



**NSD-S HUB**

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# **MIGRATIONS, HUMAN SMUGGLING AND HUMAN TRAFFICKING**



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## EXECUTIVE SUMMARY

Over the last decade, mass and unregulated migration has sparked significant concerns in public opinion, particularly in Europe. While the number of new arrivals of migrants has sharply declined from its high of over one million in 2015, the movement and integration of those from across the Mediterranean remain today of major concern for Europe and, by extension, the Atlantic Alliance. Nonetheless, the development of a collective understanding among NATO members of the security implications of such migration for the wider Mediterranean region (including North Africa and Sahel) has not yet been achieved. Making the topic even more complex is the inclusion of the question of direct connections between migrants and terrorists in its framing of the issue.

Furthermore, the issue of human smuggling is a matter of growing concern in the broader topic of migration. Smugglers take advantage of the large number of migrants willing to take risks in search of a better life when legal migration channels are not available to them. However, as in the case of the suggested connection between migrants and terrorists, assessing the real size of this crime is a complex matter owing to its underground nature, making it difficult to identify to what extent irregular migration is driven by profit-seeking criminals.

Since smuggled migrants are vulnerable to abuse and exploitation, human trafficking is often confused with human smuggling (and even migration) but the two crimes are quite distinct, though they have often been used interchangeably in the mass media, especially when migrants have been abused along their journey and forced into slavery or sexually exploited. Nevertheless, the need to clearly distinguish these crimes is even more important today than before.

There is growing evidence that fighting the crime of smuggling with anti-trafficking methodology is doing little to reduce the scale of irregular migration or its associated risks. Also, the criminalization of irregular migration by way of anti-human smuggling measures, while weakening the protection of migrants by making them more vulnerable, leads to the further strengthening of traffickers and the increase of violent practices.

Keeping an eye on the bigger picture of human migration is also of utmost importance. Due to demographic and socio-economic trends, migration flows will inevitably increase over the next decade or two, both within Africa and between Africa and Europe. Therefore, when addressing either or both human smuggling and human trafficking, policy makers have to properly understand and consider local perceptions, since anti-trafficking and anti-smuggling policies could be easily perceived as anti-migration measures, hampering the few remaining opportunities to safely move toward richer and safer countries.

The same cautious approach should be followed by NATO decision-makers; while expanding its engagement in the Middle East and, more relevantly, in Africa, NATO will inevitably be ever more entangled in local socio-political dynamics, where the issues of unregulated migration, the connected practice of human smuggling and the various forms of human trafficking are almost inextricably mixed.

Taking into proper consideration the complexity of such social and cultural environments, and considering also the persistent negative perception of the Alliance in many African countries, if the need to adapt the current policy against human trafficking becomes a priority, it is highly recommended for NATO to keep the issues of irregular migration and human smuggling completely separate from the fight against human trafficking. For its credibility and the preservation of its long-term interests, it is paramount to avoid the risk of the Alliance being perceived as actively engaged in counter-migration measures.

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## INTRODUCTION

The issue of migration, especially the unregulated one, remains of the outmost importance for many countries, including the members of the Atlantic Alliance.

Over the last decade, mass and unregulated migration has sparked significant concerns in public opinion, particularly in Europe. The demographic growth in Africa and in many parts of Asia is certainly fuelling the movement of people looking for a better life. The world's population continues to grow at a rate of 1.1% per year and it is projected to reach 8.6 billion by 2030 and 9.8 by 2050. Africa will be the main contributor to this growth with more than half of the demographic growth expected to occur there (projected 1.3 billion more in 2050). Half of the global population will be concentrated in just nine countries, of which five are in Africa: Nigeria, Democratic Republic of Congo, Ethiopia, United Republic of Tanzania and Uganda.

Climate change (increased temperatures, floods, droughts, desertification, coastal erosion and other environmental phenomena) further damages the already fragile environment, impoverishing the Southern region and their inhabitants, resulting in food insecurity, less reserves of water and firewood as well as reduced availability of other natural resources. Thus, the growing population and climate change act as multipliers in this precarious context. While boosting the already mentioned factors, they challenge the capacity of states and supra-national institutions to adequately address social integration, the reduction in poverty and the development of national economies.

Conflicts, persecution and natural disasters, along with these demographic and climatic changes, further drive migration, especially in Africa. Many others leave their homes because of indiscriminate violence. Fear of persecution, lack of governance (e.g., law and order, etc.) and social instability, in areas where it appears evident a lack of sufficient security or trust in their political system. There are 13 African countries currently involved in major armed conflicts and they account for almost 90% of the 25 million people who have been displaced by conflict and persecution on the continent. All of these conflicts are internal (rather than interstate) and this highlights the critical relationship between autocratic elite governance, political crisis and conflict.

Poverty and uneven wealth distribution are other important drivers. These phenomena are caused by poor governance in social, political and economic affairs. The youth can be particularly affected by these issues. Their difficulties are exacerbated by a combination of socioeconomic deprivations, widespread poverty, and lack of job opportunities and/or inadequate governmental services for citizens.

Today, while the number of new arrivals of migrants has sharply declined from its high of over one million in 2015, the movement and integration of those from across the Mediterranean remain of major concern for European countries and, by extension, the Atlantic Alliance.

Nonetheless, the development of a collective understanding among NATO members of the security implications of such migration for the wider Mediterranean region (including North Africa and Sahel) has not yet been achieved. Making the topic even more complex is the assessment of the security implications of unregulated migration and, more specifically, the inclusion of the question of direct connections between migrants and terrorists in its framing.

