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Human smuggling in Africa

Rethinking responses

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Summary

Although human smuggling has long roots in Africa's history, the birth of the modern migrant smuggling industry as a multi-million global business is much more recent, as is the current perception of the migrant smuggler as a highly organised criminal figure. The majority of smugglers are low-level operators who often come from the same community as their clients, making the industry an important source of community resilience. But as countries adopt a criminal justice approach to counter human smuggling, the risk to smugglers escalates, and the market professionalises. As risk rises, so does the price – and the danger – for migrants.

Key points

- Human smuggling has become increasingly central to global migration mechanics.
- Responses to addressing human smuggling in Africa have largely adopted a criminal justice perspective, often backed by military power. This is in line with global trends where responses have focussed on the supply side of the human smuggling market, rather than on demand.
- Such approaches drive the smuggling market through three distinct phases, and towards its more exploitative manifestations. This undermines state governance structures, as corruption becomes ever more pivotal to the success of human smugglers, and drastically increases the protection risks faced by migrants using smuggling services.
- The market can become increasingly controlled by organised crime, who reap significant profits from human smuggling.

Recommendations

- Policymakers should adopt policies and programmes enabling cross-continent mobility, making smuggling services unnecessary.
- Migration policy should be shaped by the demands of the labour market, both within Africa, and more broadly.
- Responses should be framed through a harm reduction lens, with law enforcement investigations targeting higher-level smuggling operators and networks causing the greatest harm, such as those increasingly exploiting migrants, or operating across trafficking and smuggling spaces.
- The success of counter-smuggling law enforcement strategies should be measured through the quality, not the quantity, of arrests.
- Smugglers should be considered key players in the local economy, rather than criminal operators, especially in areas where the industry has become a core livelihood in the community.

Introduction

Smuggling networks are at the heart of modern migration mechanics. While it is impossible to know for certain how many irregular migrants use the services of smugglers, it is increasingly recognised that a significant proportion of the world's irregular migrants will have used them at some point in their journey.

Shrinking avenues for legal movement, twinned with unprecedented mass displacement rates, have resulted in a sharp increase in people on the move irregularly and consequently in a growing need for the services smugglers provide.

Mobility has been a key facet of resilience across much of the African continent throughout its history, with smugglers facilitating a significant proportion of movement. However, the birth of the modern migrant smuggling industry as a multi-million global business is much more recent, as is the current perception of the migrant smuggler as a highly organised criminal figure.

In 2018, through the United Nations' Global Compact on Refugees, and the Global Compact for Safe, Orderly and Regular Migration, states renewed commitments to

'strengthen the transnational response to smuggling of migrants'. This is a key moment to assess the approaches taken by African states to human smuggling dynamics on the continent, and to scrutinise how these shape the smuggling market.

Responses to addressing human smuggling phenomena in Africa have largely adopted a criminal justice perspective

While the scale of the human smuggling industry is increasingly recognised, it remains poorly understood and frameworks for an appropriate response are highly contested. Responses to addressing human smuggling phenomena in Africa have largely adopted a criminal justice perspective, often backed by military power.

Such approaches drive the smuggling market towards its more exploitative manifestations, undermining state governance structures and increasing protection risks faced by migrants. Continuing along this path is unlikely to yield different results. Clearly it is time for a rethink.

This brief considers the impact of counter-smuggling enforcement action on the smuggling market, highlighting overarching trends and proposing a typology that recognises three phases of the smuggling market.

The brief considers one of the themes analysed in the underlying report, titled [Human Smuggling in Africa: the creation of a new criminalised economy?](#) The report is an in-depth tripartite study exploring smuggling narratives and policy approaches, the legal frameworks criminalising smuggling in Africa, and the impact of counter-smuggling enforcement activity on the smuggling markets in Africa. It sets out case studies analysing counter-smuggling enforcement action in Mali, Ethiopia, Kenya, Algeria, Niger and Egypt.

Analysis of the legislative approaches taken by African governments to criminalise human smuggling is not set out here; it is instead outlined in the [accompanying brief](#) targeted at legal scholars and practitioners with an interest in smuggling law, together with the [underlying report](#).

