



STAR SOM

STRENGTHENING TRANS-REGIONAL
ACTION AND RESPONSES AGAINST
THE SMUGGLING OF MIGRANTS

POCKET BOOK

Nigeria and Ghana

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Introduction to the pocketbook

This pocketbook is developed to provide information and practical reference material about trafficking in persons and smuggling of migrants to investigators and prosecutors. It was developed under project STARSOM (Strengthening Trans-Regional Action and Responses Against the Smuggling of Migrants”), funded by the Government of Canada, and implemented by UNODC in the following countries: Brazil, Colombia, Costa Rica, Dominican Republic, Honduras, Turks and Caicos, Sri Lanka, Nepal, the Maldives, United Arab Emirates, Qatar, Ghana and Nigeria.

STARSOM was developed in response to a request from the government of Canada to UNODC, to address the popular smuggling route that starts in Asia, transits the Gulf States, West Africa, Latin America, and the Caribbean, heading towards the United States and Canada. Little knowledge about smuggling operations and criminal organized groups and little cooperation between authorities of countries along these routes are jeopardizing responses to this crime.

STARSOM aims to support beneficiary countries to fight the activities of migrant smuggling networks and the threat posed to smuggled migrants along these routes by enhancing law en-

forcement and judicial strategies beyond interdiction activities, towards dismantling criminal networks, fostering transnational cooperation and ensuring due respect to migrants’ rights.

STARSOM is funded by the Government of Canada through its Anti-Crime Capacity Building Program (ACCBP)

What is Smuggling of Migrants?

The smuggling of migrants is defined in article 3 of the Protocol Against The Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime, according to which:

- a) “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;
- b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

Other conducts that need to be criminalized, when committed for the purpose of enabling the smuggling of migrants, include:

- (i) Producing a fraudulent travel or identity document;
- (ii) Procuring, providing or possessing such a document;
- (iii) Enabling 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.

It should be kept in mind that the drafters of the Protocol included an explicit requirement of “financial or other material benefit” in the definition of the criminal offence, as per article 6. In other words, if there is no “financial or other

material benefit” there is no crime of smuggling.

In addition, States parties to the Protocol are required to provide in their legislation, aggravating circumstances and punish with more severe sentences, the crime of migrant smuggling when:

- It endangers, or is likely to endanger, the lives or safety of the migrants concerned;
- It entails inhuman or degrading treatment, including for exploitation, of such migrants.

The inclusion of the Financial or other Material Benefit as key element of the definition of the smuggling of migrants aimed to:



@Aondoaver Kutuh

Officials of Nigeria Immigration Service Headquarters, Abuja discuss a case of migrant smuggling during one of the mentoring sessions leaders

What is Trafficking in Persons?

“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 the 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”.¹

Trafficking in persons has three key elements:

1. The **ACT** – what the traffickers do - recruitment, transportation, transfer, harbouring or receipt of persons
2. The **MEANS** – how they do it - 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
3. The **PURPOSE** – why they do it – Exploitation. This is the central element of trafficking in persons. If the intent to exploit another person is lacking or can't be proven, trafficking in persons is not substantiated

¹ Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children (Palermo protocol 2000).

What are the differences and the intersections between TIP and SOM² ?

	Smuggling of Migrants	Trafficking in Persons
Geography	Smuggling always involves the crossing of international borders. It is a transnational crime.	Trafficking may occur entirely within the borders of one country or may occur transnationally.
Purpose. Source of profit	Migrant smugglers act to obtain a 'financial or material benefit'. The source of profit is the payment received to arrange illegal border crossing.	The purpose of trafficking in persons is the exploitation of the victim.
Victimization	Smuggled migrants are not "victims". While the term "victim" is not used in the Protocol, they may be considered victims of crime in situations of aggravated smuggling, where their lives and safety are endangered, or where they are subjected to inhuman or degrading treatment including exploitation.	Persons who are trafficked are victims of the crime of trafficking in persons. They may also be victims of other crimes committed while being trafficked.
Perpetrator	Smugglers may be opportunistic individuals, organized criminals, the migrant's own family or friends or others, but only where they act for financial or another material benefit.	Traffickers may be organized criminals, the victim's own family or friends or others. And they aim at exploiting the individual trafficked.

