

The Smuggling of Migrants in Africa: Questions of (Missing?) Protection

World Border Security Congress
Casablanca, 19-21 March, 2019

Dr. Cristiano d'Orsi
SARCIL/University of Johannesburg



INTRODUCTION

Smuggling of migrants is one of the most tragic plights affecting human beings worldwide and **Africa** is not immune from it.

Smugglers offer a service to migrants, assisting them to cross an international border.

The link between a migrant and a smuggler is consensual and should end once the arranged journey is completed.

However, it may sometimes happen that a consensual smuggling relationship take the shape of a trafficking because during their trip, migrants are exposed to abuses and, sometimes, also forced to assist smugglers in the smuggling of other individuals.

DEFINITION OF “SMUGGLING OF MIGRANTS”

The expression “**smuggling of migrants**” is well-defined by **Article 3(a) (“Use of Terms”)** of the **2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000 UN Protocol, entered into force: 28 January 2004, according to its Article 22 (“Entry into force”))**.

These documents have the **United Nations Office on Drugs and Crime (UNODC) as a custodian**, assisting states in implementing the protocol.

Article 3(a) stipulates:

“Smuggling of migrants’ shall mean 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”.

Particularly the expression “financial or other material benefit” has been the object of analysis by scholars with the concept of “**benefit**” **extending further than a mere monetary advantage and comprising also payments through intermediaries as well as work, sexual performances or other services both provided and received.**

DEFINITION OF “SMUGGLING OF MIGRANTS”

Some of the **existing international human rights instruments** also recognize the **right of states to implement enforcement measures against smuggled migrants**, as the interpretation given by the Human Rights Committee (HRC) in 1986 on Article 13 of the International Covenant on Civil and Political Rights 1966 (ICCPR), regarding the position of aliens under the ICCPR shows, when it affirms that aliens

“must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude”.

Regrettably, still in **2017-2018**, this recommendation seems to remain a dead letter in Africa with, for instance, organizations like **Amnesty International (AI)** **currently denouncing the inhumane conditions of migrants smuggled to Libya.**



DIMENSIONS OF THE BUSINESS

To have an idea of the dimension of the business of smuggling in Africa, and taking as an example what happened in South Africa in 2015 and 2016, smuggled migrants to that country in those years paid an average of USD 3,372 for the journey from the Horn of Africa. This represented an increase in line with the rise in costs observed in smuggling between 2009 and 2013 (from an average of USD 2,000 to USD 2,500).

Thus, the average cost of the trip from the Horn of Africa to South Africa increased by almost 69% between 2009 and 2016.

DEFINITION OF NSAS

The major responsibility for smuggling of migrants in Africa bears on the Non-State Actors (NSAs) that, as observed by A. Clapham in 2009, are:

“[g]enerally understood as including any entity that is not actually a state, often used to refer to armed groups, terrorists, civil society, religious groups or corporations”.

NSAs are also defined in the 2000 Cotonou Agreement that, since its adoption, it has constituted the basis for the European Union’s (EU) rapports with seventy-nine (79) countries from Africa, the Caribbean and the Pacific (ACP). Article 6(1)(c) of the Agreement considers as NSAs (in this circumstances intended as actors of cooperation):

“private sector; economic and social partners, including trade union organisations; civil society in all its forms according to national characteristics”.

1990 MIGRANT WORKERS' CONVENTION

In the situation of smuggling, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990 Migrant Workers' Convention) may also be applicable, and particularly its Article 16(2), in which the state of destination of the migrant should protect him/her against all forms of violence also from privates.

This convention can be extended to include smuggled migrants because, according to its Article 5, it applies to both documented and undocumented migrants.

However, this convention (entered into force in 2003) although, to date, ratified by twenty-nine (29) African countries, has not yet been ratified by several countries with the highest rates of immigration on the continent –both in absolute terms and in proportion with the local population- such as Cote d'Ivoire, DRC, Ethiopia, Gabon, Kenya, South Africa and Tanzania.



DOMESTIC LEGAL PROTECTION AGAINST THE SMUGGLING OF MIGRANTS

In Africa there are **two categories of laws protecting smuggled migrants**.