This brief, and the underlying report, were researched and written before the Covid-19 pandemic emerged in early 2020. While it is too early to definitively determine the long-term impacts of Covid-19 on human smuggling in Africa, the pandemic looks set to exacerbate certain trends explored in this brief – if states continue to respond to the coronavirus by enhancing the securitisation of the migration landscape, the smuggling industry is likely to be driven towards its more exploitative manifestation. Preliminary evidence of the pandemic's impact are explored in a discrete section of the [underlying report](#), and in a policy brief written by the author for the Global Initiative titled [‘Smuggling in the time of Covid-19: The impact of the pandemic on human-smuggling dynamics and migrant-protection risks’](#).¹

This brief and the underlying report draw on field research across a number of the jurisdictions scrutinised (including Egypt, Niger, Algeria and Libya), long semi-structured interviews with over 20 experts on migration dynamics and key informants working in civil society, law enforcement and the military in Africa, and extensive desktop research.

Understanding human smuggling

Human smuggling can be characterised as a supply and demand market where local aspirations are achieved through illicit access.

The specific dynamics of migrant smuggling networks, their operating mechanics and structures, are wrought by the markets in which they operate. Although broad trends can be tracked across markets, there are no uniform modus operandi of smuggling networks, as they shape their methods around the specific demands of the client, providing an extremely broad spectrum of services. Some networks can be likened to corporate structures, with clear roles, hierarchies and kingpin ‘CEOs’.

Many regions in Africa are characterised by longstanding levels of high mobility where the smuggling industry has significant local legitimacy and is a key source of income and employment. Smugglers often come from the same communities as their clients, and the interests of both are aligned in the safe journey of the migrant, building the reputation the smuggler relies upon to drum up business. Smuggling is therefore not an inherently exploitative industry and has long constituted an

important source of community resilience. The majority of smugglers continue to be low-level operators who provide their services without abuse or exploitation, and the contract between smuggler and client ends at the conclusion of the migrant's journey.

The more difficult a stretch of the journey becomes to traverse independently, the more important are the services provided by smugglers. Similarly, the more hostile the environment becomes to irregular migration, the riskier are the journey of the migrant and the operations of the smuggler. In many cases this drives smuggling networks to professionalise in order to operate successfully in a more challenging environment and attracts organised crime to enter the market.²

Human smuggling is not human trafficking

While the terms are repeatedly used interchangeably in public discourse, it is key to distinguish between ‘the smuggling of migrants’, as described above, and ‘human trafficking’.

The latter constitutes three elements: (i) an ‘action’, being recruitment, transportation, transfer, harbouring or receipt of persons; (ii) a ‘means’ by which that action is achieved (threat or use of force, or other forms of coercion, e.g. abduction, fraud, deception, abuse of power or a position of vulnerability) and the giving or receiving of payments or benefits to achieve consent; and (iii) a ‘purpose’ – namely, to exploit.³

In distinguishing between the two it is important to note that smuggling commences as a willing transaction between migrant and smuggler, a bilateral contract for services. Although in some cases smuggling arrangements may end in trafficking, the vast majority will not, and the migrant will bid farewell to the smuggler at the end of the journey.

The arrangement, for a fee, of an individual's journey from Kenya to Saudi Arabia on a false passport, where the individual then seeks work independently, is an example of smuggling. Were this individual tricked into travelling to Saudi Arabia through a promise of employment as a maid, and then trapped in their employer's house, passport confiscated, wages unpaid, this becomes trafficking. The latter example, true for thousands of East African nationals trafficked to the Middle East, is a clear example of trafficking, but a significant proportion of trafficking is harder to identify.

Although human smuggling and trafficking are distinct crimes under international law, in practice they are widely recognized to exist on a continuum, as migrants can move between dynamics that have characteristics of each phenomenon while on a single journey. However, the elements of each crime differ, as do the policy responses required.

This brief focusses on human smuggling, considering human trafficking only when it intersects with human smuggling on the migrant trail and in destination countries.

The rise of counter-smuggling measures

Policy discourse began to twin migration governance with human smuggling dynamics only shortly before the turn of the century. Since then human smugglers have been catapulted to fame and have played an unprecedentedly pivotal role in migration mechanics.

The rise of counter-smuggling measures on the political agenda of international organisations, destination states and, to a lesser extent, countries of transit and origin in Africa can be tracked predominantly across the last 15 to 20 years, and in particular since 2005.