The relationship between TIP and SOM lies in the vulnerability of persons involved in the route, whether they are victims or migrants. Smugglers are opportunistic and can take advantage of vulnerable migrants who may become victims of trafficking. Trafficking and smuggling can occur along the same routes and smuggling can sometimes lead to trafficking. Smuggled persons may not have travel or residency documents, may not speak the language of the country in which they were smuggled, and may be unsure of their rights in the new country. These conditions of vulnerability create an environment in which the smuggled person is more susceptible to exploitation and trafficking. For example, after an individual has been smuggled into his or her destination country, if they are unable to pay the price of the smuggling, the smuggler may become a trafficker by imposing a condition of debt bondage on the individual, a practice like slavery.³

² Adapted from E4J University Module Series: Trafficking in Persons & Smuggling of Migrants. Module 11: Smuggling of Migrants and Trafficking in Persons - Differences and Commonalities. Available at: <https://www.unodc.org/e4j/zh/tip-and-som/module-11/key-issues/differences-and-commonalities.html>.

³ Issue brief ICAT The Inter-Agency Coordination Group against Trafficking. Issue Brief 4. <https://www.unodc.org/documents/mexicoandcentralamerica/publications/CrimenOrganizado/UNODC-IB-01-draft4.pdf>

The risks migrants face

Migrant smugglers commit many crimes against migrants during the journey

- Migrants may be killed;
- Migrants may be physically abused;
- Migrants may be extorted for money;
- Unsafe vessels may result in death by drowning at sea;
- Migrants might become ill with no medical attention;
- Babies might be born at sea or in other unsafe environments;
- Migrant smugglers often use dangerous vehicles with no ventilation;
- Migrant smugglers often take the riskiest routes that expose migrants to attacks by criminals and even insurgents;
- Migrants may be raped;
- Migrants may be injured.

Physical violence and inhuman and degrading treatment are the most prevalent forms of abuses encountered by migrants in transit. ⁴

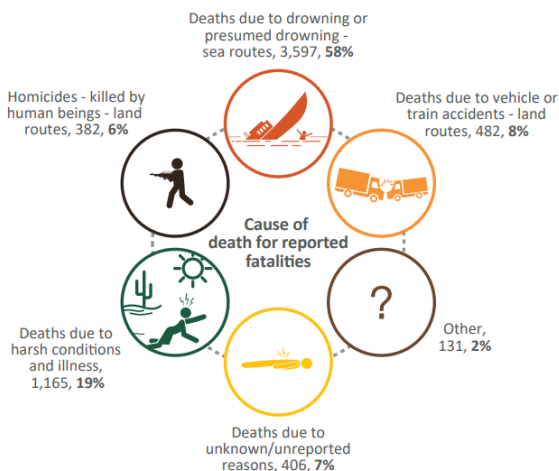


Young officers of the Nigeria Immigration Service studying a case during a mentoring session

⁴ UNODC. (2021). Abused and neglected. A gender perspective on aggravated migrant smuggling offenses and response. https://www.unodc.org/documents/human-trafficking/2021/Aggravated_SOM_and_Gender.pdf

Figure 1 illustrates reasons for migrant deaths:⁵

Number of migrant fatalities reported, by cause of death, 2017



Migrants are exposed to extremely high risks of abuse and exploitation along smuggling routes in West and North Africa and towards Europe. Specialized sources report that virtually every person who arrived along the Central Mediterranean route to Italy between 2014 and 2019 showed symptoms of Post-Traumatic Stress Disorder. The most reported mental health issues include sleep disorders, anxiety and panic disorders, as well as intrusive thoughts. In recent years, an increase in the number of lives lost during the journey in the desert and at the borders between Niger, Mali, Algeria and Libya has been re-

ported. SOM Observatory interviewees recalled travelling in overcrowded pick-up trucks along land routes connecting West and North Africa, with many suffering from dehydration, and in fear of being abandoned in the desert if they were not able to keep holding on or standing up on those vehicles.⁶

On the Central Mediterranean Sea route, 805 migrants have been recorded as dead or missing as of July 2022.⁷ Libya is the most common departure point but more recently, increased embarkations in other countries such as Tunisia, Algeria and Egypt have been observed. People are often boarded onto

⁵ UNODC (2018). Global Study on Smuggling of Migrants, p.9. Available at: https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf.

⁶ UNODC (2021). Observatory on Smuggling of Migrants. Key Findings on the Characteristics of Migrant Smuggling in West Africa, North Africa and the Central Mediterranean. Available at: <https://storymaps.arcgis.com/stories/9b5bd3d4d6624d44b5ddae6aa5af1da3>

⁷ IOM. Missing Migrants Project. https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&year%5Bmin%5D=10121&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=

precarious vessels, without the necessary equipment and provisions for the full sea crossing.