On one side, there are laws that, although not specifically dealing with the smuggling of migrants, nonetheless **recall the provisions of the 2000 UN Protocol, like the 2011 Kenya Citizenship and Immigration Act and the 2015 Immigration Act of Nigeria**.

On the other side, there are laws aiming to explicitly combat the phenomenon of smuggling of migrants such as the **2016 Law on Combating Illegal Migration and Smuggling of Migrants of Egypt** that, among other aspects, highlights the activities of organized criminal groups in the ambit of smuggling (similar examples in Cameroon, Mali and Senegal).

In South Africa, a **White Paper on International Migration** has been released in July 2017, although there the smuggling of migrants is only briefly mentioned.

However, the **1996 South African Constitution** allows for human rights claims against **private entities**. In any event, recent surveys show a reduced attraction of the country for smuggled migrants due also to the rising **xenophobia** in the country.



KHARTOUM PROCESS

African regional and sub-regional organizations have also adopted initiatives/instruments to address the phenomenon of smuggling of migrants on the continent.

These include, for instance, the **2014 Khartoum Declaration on African Union (AU)-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants**, in response to a growing number of boat tragedies in the Mediterranean over the course of 2013 and 2014, involving Egypt, Eritrea, Ethiopia and Sudan as well as their neighbouring countries: Djibouti, Kenya, Somalia and South Sudan.

This initiative has urged the launch of the **Khartoum Process**, a partnership between the twenty-eight (28) member states of the European Union (EU) and East and North African states, to respond to human smuggling and trafficking.

The Khartoum Process is a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe, implementing projects to address the smuggling of migrants through the regional collaboration between countries of origin, transit and destination of the migrants.



EXAMPLE OF SMUGGLING OF MIGRANTS IN AFRICA: NIGER

Looking at the north shores of Africa as the point of departure of an increasingly number of African smuggled migrants to Europe, **instability and high levels of violence in Libya preclude credible interventions to curtail irregular migration flows from the coasts of Libya to Europe.**

As a consequence, the focus has been moved by policy-makers to the **transit country of Niger**, and particularly to **Agadez**, a veritable smuggling-hub in the Sahara Desert, with the purpose of reducing the number of migrants crossing into southern Libya for onward trips to Europe via the Mediterranean.

While in several cases the smugglers facilitating these journeys are connected with the smugglers operating on the Libyan coast, in other circumstances networks consist of alliances of “freelance” criminals not part of any formal organization.



EXAMPLE OF SMUGGLING OF MIGRANTS IN AFRICA: NIGER

Yet, the fact that the organised criminality at the moment does not regularly operate along the Niger-Libya corridor does not mean that smuggling will be easier to fight **having**, for instance, **several foreigners who administer sort of ghettos in Agadez or other towns of the country, like Zinder, where they gather compatriots before consigning them to the smugglers.**

Besides, smuggling in Niger is also considered as a form of paid occupation for young, unemployed people.

This partially explains also why migrant smuggling has been *de facto* decriminalised in the country, whilst in 2015 Niger passed a law against migrant smuggling.

This law is applicable to smuggling linked to both criminal and non-criminal organizations (**Article 2**) and having as a goal not only to prevent and fight against the smuggling (and the trafficking) of migrants **but also** to protect the rights of smuggled migrants and to encourage the cooperation, **both national and international**, in order to prevent and halt that plight (**Article 1**).

EXAMPLE OF SMUGGLING OF MIGRANTS IN AFRICA: THE HORN

Another African area where smuggling of migrants is common is the Horn, with the Ethiopian and Somali diaspora paying smuggling expenses largely through the hawala, an informal remittance system based on trust.

One of the advantages of the hawala is that the beneficiary does not need to show an identity document, which many pastoral communities in that area do not have.

The sender remains anonymous, and this is beneficial in the country of destination for both those who overstay their visas, and the irregular migrants in search of employment.

In addition, hawala does not leave a paper track, in so doing letting the connection between smuggled migrants and smugglers hidden.

EXAMPLE OF SMUGGLING OF MIGRANTS IN AFRICA: THE HORN

The services provided by smugglers in The Horn are linked to well-established smuggling networks operating in the country of origin, transit and destination countries.

Conflict, insecurity and the lack of rule of law within countries, such as Eritrea, Ethiopia and Somalia has allowed migrant smuggling to thrive.