Increased policy focus led to the criminalisation of human smuggling under international law through the adoption of the UN's Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol) supplementing the Convention against Transnational Organized Crime (UNTOC) in 2000. That human smuggling was identified as one of only three types of crime requiring an additional protocol to the UNTOC shows that smuggling had become a priority for contributing states.⁴

As of 2019, 40 of 54 African states had ratified the Smuggling Protocol.⁵ The research for this brief found that, as of 2019, 22 of those states had broadly complied with the obligation to criminalise 'smuggling of migrants' and translated the protocol's provisions into national legislation broadly in line with the definitions set out in the protocol (including that the intent of the perpetrator must be for financial or material benefit).⁶ Many prescribe severe penalties, including in some cases life imprisonment, for smuggling offences.

As the focus of African and European Union (EU) policy on 'irregular migration' grew, state positions became more combative. This can be tracked in the rhetoric used in intra-continental, and African-EU, policy documents regarding migration, with the terms 'irregular' tripling, and the terms 'fight' and 'combat' doubling, between 2005 and 2016.⁷

State rhetoric increasingly characterised migration governance as a fight against irregular migration, which in turn was depicted as a destabilising force threatening state sovereignty and national security. There was a growing need for a clear opponent in this 'fight'. This has resulted in the demonisation of migrants across media and political discourse and the characterisation of human smugglers as criminals driving migrants to take unsafe journeys.

African countries are increasing spending on border control, and regional policy documents reflect strict approaches to movement

Within Africa there is a disjuncture between the pan-African vision espoused by the African Union (AU), and the emphasis on border control of its members. In the AU's Agenda 2063, 'open borders' are essential to 'allow for robust trade ... [and] contribute to integration, prosperity and peace' in an 'integrated continent'.⁸

In line with this, the AU adopted the Free Movement of Persons Protocol in 2018. Only four states had ratified the protocol as at November 2019, and it requires 15 ratifications to come into force. The slow rate of ratification to date not only suggests it may never come into force but also illustrates the lack of enthusiasm for the free movement of people among AU states.⁹

Similarly, although visa restrictiveness for African nationals is decreasing across the continent, progress is extremely slow.¹⁰ Meanwhile, ever more African countries are increasing spending on border control, and regional policy documents reflect increasingly strict approaches to movement, even across previously permissive areas such as the Economic Community of West African States.

Responding to the smuggling industry

Focusing on demand or supply

Responses to the smuggling industry can be broadly characterised into two typologies – those focusing on supply, and those addressing demand.¹¹

The most promising demand-side approach, and that which most effectively protects the rights of migrants, is to render the smuggling service unnecessary by enhancing legal avenues for movement. Pursuant to this approach, states supplant smugglers as the principal facilitators of movement.

Although it is well recognised that this will often be more beneficial than prohibition to states' security and economy, the current political climate across much of Africa and in key destination areas such as the EU make this approach unlikely.

Supply-side approaches, more common across the continent, have adopted a predominantly criminal justice approach, ascribing heavy sanctions for smuggling offences. However, these approaches can make smuggling, the activity they seek to eliminate, more profitable. They can also increase risks for migrants. Similar challenges in supply-centric approaches have been identified in other illicit markets, including illicit drugs.¹²

Supply-side measures can experience a level of success in shrinking the smuggling market in certain contexts. However, they need to be coupled with policies that meaningfully reduce the demand for smuggler services. Implemented in isolation, they can prove ineffective and drive the smuggling industry towards greater professionalism and more acute exploitation of migrants. This is explored in greater detail below.

A three-phase industry

Two key factors drive the attractiveness of criminal markets to criminal actors: profits and operating risk. Increasing enforcement against the smuggling market affects these factors which in turn shape the smuggling market.

The smuggling market can be perceived to have three distinct phases, each entailing different risks for migrants using smuggling services.

PHASE 1: Low risk, low profits

Where profits and operating risk are low, criminal operators are typically relatively unsophisticated. They often conduct the criminal activity as a side show to alternative legal businesses, or to the smuggling of legal commodities across borders to leverage price differences (e.g. fuel smuggling between Libya and Niger).

This can be characterised as phase 1 of the smuggling market with low levels of enforcement, a low risk operating environment for smugglers, and consequently low prices for smuggling services. Phase 1 is also typically characterised by a lower risk for the migrants using smuggling services.

Profits from the smuggling industry are typically reinvested in the local community and can act as a stabilising force offsetting hardship among marginalised communities. Most smuggling industries in Africa can be characterised as phase 1 markets for most of the 21st century. There are some key exceptions where the migration space has been highly securitised for a long time and smuggling markets have long operated in high-risk environments, for example, Eritrea.