Accounts of trafficking, kidnapping, deprivation of liberty, sale of a person, inhuman and degrading treatment and torture are common along the route. Migrants and refugees reported being kidnapped multiple times along the routes from West Africa to North Africa, particularly in border areas in the Sahel, while working in agricultural fields or living in Tripoli. In many cases, this would constitute trafficking in persons, where the act (recruitment/transfer/receipt of persons), the means (abduction, use or threat of force) and the purpose of exploitation in forced labour, sexual exploitation or otherwise are present.⁸

Whereas men also report a wider range of abuses than women, women report a much higher “exposure to sexual violence while migrating” as well as “not having access to sufficient health care” as a significant obstacle, showing an increased need for such services likely linked to the impact of sexual violence experienced as part of their journey.⁹

Interviewed migrants and refugees also experienced extended periods of deprivation of liberty in Libya, Algeria and/or Northern Mali. They are held captive by their smugglers or other criminals and non-state actors, who are either independent or affiliated with their smugglers. They are detained multiple times in buildings described as prisons run by armed groups, private warehouses, or private houses. Following failed sea-crossing attempts, interviewees were also detained in official detention centres.

After weeks or even months spent in captivity, refugees and migrants report to be released and manage to continue their journey only when:

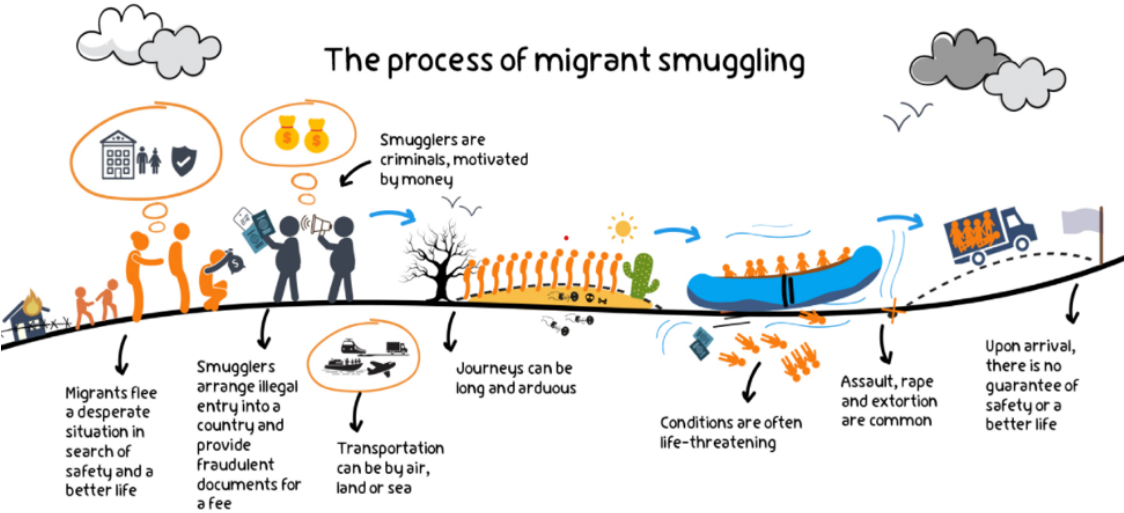
1. A ransom is paid by their family members – in this case, their captors then arrange their next movement along the route.
2. They are freed or manage to escape with the help of other prisoners and, once liberated, contact a smuggler in order to move on.
3. They are “sold” by a guard to a third party, then offered freedom in exchange for forced labour in agriculture or construction for men, and exploitation in domestic work or prostitution for women.

Practitioners should always remember that smuggled migrants may have suffered psychological and/or physical harm on their journeys, and need to receive appropriate care and adequate treatment after being rescued.

⁸ UNODC. (2021). Observatory on Smuggling of Migrants. Key Findings on the Characteristics of Migrant Smuggling in West Africa, North Africa and the Central Mediterranean. Available at: <https://storymaps.arcgis.com/stories/9b5bd3d4d6624d44b5ddae6aa5af1da3>

⁹ UNODC. (2021). Abused and neglected. A gender perspective on aggravated migrant smuggling offenses and response. https://www.unodc.org/documents/human-trafficking/2021/Aggravated_SOM_and_Gender.pdf

Organization of Smuggling of Migrants



Migrant smuggling can take many forms from very small or simple activities conducted by opportunistic individuals to very complex ventures organised by criminal groups in which smugglers perform various roles.¹⁰

Simple Migrant Smuggling

- May involve only one smuggler and one migrant;
- A small amount of money paid to the smuggler;
- May involve no violence or intimidation.

