum-seekers and migrants crossing the Gulf of Aden*, June 2008. Available from http://doctorswithoutborders.org/publications/article.cfm?id=2821&cat=special-report.

INTERPOL. *People smuggling*. Fact sheet available from www.interpol.int/Public/ICPO/FactSheets/THB01.pdf.

Fortress Europe

http://fortresseurope.blogspot.com

This blogspot documents the hardships experienced by and deaths among migrants attempting to migrate.

1.14 The smuggling of migrants as a deadly criminal business

The smuggling of migrants as a business

In cases where a smuggler of migrants conducts his or her business for financial or material profit, the illegal activity can be considered one kind of business model, which involves a demand for a service and the provision of that service to a client in exchange for financial remuneration. The market is often a highly complex one with different services available; certain services or stages of the process may be outsourced to middlemen along the way. As in other businesses, word of mouth can carry a long way, with a reputation for trust-worthiness ensuring the long-term success of any given smuggling of migrants operation and its competitive edge.

The business aspects of smuggling of migrants include the following:

- Responsibilities for certain tasks or stages of the migration process are outsourced. The welfare of the persons being smuggled may be irrelevant to the people involved in smuggling them.

- Contrasted with the point above, because smuggling is a smuggler's livelihood, it may be in his or her interest to offer reliable services, so that word spreads among potential "clients"; or, if he or she is contracted to perform a part of the smuggling process, it may be in his or her interest to perform well, so that he or she will be reconsidered by the coordinator for the next operation.

- Coordinators and mediators are often paid for their work by commission.

- Smugglers often compete with each other just as businesses compete: coordinators will generally choose the "cheaper" or "better" offer or leave competitors to come to pragmatic agreements among themselves. (The emergence of new competition during conflict has led to agreements that, for instance, one group will smuggle on Mondays and Wednesdays and another on Tuesdays and Thursdays.)

Deaths resulting from smuggling operations

Smugglers of migrants often conduct their illegal activities with little or no regard for the lives of the people whose hardship has created a demand for smuggling services.

It is difficult to quantify precisely irregular migration flows around the world, given that irregular migrant populations are often hidden and that smuggling activities take place very much underground. UNODC estimates that each year as many as 300,000 African migrants try to reach Europe without appropriate documentation. The BBC reported that in 2006 alone about 6,000 migrants from Africa died or went missing on the sea journey to the Canary Islands.

The following extracts from news reports give an indication of the alarming number of deaths that result from smuggling of migrants.

Extract One

Fifty-four people have been found dead after suffocating in a lorry smuggling them. More than 100 people were packed into a container measuring 6 m by 2 m; many of the survivors are seriously ill from dehydration and lack of oxygen. The driver opened the doors of the vehicle after the migrants banged on the walls—but he fled on foot when he saw what had happened. The [survivors] said they tried to bang on the walls of the container to tell the driver they were dying, but he told them to shut up as police would hear them when they crossed through checkpoints. A 30-year-old survivor told how he believed everyone would perish in the lorry: "I thought everyone was going to die. I thought I was going to die. If the truck had driven for 30 minutes more, I would have died for sure."

Source: BBC.

Extract Two

She was wearing jeans and a blouse. Foam around her mouth was evidence of a seizure. Though she had only walked about a day and a half, her physical condition and the insufficient water and food she had consumed made her susceptible to a desert death. In her last call home a couple of days before she died, she said "Daddy, I've reached the border."

Source: The New York Times.

Extract Three

"Sixteen people have drowned over the weekend in incidents involving smuggling boats … the passengers onboard said that the vessel, reportedly carrying 44 people, capsized early Saturday night when the smugglers began to push the passengers overboard into the waters off the coast … As smugglers began forcing people into the sea, frightened passengers moved towards one side of the vessel, causing it to capsize."

Source: UNHCR.

Extract Four

"5,100 crosses at the border mark migrant deaths … The crosses represent the number of migrants estimated to have died in the [last] 15 years."

Source: CBS news.

Extract Five

"Dozens of bodies washed ashore today … after smugglers threw nearly 150 migrants overboard into shark-infested waters."

Source: The Star.

Extract Six

"Customs officers found the bodies of 58 migrants, who had suffocated during the five-hour crossing, in the back of a truck … Only 2 of the people who made the trip survived."

Source: Associated Press.

Recommended resources

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Fortress Europe

Fortress Europe is a blog that reports on deaths of migrants attempting to reach Europe.

http://fortresseurope.blogspot.com

No_border network

The No_border network compiles media reports of deaths of migrants trying to reach Europe.

www.noborder.org

European network against nationalism, racism, fascism and in support of migrants and refugees

The European network against nationalism, racism, fascism and in support of migrants and refugees (UNITED) has drawn up a list of those who have lost their lives trying to reach Europe. The organization attributes the large number of deaths to border militarization, asylum laws, detention policies, deportations and carrier sanctions, while stressing that these are not singular incidents, but symptoms of policies that no longer consider the humanity of those fleeing their homeland. Finalized in May 2009, the list is available at www.unitedagainstracism.org/pdfs/listofdeaths.pdf.

Karl Eschbach, Jacqueline Hagan and Nestor Rodríguez. *Deaths during undocumented migration: trends and policy implications in the new era of homeland security*.

Defense of the Alien, vol. 26 (2003), pp. 37-52.

Center for Immigration Research, University of Houston

The Center for Immigration Research at the University of Houston has been conducting an ongoing study of deaths of undocumented migrants along the south-west border of the United States of America since 1995 through fieldwork and quantitative research (Eschbach and others, 1999; Eschbach, Hagan and Rodríguez, 2001).

The fieldwork has involved interviews with border patrol agents, medical examiners, funeral directors, local law enforcement agents, undocumented migrants and human rights advocates. Through these interviews, those involved sought to understand both the number of and reasons for migrant deaths in each area along the border. The quantitative component involves the systematic study of trends in undocumented deaths along the full border using a standardized data source.

www.class.uh.edu/cir/

Human Rights Watch. *Sinai Perils: Risks to Migrants, Refugees and Asylum Seekers in Egypt and Israel*. New York, 2008.

Since 2006, over 13,000 refugees, asylum-seekers and other migrants have passed through Egypt and crossed the Sinai border into Israel. The majority arrived in Israel beginning in 2007; at times, in early 2008, over 100 people per night reportedly crossed the border.

Available from www.hrw.org/en/reports/2008/11/12/sinai-perils-0.

United States Commission on Civil Rights. *Tragedy along the Arizona-Mexico border: undocumented immigrants face the desert.* Briefing before the Arizona Advisory Committee to the United States Commission on Civil Rights, Tucson, Arizona, 23 August 2002. Available from www.law.umaryland.edu/marshall/usccr/documents/cr182t67b.pdf

UNODC
United Nations Office on Drugs and Crime