PHASE 2: Profits and operating risk increase

Where enforcement increases operating risk, it also drives up the prices migrants must pay for smuggling services (although there may also be other factors at play).¹³ Although an element of the price increase may be absorbed into operating costs, such as increased bribes or higher fuel costs to navigate more circuitous routes, a significant proportion will represent a growth in profits for the smuggler, making involvement in the industry more lucrative.

The industry then begins to offer a full-time revenue stream for operators. It also changes the risk profile of human smuggling activities, which become 'criminalised' rather than merely an informal mode of transport. At this point more sophisticated criminal networks are attracted to the market by increased profits, while low-level operators either become increasingly professionalised or leave the market due to increased risk. Given the shifting nature of the actors involved in the smuggling industry, profits start to be reinvested in growing the criminal economy itself, diverting resources away from local communities.

This can be characterised as phase 2 of the smuggling market, where enforcement has driven up prices and operating risk to a medium level, but demand for smuggling services remains high. This is partly because the environment has not yet become unfeasibly hostile or dangerous for irregular migrants, but it may also be attributable to a time lag in the shifts in operating risk reaching those embarking on their journey. Algeria, where significant state resources have been invested in border control, and risks for both migrants and smugglers have increased but demand has not yet diminished, can be characterised as a phase 2 market.

Here the disjuncture is created between legal approaches to smuggling, which treat the phenomenon as criminal, and local perceptions, which to a large extent remain rooted in a phase 1 understanding of the smuggling economy, i.e. merely as a facilitation of movement.

Migrant perceptions about the role of the smuggler start to shift in phase 2, although in many jurisdictions the prevailing view will see smugglers merely as facilitators of movement. Data collected by the Mixed Migration Centre as part of its 4Mi project found that in Agadez, Niger, 81% of migrants perceived their '*passeur*' (a term typically used to refer to smuggler, but that can similarly translate more as a driver, or general facilitator of transport, without necessarily having illicit connotations) to be a professional smuggler, decreasing to 42% in Niamey, where the majority (51%) perceived *passeurs* to be operating as travel agents.¹⁴ This is in part due to the fact that migrants move using regular buses in the latter, where enforcement has been lesser, and not the former, where smugglers have been forced further underground and to operate more professionally.

Similarly, in Gao, Mali, where sporadic enforcement is the exception to overall state absence, 44% perceived *passeurs* to be professional smugglers, far lower than in Agadez which has experienced prolonged counter-smuggling enforcement (33% of migrants in Gao classified *passeurs* as travel operators).¹⁵

PHASE 3: Risk high, profits diminish, driving diversification of income streams

In phase 3 of the smuggling industry sustained enforcement has kept prices and operating risk high. In some contexts, where demand is inelastic (often in the case of refugees) or purchasing power high,

the market remains static, with highly criminalised smuggling networks reaping significant profits from operations. This occurred in the exodus of Syrian refugees during the Syrian conflict who had little option but to move.

In contexts where demand is more elastic, prices may exceed the purchasing power of those seeking smuggling services, and irregular migrants are deterred by the increasingly hostile environment of the relevant jurisdiction. This drives down demand, meaning that although the per capita profits remain high, overall revenues dwindle.

This drop in demand has been tracked in the decreasing numbers of migrants from West Africa and the Horn of Africa travelling across Libya, with more opting to move across alternative migration routes.