Complex smuggling

- May involve organized criminal smugglers and many migrants;
- With repeated smuggling activities occurring over a long period of time;
- May involve smugglers operating out of three different countries;
- And migrants out of multiple countries;
- Smugglers charge large sums of money;
- Provide fraudulent travel and identity documents;
- Arrange transportation;

¹⁰ UNODC (2011). In-debt training manual on Investigating and prosecuting the smuggling of migrants. Available at: https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/In-Depth_Training_Manual_SOM_en_wide_use.pdf.

- Throughout the smuggling process, the smugglers may use intimidation, threats and even violence if the migrants do not follow the instructions of the smugglers.

Ad-hoc smuggling

- Occurs when migrants organize most of their journey themselves but need the assistance of smugglers for parts of their journey (example: help in securing travel documents);
- Often requires little planning and little financial cost to the migrant;
- Often comes with a greater risk to the migrant's life and safety, and a greater risk of being detected.

Stage-to-stage smuggling

- Involves a high level of planning;
- Preorganized;
- There are 'stage coordinators' often a chain of independent but closely interacting individuals, negotiate with "local service providers" and pay them;
- Local service providers, often nationals or residents of the transit country, change from stage to stage;

- The stage coordinators usually have the same ethnic background as the migrants.

Actors involved in SOM

- Opportunistic individuals providing ad-hoc smuggling services;¹¹
- Organised criminal groups who may be involved in criminal activities additional to migrants smuggling;¹²
- Coordinator or organizer;
- Employees or subcontractors;
- Recruiters, transporters or guides;
- Drivers;
- Messengers;
- Safe house operators,
- Forgers of travel or identity documents;
- Train conductors;
- Taxi and bus drivers;
- Airline staff;
- Boat owners or owners of other vehicles;
- Financiers or cashiers, responsible for passing payments from migrants to smugglers upon successful completion of the smuggling venture.

Key points in investigating SOM

- Financial and Other Material benefit is the main focus of the investigation of SOM;

¹¹ Women are most often involved in small-scale migrant smuggling with a small number of migrants (personal attempts to enter a country other than their own, or activities leading to the migration of their own children, friends and/or family members), as per UNODC (2019). Women in Migrant Smuggling. A case Law analysis. However, one should consider that the sample of this research was small.

¹² Males are most involved in large migrant smuggling enterprises, as per UNODC (2019). Women in Migrant Smuggling. A case Law analysis.

- Other material benefit includes benefit of a non-financial nature;
- The smuggled migrant is not the person under investigation and should not be criminalized for being the object of smuggling; Migrants smuggled may be in a vulnerable situation and in need of special care (medical or other needs) therefore their life and safety should be taken into account along with the investigation; The use of dangerous transportation, risky routes and threat or use of violence and endangering the life of the migrant constitute aggravating factors.¹³

Other key considerations for investigating SOM:

- Adopt a human rights-based approach while interviewing a smuggled migrant who is a witness (PEACE model recommended);
- Address inconsistent statements by smuggled migrants/witnesses;
- Preserve evidence and chain of custody;
- Search arrested suspects who might have evidence like proceeds of crime, documents seized from victims, transport receipts, accommodation receipts, etc;
- Look out and document evidence of control, force or threat of use of force, imprisonment, assault, rape etc.

- Look out for defects in travel documents – primary and secondary examination depending on skills and available tools.
- Consider examining mobile phones for additional evidence and tracing further suspects

There are a few key points to consider carrying out a successful investigation of SOM:

- Know the definition of SOM;
- Pay attention to SOM as organized crime;
- Identify the SOM role players e.g spotters, transporters, guides, fraudulent document procurers, etc;
- Develop an investigation plan;
- Screen/interview identified /intercepted migrants;
- Separate smuggled migrants from potential suspects/smugglers;
- Interview migrants who might be witnesses – however, if interpreters are needed, avoid using “volunteers” from within the group and instead use an independent interpreter;
- Adopt interview approaches that respect the rights and consider the vulnerabilities of the person interviewed.

¹³ UNODC. (2021). Abused and neglected. A gender perspective on aggravated migrant smuggling offenses and response. https://www.unodc.org/documents/human-trafficking/2021/Aggravated_SOM_and_Gender.pdf

Financial Investigation

“Smuggling of migrants is a big business with high profits. There is evidence that, at a minimum, 2.5 million migrants were smuggled for an economic return of US\$5.5–7 billion in 2016. This is equivalent to what the United States of America (some US\$7 billion) or the European Union countries (some US\$6 billion) spent on humanitarian aid globally in 2016. This is a minimum figure as it represents only the known portion of this crime.”¹⁴

Given the profits that migrant smugglers make, it is important to carry out financial and assets investigation at the earliest stage possible, as sources of evidence, but also to recover/confiscate proceeds of crime for the benefit of the state, and the smuggled migrants, in case the domestic law foresees this possibility¹⁵.