In Somalia in recent years, insecurity caused by Al-Shabaab attacks has pushed people to seek alternative destinations beyond the region.

In Eritrea, the Government instituted a “shoot on sight” policy in early 2015 along its borders to reduce the number of young people fleeing the country.

The continuous droughts and famines in Ethiopia becomes a recruitment ground for migrants for brokers or agents.



EXAMPLE OF SMUGGLING OF MIGRANTS IN AFRICA: THE HORN

If **Somalia does not have** any piece of legislation punishing the smugglers of migrants, the **2004 Criminal Code of Ethiopia**, specifically at its **Article 243** (“Unlawful Departure, Entry or Residence”) protects the rights of regular migrants.

In addition, the **2015 Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation of Ethiopia**, makes clear that a smuggler can also be part of an organized criminal group (**Articles 2(1)(c) and 2(2)**) and establishes a National Task Force to “**design policies, strategies, action plans and measures that enables the protection and assistance of victims**” (**Article 40(3)(a)**).

In this geographical area, including also Yemen, in 2010 the International Organization for Migrations (IOM) has launched a **Regional Committee on Mixed Migration (RCMM)** to **facilitate the co-ordination of governments’ action in addressing cross-border movements**, as also a 2013 Regional Conference in Sana’a acknowledged.

However, the news from Yemen are not so positive with reports showing that African smuggled migrants, who consider Yemen mainly as a country of transit, are detained and tortured.



ROLE PLAYED BY THE IOM IN AFRICA

Generally, **IOM responses** to the phenomenon of smuggling of migrants in Africa **are multifaceted** and, under a legal point of view, consist, **on one side, of promoting humanitarian schemes of admission and labour migration channels,** while **on the other the organization backs states in promoting procedures allowing the law enforcement agencies to successfully target the criminals organizing the smuggling.**



THE WAY FORWARD?

In Africa, the strengthening of migration policies and the current cooperation enhancing the mechanisms of interception and exclusion mechanisms **have led to the augmentation of smugglers and smuggled people and in the deterioration of the conditions of migrants.**

As it has also been pointed out in the conference organized in **Kampala in September 2017** by the Human Rights campaign group **Act Now** and entitled **“African Youth and Migration”**, migration can be better managed but it cannot be stopped.



THE WAY FORWARD?

Keeping in mind that the phenomenon of migration cannot be stopped, **safe corridors for African migrants** should possibly be opened in order for them not to fall in the hands of smugglers.

Besides, **cooperation between governments** should be strengthened, as also highlighted in March 2018 at the launch of the UNODC-IOM Joint Platform **Countering Migrant Smuggling**, in order to better protect migrants who can find themselves in a very vulnerable situation.

Strengthening information-sharing as well as joint operational functions, at the same time strengthening legislative methods in order to criminalize acts of **smuggling** could also be considered as suitable solutions that African states should be seriously taken into consideration in order to challenge the current setting.

HOW TO TACKLE MIGRATION FROM AFRICA?

“Only by opening Europe to African products beyond raw materials -while guaranteeing an equal share of the benefits to African populations- and addressing the structural conditions that undermine the development capacity of millions of people, will the European Union (EU) be able to implement a vision based on sustainable solutions”.

The EU should adopt four main policies:

“1) Exposing and sanctioning the ongoing exploitation of Africa’s natural resources by private and public European companies in order to tackle some of the structural causes of migration - those hindering the development of many countries in the region”.

HOW TO TACKLE MIGRATION FROM AFRICA?

“2) **Overcoming the self-serving cliché** of “investing in African countries”, **while opening Europe** - including by involving multinational corporations - to African products and enabling local populations to sustain their economies”.

“3) **Monitoring and stemming the flow of weapons produced in European countries and sold in African countries affected by wars**”.

“4) Providing legal protection and opportunities - possibly using some of the 6 billion Euros (\$7.5bln) allocated by the EU to strengthen Europe’s external borders - **for “climate migrants”, that is those (millions of people) who flee African countries because of the effects of climate change**”.

(L. Kamel, “To stop migration, stop the abuse of Africa’s resources”, 15 February 2018)<<https://www.aljazeera.com/indepth/opinion/stop-migration-stop-abuse-africa-resources-180213114944137.html>>

Thank you!