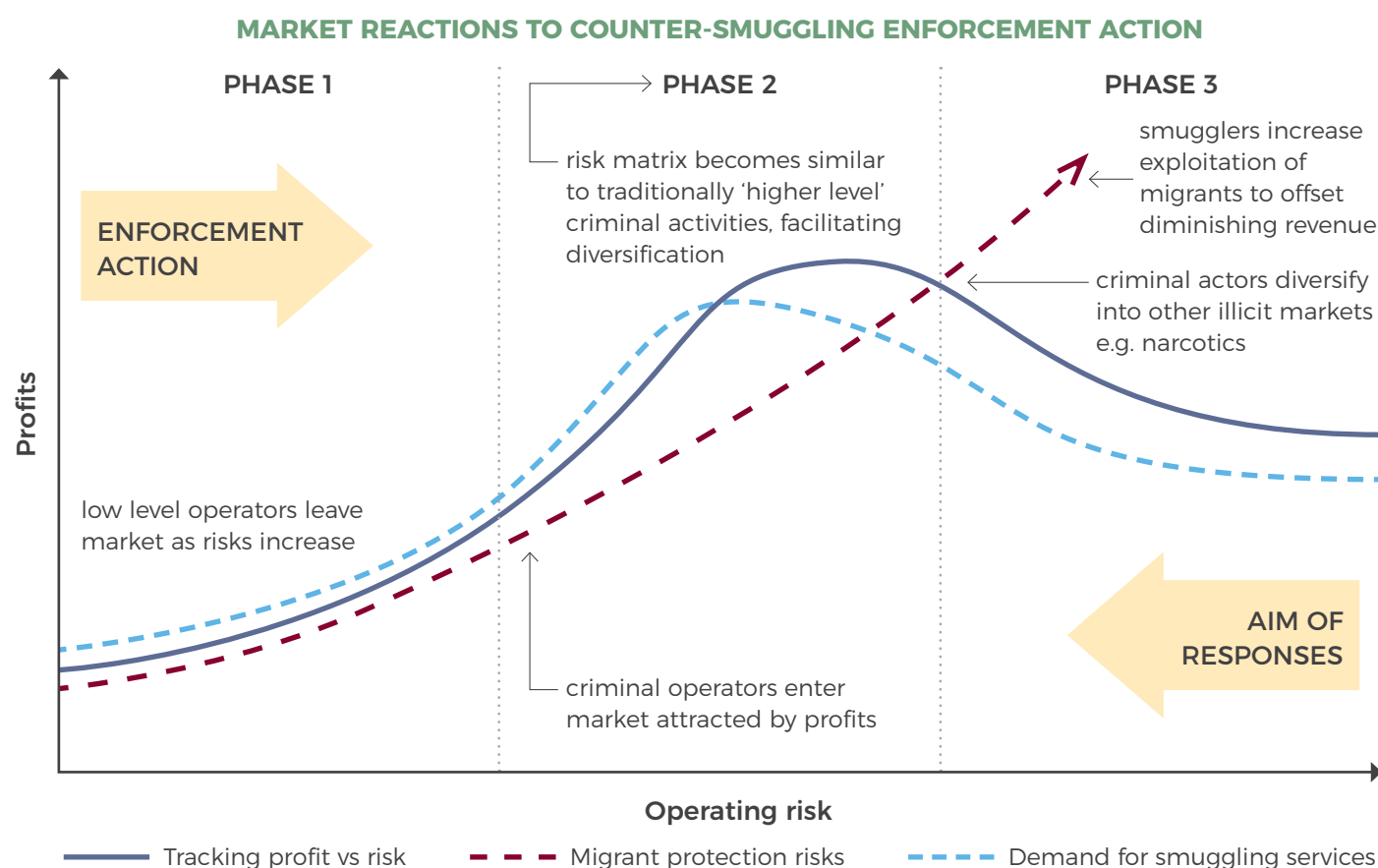
Civil society organisations operating in Egypt have discovered that an increasing proportion of the mixed migration flows moving irregularly into the country are refugees, rather than economic migrants. This could in part be due to the fact that refugee demand is inelastic and therefore less reactive to the changing risk profile of the journey.

With operating capacity exceeding demand, actors in the smuggling industry can no longer rely on the market as a full-time revenue stream and are forced to diversify into alternative income streams. These can broadly be categorised into three typologies. Smugglers:

- seek to draw greater profit from a smaller number using their services (through exploitation and extortion); or
- move into licit economies; or
- move into alternative illicit markets, likely the smuggling of illicit commodities, as this leverages existing networks accustomed to the facilitation of clandestine movement.

Where alternative employment in legal markets is low (a characteristic which may have driven high involvement of the local community in the smuggling industry in the first place), actors are forced to turn to one of the other options.

Figure 1 Accompanying 'Phases of the Smuggling Industry'



Overarching trends in market responses to enforcement

Displacement of risk down the power scale: Senior smuggling operators displace risk down the chain, with the smuggling industry as a whole seeking to shift risks away from itself and typically onto migrants. In Algeria, Niger and Libya smugglers have turned to night-time operations (including night-time sea disembarkations) and longer and riskier routes (overland and sea) to evade law enforcement. Heightened fear of interdiction has increased mid-journey abandonments of migrants, as reported in Algeria,¹⁶ Niger and Libya.¹⁷ These have often led to fatalities.