Financial/assets investigation should be an integral part of the investigation into the smuggling of migrants. Provisions in the national law(s) regarding financial/asset investigation must be complied with.

During financial/assets investigations, officers should:

- Search persons who are arrested for SOM offences;
- Search vessels (any means of transport used by the smugglers);
- Seize property suspected to be proceeds of the crime (of SOM);
- Use other investigation tools (bank records).

Key considerations in use of financial investigations:¹⁶

The following good practices may strengthen financial investigations:

- Incorporate financial investigations into the migrant smuggling investigative plan;
- Obtain information from migrants in relation to payments made to the smugglers, including method and timing of payments;
- Investigate all assets and income of the smugglers, including properties, businesses, vehicles, and bank accounts;
- Obtain all relevant financial records and documents. Where these documents are in a foreign jurisdiction, find out whether there are cooperative agreements in place;

¹⁴ UNODC (2018). Global Study on Smuggling of Migrants, p.9. Available at: https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf.

¹⁵ See Nigeria Immigration Act, 2015, sections 81–94.

¹⁶ UNODC (2011). In-depth training manual on investigating and prosecuting the smuggling of migrants, Module 11. Available at (with restricted circulation): <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/in-depth-training-manual-on-smuggling-of-migrants.html>.

- Maintain a database of precedents to use for applications to search financial institutions, homes, vehicles and electronic equipment.

Screening and debriefing interviews

As soon as migrants are intercepted at any entry or exit points, they should be screened and debriefed before further evidential interviews, if applicable are carried out. Here you can find some recommendations:¹⁷

The screening interview is the initial brief interview conducted when first responders (such as law enforcement, customs or border officers, coastguards, military or medical personnel) arrive at the scene of a crime or are called to investigate an incident. The purpose of a screening interview is to find out about the incident, separate migrants from smugglers, assess health and safety issues, and to provide information so that the interviewers can make informed decisions about their contribution as witnesses to investigation and prosecution.

Screening interviews may take place in locations such as:

- The scene of an unexpected mass arrival;
- A police station when a migrant has come in to make a complaint;
- A border crossing during routine processing of travelers;
- An airport during or at the end of a proactive investigation.

In the case of a mass arrival, authorities will have to conduct several screening interviews in a short time, and should therefore care for migrants' immediate needs (for example, food or medical needs). Often, the screening process is time-consuming and migrants cannot be returned or resettled at the day of arrival, therefore, those should be referred to shelters for temporary accommodation.

During the screening interview, authorities should separate suspected smugglers from migrants as soon as possible, both to obtain correct information and for safety reasons. Smuggles may be skilled at posing as migrants. The process of distinguishing between migrants and smugglers should therefore be ongoing.

General screening questions

Below are common screening questions that can be adapted to circumstances as appropriate:

- Are you hurt, injured, in need of medical attention?

¹⁷ UNODC (2011). In-depth training manual on investigating and prosecuting the smuggling of migrants, Module 13. Available at (with restricted circulation): <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/in-depth-training-manual-on-smuggling-of-migrants.html>.

- Can you understand? What language do you speak?
- What is your name?
- Do you have identity documents?
- Do you have travel documents, passports, visas?
- Are you here with family members in this group?

Debrief

Debrief occurs after screening to obtain further information. In a mass arrival context, debrief may occur where migrants and smugglers are being held in temporary facilities. In a smaller-scale investigation, debrief is likely to occur in a law enforcement office at the port of entry. Officers should have a pre-prepared set of questions and be aware of relevant indicators. Officers can also prepare by learning about the background, country and culture of the person being debriefed.

The migrant or smuggler may provide information that will need to be acted on immediately. If so, the debrief should be temporarily suspended to address the risk and resumed after appropriate action has been taken. Risk should be continually accessed throughout the entire debrief.

During debrief, officers may identify smugglers who have been posing as migrants. Suspected smugglers will be moved to a more permanent

detention facility which officers may attend later to conduct a lengthier interview, in jurisdictions where this is permissible. Those believed to be migrants should be sheltered in an appropriate facility until they can be formally interviewed as potential witnesses.