These shifts in modus operandi have significant impacts on the risks faced by migrants. In Niger, statistics published by the International Organization for Migration recorded a six-fold increase in desert fatalities between 2015 and 2017 on the roads towards Niger and Algeria.¹⁸ In Libya, UNHCR data suggests the mortality rate of the sea crossing as a percentage

of departures increased from 2.1% in 2017 to 3.3% in 2018.¹⁹

Increase in price: In Niger, the price for foreign migrants making journeys across the desert and into Libya grew fivefold between 2015 and December 2019 (at which point it appeared to stabilise).²⁰ In Egypt, prices to transit into Libya have reportedly doubled in reaction to expanded border security.²¹ This has increased the vulnerability of migrants already in Egypt to other forms of exploitation, including organ trafficking, to finance onward movement.²²

Increase in exploitation of migrants by smugglers: In Niger, kidnap for ransom and banditry became more common elements of the migrant experience following enforcement of Niger's Smuggling Law (Loi 2015-036).²³

Since 2017 heightened enforcement against coastal disembarkations in Egypt significantly shrunk the

revenues of smugglers operating these routes. No disembarkation has been reported since early 2017. Smugglers in this area reportedly continue to earn a small revenue stream from falsely advertising boat trips to Europe to new irregular arrivals. These migrants pay between US\$2 000 and US\$3 000 for the promised journey. They are held in a location within Egypt and then abandoned or ransomed further.

Some smuggling networks are reportedly gaining revenue through organ trafficking.²⁴ They exploit the vulnerabilities of a stagnant migrant population, whose onward movement has been complicated by increased prices (driving migrants to search for alternative ways of earning money) or entirely blocked through enforcement preventing coastal disembarkations.

Diversification of income streams: In Niger, while some ex-smugglers found employment as drivers or checkpoint officials for flows of Nigerien emigration to Libya, others turned to smuggling alcohol, trafficking the opioid tramadol or cannabis resin.²⁵ Similarly, in

Egypt 2018 cases of arrest and investigation of human smugglers demonstrates an overlap in the networks smuggling people and narcotics.²⁶

Spikes in emigration and unrest: Local media reports have attributed unrest in a number of border areas in Algeria, such as in the northern border settlements of Souani and Labtime, to the disruption of cross-border trade caused by increased border enforcement.²⁷

In Niger, both Tuareg and Tebu communities in the north of the country relied on smuggling as a key livelihood mainstay. The crackdown constituted a destabilising economic blow. It triggered increasing unrest and heightened tensions between Tuareg and Tebu. Together with additional climatic factors (in particular drought), it has also contributed to an increase in emigration since 2016. As at December 2019, local transport operators report that on average 2 000 young Nigeriens leave for Libya every week in what is locally termed an 'exodus' due to its size.²⁸

Smuggling as a state-enabled economy

Human smuggling in Africa and more widely is a state-enabled economy – to different degrees, depending on the political economy of the specific country. Firstly, state policies, such as the marginalisation of certain groups, drive movement and close legal migration routes, while punitive approaches to irregular migration force reliance on smugglers.²⁹ Secondly, state corruption, or indeed official state policy, typically lies at the core of smuggling industries. Reports of violence in clashes between smugglers and law enforcement are rare, reinforcing the understanding of the smuggling industry as one predominantly facilitated through the payment of bribes.

As noted above, interventions into the smuggling industry across the continent have largely been predicated on enhanced border control, greater law enforcement involvement, and increased arrests of all actors involved in irregular migration, both migrants and smugglers. Yet the central role played by the state in the smuggling industry complicates its role as the primary player in anti-smuggling interventions.

In Egypt the state's counter-smuggling operations have been lauded by EU and international organisations

alike. The smuggling networks facilitating pre-2017 migrant departures from Egypt's Mediterranean coast towards Europe relied heavily on bribing government officials, including law enforcement and elements within the armed forces and intelligence apparatus.³⁰ It was precisely this collusion that enabled the Egyptian state, which exerts significant control over its officers, to quickly stem coastal departures in 2017.

State collusion remains at the heart of the highly lucrative air route from Syria into Cairo, which is facilitated by the corruption of airport officials. Smugglers bribe state airport officials to grant their clients three-month tourist visas, which can then be converted into longer-stay permits. They then await their clients outside the airport. This smuggling route appears to continue largely unchallenged, reflecting the focus of state enforcement efforts on emigration towards Europe, particularly of Egyptians.³¹

A military official in Egypt explained that 'governments and the police are evaded' by smuggling networks due to the role played by 'intermediaries ... that have connections and relationships with those who have access to the security plans to combat these gangs'.³² Such connections mean that smuggling networks 'have prior information on the movements of the government

and the security forces, enabling networks to 'modify their plans, to evade interdiction, facilitating cross-border movement'.³³

The Model Law on Migrant Smuggling published by UNODC to guide states in translating the Smuggling Protocol into national legislation recognises the role of corruption in smuggling. Commission of a smuggling offence by a state official attracts a higher penalty than by a lay person. This difference is reflected in the national laws criminalising smuggling in Algeria, Ethiopia, Egypt, Libya, Equatorial Guinea, Guinea Bissau and Niger,³⁴ which ascribe higher penalties to smuggling offences committed by state officials. However, arrests of state officials remain extremely rare.