P.E.A.C.E interview model¹⁸

P.E.A.C.E stands for:

- Planning and Preparation;
- Engage and Explain;
- Account;
- Closure;
- Evaluate;

The following summary gives a basic overview of the terms:

- i. Planning and preparation: cover many aspects of interviews. SOM cases may require additional planning compared to other interviews, such as arranging interpreters, social supporters and accommodation.
- ii. Engage and explain: at this stage, rapport is established. Engaging means forming a relationship or connecting with the person who is being interviewed. Explaining can be very broad, particularly in trafficking cases. Typically, the smuggled migrant should be told what is going to happen in

¹⁸ UNODC (2009). Anti-human trafficking manual for criminal justice practitioners: Module 8. https://www.unodc.org/documents/human-trafficking/TIP_module8_Ebook.pdf

the interview, how information obtained might be used and his/her rights.

- iii. **Account:** the initial phase is to obtain an uninterrupted account from the person being interviewed. This is sometimes known as “free recall.” Interviewers follow this approach by expanding and clarifying the account. In many interviews, the final phase reviews and questions any inconsistencies in an account.
- iv. **Closure:** In this phase, the content of the interview may be summarized, the interviewee/smuggled migrant is given the opportunity to add information that was not previously mentioned and is told what will happen next.
- v. **Evaluation:** When the interview is concluded, it should be evaluated to establish if the aims and objectives of the interview have been achieved, how the new information obtained in the interview affects the investigation, and how the interview

went overall and what improvements could be made. Where interviewers are part of a larger team, the evaluation should take place.

Remember when interviewing vulnerable migrants that:

- Interviews may reveal crimes committed against them;
- Injuries sustained by migrants may be evidence of abuse and violence;
- Some migrants might be victims of trafficking in persons – be aware of the supporting institutions in your location and make the appropriate referral;
- In some cases, there might be no visible injuries – this does not mean that migrants were/are not harmed;
- Migrants’ statements may not be consistent due to their traumatic experience.

“When I am investigating these cases I am more suspicious of the highly detailed account told from beginning to end that never changes than I am of the one that moves all over the place and has gaps and changes a number of times.”¹⁹

This should not be taken to suggest that consistent accounts are always suspect but does illustrate that changing accounts are not necessarily an indication of deception in practice.

¹⁹ UNODC (2009). Anti-human trafficking manual for criminal justice practitioners Module 8. https://www.unodc.org/documents/human-trafficking/TIP_module8_Ebook.pdf. Accessed April, 2021

Protection, support, and assistance for vulnerable migrants

The Protocol does not recognise smuggled migrants as "victims" and does not use such terminology. However, the Protocol does acknowledge that smuggled migrants deserve protection. They can also be victims of other crimes, including aggravated forms of smuggling. State authorities should preserve and protect the rights of migrants, e.g, the right to life, dignity, and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. State authorities should take measures to protect migrants from violence and afford appropriate assistance to migrants whose lives and safety are endangered. Also, states authorities should consider the needs of women and children and

other vulnerable groups. In the case of the detention of a migrant, the state authorities

should comply with its obligations under the Vienna Convention on Consular Relations and inform the migrant without delay about the provisions concerning notification to and communication with consular officers. It is the responsibility of state authorities to protect migrants in accordance with their domestic legislation and relevant international standards.

TIP and SOM Law: Nigeria

In Nigeria, the Immigration Act of 2015 vests investigation and prosecution powers in the Nigeria Immigration Service, whereas the National Agency for the Prohibition of Trafficking in Persons, NAPTIP, is the agency with the mandate to, inter alia, investigate and prosecute cases of trafficking in persons.²⁰

Section 61 of the Immigration Act, 2015 establishes the Directorate of migration and divisions of regular and irregular migration, including the investigation of the smuggling of migrants – ref. sa61 (d).

²⁰ Art. 62, d and 63, c, of the Immigration Act and Art. 5, e, 6, a of the Trafficking in Persons Act.

There are notable provisions regarding the smuggling of migrants as highlighted below:

Section 64 of the Act prohibits the smuggling of migrants. No person shall, for the purposes of financial or any other material benefit, by means of a fraudulent travel or identity document, procure the illegal entry of a person into or the illegal stay of a person in a country of which that person is not a national or permanent resident.

Section 65. (1). Punishes the crime with imprisonment for a term of ten years or a fine of not less than one million Naira or both and is in addition, liable to refund to the migrant all monies obtained from him in the course of the commission of the offense.