Approaches to stemming migration that emphasise criminal justice and border management in source and transit countries drive reliance on corruption to evade state detection. This pushes the industry into the hands of organised crime syndicates with the requisite connections. It thus further entrenches existing networks of corruption or provides the impetus for new ones to proliferate.

While there have been some studies that examine the 'corruption-migration' nexus,³⁵ there is a paucity of research regarding the relationship between corruption and migration as it pertains to specific migrant smuggling markets. However, broadly, the more of an enforcement priority that smuggling becomes, the more difficult it is for smugglers to operate without a level of state collusion.

Firstly, as enforcement increases (into phase 2 of the smuggling market), smugglers require connections to relevant state officials in order to operate, driving ill-connected smugglers out of the business. In contexts where the state is lacking, connections are instead required with quasi-state armed actors (as is the case in areas of northern Mali where armed groups rather than the state control territory).

Secondly, as risks of interdiction increase for the smuggler, and state collusion becomes increasingly essential, bribe amounts increase. These costs are passed onto the migrant by the smuggler. In Niger smugglers reported that between 2016 and 2018 a greater proportion of detection by law enforcement and military patrols would result in arrest. However they also reported a spike in the price of bribes required by state officials to cooperate.

State security structures in Niger have long been reliant on revenues generated through collecting rents from smugglers. In late 2016 and 2017, the peak of counter-smuggling enforcement action, there was a small hiatus in this income stream. However, the vanishingly low salaries of police and border officials in Niger have remained static, engendering ongoing reliance on bribes.³⁶ Postings in Agadez and the north remain desirable among law enforcement officers, despite often being far from their home towns. This suggests that the additional income from bribes extracted from the smuggling industry remains a significant draw.

The price of a bribe is closely linked to the level of risk of the specific smuggling activity. Bribes payable for being caught smuggling a woman in Niger hovered around FCFA400 000 (€610) as at May 2019. This is significantly higher than the FCFA300 000 (€455) normally payable for the smuggling of foreign migrants.³⁷ It mirrors the higher sentences attributable for smuggling women under Niger's anti-smuggling law (Loi 2015-036).³⁸

The relationship between enhanced enforcement and greater reliance on state involvement highlights a toxic and self-defeating relationship between enforcement and corruption. Where the smuggling industry professionalises, enabling it to succeed in increasingly challenging operating environments, its need to corrupt state officials grows. So does its ability to do so, due to greater financial resources available for paying bribes and driving state complicity.

Conclusion

Currently approaches to countering smuggling markets in Africa broadly track the traditional mode of addressing illicit economies: criminal justice interventions bolstered by military power when such interventions are perceived to be insufficient. These accelerate development of the smuggling market towards phase 3 manifestations. This has long-term consequences for state governance structures and causes widespread harm to migrants.

Instead, to avoid increasing harm and growing the criminal economy of smuggling, policies should focus on driving markets towards their phase 1 manifestations. Here harms are lower, profits smaller, and the impact on local economies and communities, and on corruption, lesser.³⁹

Recommendations for policymakers

1. Adopt policies and programming enabling cross-continent mobility, rendering smuggling services unnecessary and facilitating labour migration to feed market demand. Wealthier African states should play a greater role in promoting legal avenues for migration and recognising the benefits of migrants to their economies.
2. Destination regions, like the EU, should shape migration policies around labour and market demand, recognising where enhanced immigration is key to meeting workforce demands in the context of an ageing population.
3. Counter-smuggling responses should be sensitive to the elasticity, or lack thereof, of demand for smuggling services. For example, for refugees and asylum seekers, demand will be predominantly inelastic, rendering strategies that seek to tip the cost-benefit analysis ineffective and harmful.
4. Smugglers should be considered key players in the local economy rather than criminal operators that need to be erased when crafting programmes to respond to the industry. In many cases the interests of smuggler and client may be aligned, and where the smuggling industry, enmeshed into local survival strategies, has become a core livelihood, smugglers constitute key voices in the relevant political economy.