The Immigration Act of 2015 provides the most comprehensive legislation on the smuggling of migrants in Nigeria (enforcement, migrant protection, compensation, aggravated SOM, etc.). However, the Trafficking in Persons (prohibition) Enforcement and Administration Act (TIPPEA) of 2015 concurrently contains SOM provisions as follows:

Section 26. (1) Any person who, knowingly, in order to obtain, directly or indirectly, a financial or material benefit, procures the illegal entry of a person into a country of which the person is not a citizen or permanent resident, commits an offence, and is liable on conviction to imprisonment for a term of not less than 5 years without an option of fine.

(2) Any person who, intentionally, in order to obtain, a financial or material benefit from another person, engages in fraudulent acts or conducts purportedly for the purpose of procuring, facilitating or promoting the actual or intended entry into, transit across or stay in a country in which that other person is not a national or a permanent resident, commits an offence and is liable on conviction to imprisonment for a term of not less than 5 years without an option of fine and shall refund all monies fraudulently obtained from the victims

(3) For the purpose of subsection (1) of this section, "illegal entry" means crossing borders without complying with the necessary requirements for legal entry into the receiving state.

The language of section 26 (1) of TIPPEA is similar to the provisions of section 65(1) the Immigration Act, 2015 (offence relating to the smuggling of migrants), with a few key differences relating to term of imprisonment and fine, as highlighted below:

Immigration Act, 2015	TIPPEA, 2015
Provides imprisonment of 10 years	Provides imprisonment of not less than 5 years
Provides option of fine of not less than one million Naira or both imprisonment and fine	Provides no option of fine

Another relevant aspect to mention is the issue of consent. The consent of a trafficked person to the exploitation is irrelevant if that person is a child or if an adult, the means of TIP (deception, force, coercion, etc) are present. Remarkably, this situation is extended to smuggled migrants under Nigerian law: The consent of a smuggled migrant to the procurement of illegal entry is equally irrelevant.

Section 75. (1) of the Immigration Act - Without prejudice to the provisions of this Act, the consent of an object of any of the offences created under this Act or any other relevant law to the intended procurement of illegal entry into or illegal stay in a country of which he is not a national or permanent resident, or to any form of exploitation punishable under this Act or any other relevant law, shall not be a defense for an offender to any offence under this Act or any other relevant law.

Officials of the
Nigeria
Immigration Service
Edo state
participating in the
mentoring sessions
at the irregular
migration unit of
NIS, Benin city



Financial Investigation

Section 87 Immigration Act, 2015 - Where person is arrested for an offence under this Act or any other relevant law, the service shall immediately trace and attach all assets and properties of the person acquired because of the offense.

Protection of migrants

The Act established the Division for Irregular Migration under the Directorate of Migration which has the responsibility to handle all matters related to the smuggling of migrants outlined in sections 61-63 of the Immigration Act, 2015.

The Immigration Act, 2015, Part XVII of the Act provides for protection and support of smuggled migrants.

It prohibits discrimination, provides for temporary (during investigation/prosecution actions), safe return, minimization of intrusion into personal history of smuggled migrant, protection of identity, non-detention and prosecution and the provision of temporary shelters, etc – Under the Act, a smuggled migrant has access to adequate health and social services, the embassy or consulate of their country of citizenship or else

to the diplomatic representative that takes charge of their state. They also should be taken to a transit shelter where they can receive protection, counseling, and rehabilitation in order to reintegrate back into society- see sections 98-100 of the Immigration Act, 2015.

In case of an identified smuggled migrant, the authority should refer the person and the case to the Nigerian Immigration Services (NIS) which will investigate the case and refer the smuggled migrant to assistance/protection and repatriation, if deemed appropriate.

In case of a potential victim of trafficking in persons, the case should be reported to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) for similar follow up: investigate the case and refer the victim to assistance.

TIP and SOM Law: Ghana

In Ghana, the Ghana Police Service and the Immigration Services have the mandate to investigate and prosecute trafficking in persons and smuggling of migrants, and to refer victims to protection services.

The Ghana Immigration Act of 2000 was amended in 2012 to prohibit and punish migrant smuggling. The criminalization of migrant smuggling in Ghana is aligned to the Smuggling of Migrants Protocol.

Prohibition of migrant smuggling

- 52A. (1) A person shall not engage in migrant smuggling.
- (2) A person who engages in migrant smuggling commits an offence and is liable on conviction to a fine of not less than six hundred and twenty-five penalty units and not more than one thousand, two hundred and fifty penalty units or to a term of imprisonment of not less than five years and not more than ten years or to both
- (3) For the purposes of this section, migrant smuggling: means the facilitation of the unlawful entry or departure from the country of a person in order to obtain, directly or indirectly, a financial or other material benefit.
- (4) For the purposes of this section, “facilitation” includes
- (a) producing, procuring, providing or possessing a travel or identity document by fraudulent means;
 - (b) procuring by unlawful means other documentation in support of the processing of a travel or identity document; and
 - (c) enabling a person who is not a national or a permanent resident to remain in the country without complying with the requirement for legally remaining in the country by any of the means mentioned in paragraphs (a) and (b)

Ghana prohibits all forms of trafficking by its 2005 Human Trafficking Act, which provides a minimum penalty of 5 years of imprisonment.

@Aondoaver Kuttuh

In one of the mentoring missions to Ghana, the Document Fraud Unit of the Ghana Immigration Service received the UNODC Advisor at the Kotoka International Airport, Accra, where they explained the processing of irregular passports



Meaning of trafficking

1. (1) Human trafficking means the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by
 - (a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or ex-ploitation of vulnerability, or
 - (b) giving or receiving payments and benefits to achieve consent.
 - 2) Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, salary or practices similar to slavery, servitude or the removal of organs
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Under the 2005 Human Trafficking Act, a person who provides another person for purposes of trafficking commits an offense, even if the person is a parent. In addition, the use of a trafficked person is prohibited. The act also provides for the rescue, rehabilitation and reintegration of victims of trafficking in persons. The Ministry of Women and Children's Affairs is in charge of providing temporary support and protection for the victims. Ghana Police Services or the GIS, after identification, can refer the victim to the Ministry. The Ministry shall also assist the victim with vocational training and employment opportunities and to locate his/her family.

Prohibition of trafficking

2. (1) A person shall not traffic another person within the meaning of section 1 or act as an intermediary for the trafficking of a person.
 - (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years.
 - 3) Placement for sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor shall also constitute trafficking.
 - 4) Where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence in prosecution under this Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.
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Sources of information and References in this POCKET BOOK

Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its 1st to 11th sessions, 2 November 2000, <https://digitallibrary.un.org/record/426797?ln=en>.

Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime, 11 September 2000, <https://digitallibrary.un.org/record/426757?ln=en>

Conference of the Parties to the United Nations Convention against Transnational Organized Crime: Working Group on the Smuggling of Migrants Vienna, 11-13 September 2017, <https://www.unodc.org/unodc/en/treaties/CTOC/working-group-on-the-smuggling-of-migrants-2017.html>

Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children (Palermo protocol 2000), 15 November 2000, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

E4J University Module Series: Trafficking in Persons & Smuggling of Migrants Module 11: Smuggling of Migrants and Trafficking in Persons - Differences and Commonalities, January 2019, <https://www.unodc.org/e4j/zh/tip-and-som/module-11/key-issues/differences-and-commonalities.html>

E4J University Module Series: Trafficking in Persons & Smuggling of Migrants Module 2: Protection of the Rights of Smuggled Migrants, January 2019, <https://www.unodc.org/e4j/en/tip-and-som/module-2/index.html>

Issue Brief ICAT Addressing vulnerability to trafficking in persons, https://icat.un.org/sites/g/files/tmzbd1461/files/publications/icat_issue_brief_12_vulnerability_to_tip.pdf

UNODC Global Study on Smuggling of Migrants 2018, https://www.unodc.org/documents/data-and-analysis/qlosom/GLOSOM_2018_web_small.pdf

Observatory on Smuggling of Migrants, <https://www.unodc.org/res/som/index.html>

Observatory on Smuggling of Migrants - West Africa, North Africa and the Central Mediterranean, <https://storymaps.arcgis.com/stories/9b5bd3d4d6624d44b5dda6aa5af1da3>

The Crime, <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/crime.html>

UNODC Anti-human trafficking manual for criminal justice practitioners: Module 8 https://www.unodc.org/documents/human-trafficking/TIP_module8_Ebook.pdf

UNODC. In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants, <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/in-depth-training-manual-on-smuggling-of-migrants.html>

UNODC. Basic Training Manual on Migrant Smuggling, https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Basic_Training_Manual/Basic_Training_Manual_e-book_English_web_version.zip

UNODC. Anti-human Trafficking Training Manual, https://www.unodc.org/documents/human-trafficking/TIP_Training_English/UNODC_TIP_Training_manual_English.zip

UNODC. Abused and Neglected – A Gender Perspective on Aggravated Migrant Smuggling Offences and Response, https://www.unodc.org/documents/human-trafficking/2021/Aggravated_SOM_and_Gender.pdf

UNODC. Women in Migrant Smuggling. A case Law analysis. https://www.unodc.org/documents/human-trafficking/2021/Women_in_Migrant_Smuggling.pdf

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