Recommendations for law enforcement

1. The success of counter-smuggling law enforcement strategies should be measured through the quality, not the quantity, of arrests. Investigations should be framed through a harm reduction lens, targeting higher-level smuggling operators and networks causing the greatest harm, such as those increasingly exploiting migrants, or operating across trafficking and smuggling spaces.
2. In line with this, it is key to leverage the symbolic power of arrests by targeting a small number of high or mid-level operators and ensure that sentencing is in line with domestic legal frameworks. Where sentencing structures are simply ignored (as has occurred in Niger – more specific examples given in the [underlying report](#)), this undermines counter-smuggling action.

Notes

- 1 L Bird, Smuggling in the time of Covid-19: The impact of the pandemic on human-smuggling dynamics and migrant-protection risks, The Global Initiative Against Transnational Organized Crime, April 2020, <https://globalinitiative.net/wp-content/uploads/2020/04/GIATOC-Policy-Brief-003-Smuggling-COVID-28Apr0930-proof-4.pdf>
 - 2 T Reitano and L Bird, Understanding Contemporary Human Smuggling, Global Initiative Against Transnational Organized Crime, 2018, https://globalinitiative.net/understanding_human_smuggling/.
 - 3 Article 3 of the Additional Protocol to the United Nations Convention against Transnational Organized Crime (UNTOC) to Prevent, Suppress and Punish Human Trafficking, in particular Trafficking Involving Women and Children.
 - 4 The other two Palermo Protocols addressed trafficking in persons and the manufacture and trafficking of firearms.
 - 5 Data collected for the Organized Crime Index project, part of ENACT, <https://globalinitiative.net/organised-crime-index-africa-2019/>. Data drawn from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en.
 - 6 The research undertaken for this brief and the underlying report found that 22 countries in Africa criminalise the 'smuggling of migrants' broadly in line with the Smuggling Protocol, namely as the (i) procurement of illegal entry of a person; (ii) intentionally in order to obtain, directly or indirectly, a financial or other material benefit (Article 6(1)(a)). These countries are: Libya, Niger, Nigeria, Namibia, Guinea, Central African Republic, Senegal, Mali, Kenya, Ghana, Ethiopia, Egypt, Burkina Faso, Algeria, Zambia, Lesotho, Eswatini, Mauritania, Guinea Bissau, Equatorial Guinea, Mozambique, Djibouti. Many more criminalise the facilitation of irregular migration, but do not stipulate that the intent of the smuggler must be for material or financial benefit. These fall beyond the scope of analysis in this brief and the underlying report because this intent is integral to the smuggling offence as conceived in international law. The legal analysis of the laws of these 22 countries is set out in the accompanying policy brief titled 'The criminalisation of human smuggling in Africa: Looking at the Law' and the underlying report. In identifying legal provisions criminalising human smuggling offences (understood in accordance with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling Protocol)), across Africa, this research draws on (i) the Database of Legislation on the UNODC SHERLOC portal; (ii) the Legal Atlas database; and (iii) Global Initiative research conducted for the ENACT Project which included a review of available databases for legislation, together with widespread qualitative expert verification.
- Consequently, this legal research is vulnerable to the limitations of the data-gathering exercises conducted for the SHERLOC, Legal Atlas and Africa Organised Crime Index databases. Although the author has sought to offset these by cross-checking positions with local analysts where possible, this limitation remains. The author welcomes any updates, or additional relevant laws, identified by readers, which can be incorporated into later iterations of this analysis.
- 7 Excluding bilateral agreements as these were not included in the analysis. Zanker unpacks 76 policy documents from African and European institutions relating to the governance of migration between 2005 and 2016. F Zanker, Managing or restricting movement? Diverging approaches of African and European migration governance, *Comparative Migration Studies*, 2019, <https://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-019-0115-9>.
 - 8 African Union, Agenda 2063 (Aspiration 2), <https://au.int/agenda2063/goals>.
 - 9 The AU Free Movement of Persons Protocol, formally adopted in 2018. Preceded by the AU Migration Policy Framework (2006), the Common Position on Migration (2015); Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol) adopted in 2018.
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About ENACT

ENACT builds knowledge and skills to enhance Africa's response to transnational organised crime. ENACT analyses how organised crime affects stability, governance, the rule of law and development in Africa, and works to mitigate its impact. ENACT is implemented by the ISS and INTERPOL, in affiliation with the Global Initiative Against Transnational Organized Crime.

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