In the wider context of unregulated migration, the issue of human smuggling is a matter of growing concern as many countries, including several NATO members, are affected by it either as points of origin, transit or

destination. In fact, smugglers take advantage of the large number of migrants willing to take risks in search of a better life when legal migration channels are not available to them. However, as in the case of the suggested connection between migrants and terrorists, assessing the true extent of this crime is a complex matter owing to its underground nature, making it difficult to identify to what degree irregular migration is driven by profit-seeking criminals.

Since smuggled migrants are vulnerable to abuse and exploitation, human trafficking is often confused with human smuggling (and even migration) but the two crimes are quite distinct, though they have often been used interchangeably in the mass media, especially when migrants have been abused during their journey and even forced into slavery or sexually exploited following arrival at their final destination.

Even more regrettably, in their efforts to curtail unregulated migration by increasing their activities against human smuggling, many countries have put aside and substantially failed to address the root causes of migration. Also, the close association – although improper – between human smuggling and human trafficking have seriously complicated matters. There is growing evidence that fighting the crime of smuggling with anti-trafficking methodology is doing little to reduce the scale of irregular migration or its associated risks. Hence, there is now a clearer understanding of the importance of clearly distinguishing human trafficking from human smuggling in order to properly address both effectively.

It is paramount that this distinction also becomes clear to policy-makers, even more so when dealing with their African counterparts. What in the Euro-Atlantic community is often perceived as human trafficking could well include, or be perceived by African states and their people to include, traditional practices in poor or rural areas. Lack of governance or rule of law can of course lead to these situations morphing into modern slavery-style conditions. However, while these practices shouldn't be condoned, anti-trafficking programmes rarely offer long-term solutions to the underlying economic or social issues and could well be perceived as purely western rhetoric when used in close association with efforts to counter human smuggling.

In order to properly address these three distinct – although deeply inter-connected – phenomena, clear definitions of Human Migration, Human Smuggling and Human Trafficking are needed, together with a fine understanding of the historical and cultural background of these concepts. Moving from this baseline of internationally-agreed (although perhaps mostly theoretical) definitions, the next step is to verify to what extent human smuggling and human trafficking are intertwined in the real world.

It is also of outmost importance to attain a deeper understanding of the local perspective vis-à-vis both unregulated migration (with the associated practice of human smuggling) and traditional forms of servitude and human exploitation, or “trafficking”, according to the internationally-agreed definition.

## MIGRATION, HUMAN SMUGGLING AND HUMAN TRAFFICKING: DEFINITIONS AND CONCEPTS

### HUMAN MIGRATION

The International Organization for Migration (IOM) is the leading UN agency on migration related **topics**.

The IOM defines migration as *“the movement of persons away from their place of usual residence, either across an international border or within a State”*.

Migrant<sup>1</sup> is an umbrella term, not defined under international law, reflecting the commonly understood concept of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, for one of a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally-defined, but also smuggled migrants.

Illegal/irregular migration<sup>2</sup> is the movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the state of origin, transit or destination. It is directly linked to the crime of smuggling people.

### HUMAN SMUGGLING

Smuggling human beings secures or aids the illegal entry of persons into a state in which they are not national or permanent residents in exchange for financial or other material benefit. While it also undermines the integrity of countries and communities, it costs many thousands of people their lives every year.

As a crime, Human Smuggling is under the United Nations Office on Drugs and Crime UNODC's protection.

Article 3 of the *Smuggling of Migrants Protocol*,<sup>3</sup> supplementing the *United Nations Convention against Transnational Organized Crime*, defines Human Smuggling as:

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<sup>1</sup> At the international level, no universally accepted definition for “migrant” exists. The present definition was developed by IOM for its own purposes and it is not meant to imply or create any new legal category.

Two approaches are generally adopted to define the term “migrant”: the inclusive approach, followed by, among others, IOM and which considers the term “migrant” to be an umbrella term covering all forms of movements; the residual approach excludes from the term “migrant” those who flee wars or persecution - J. Carling, What is the meaning of migrant? [online] Available at: [www.meaningofmigrants.org](http://www.meaningofmigrants.org) [Accessed 3 Feb. 2020].

For the purpose of collecting data on migration, the United Nations Department of Economic and Social Affairs (UN DESA) defines “international migrant” as “any person who changes his or her country of usual residence”

<sup>2</sup> Irregular migration - Although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels. The fact that they migrate irregularly does not relieve states from the obligation to protect their rights. Moreover, categories of migrants who may not have any other choice but to use irregular migration channels can also include refugees, victims of trafficking, or unaccompanied migrant children. The fact that they use irregular migration pathways does not imply that states are not, in some circumstances, obliged to provide them with some forms of protection under international law, including access to international protection for asylum seekers fleeing persecution, conflicts or generalized violence. - International Organization for Migration.. Key Migration Terms [online] Available at: <https://www.iom.int/key-migration-terms#Irregular-migration> [Accessed 3 Feb. 2020]

<sup>3</sup> In 2000, at the UN Convention against Transnational Organised Crime was adopted a definition of smuggling of migrants. As of September 2017, the related protocol has been signed by 112 parties and ratified by 146.



"[It is] 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."

In order to comply with the Smuggling of Migrants Protocol, Article 6 requires states to criminalize both smuggling of migrants and any enabling of a person to remain in a country illegally, as well as aggravating circumstances that endanger lives or safety, or entail inhuman or degrading treatment of migrants.

### **HUMAN TRAFFICKING**

Trafficking in persons is a serious crime and is a severe violation of human rights. Constantly, everywhere in the world, men, women and children are exploited by traffickers in their own country or abroad.

As a crime, Human Trafficking is under the surveillance of the UNODC. While it supervises the UN Convention against Transnational Organized Crime (UNTOC) and the related Protocol, it also assists states in the Protocol's implementation.<sup>4</sup>

Human trafficking is "the business of stealing someone else's freedom for profit".

In some cases, traffickers' trick, defraud or physically force victims into selling themselves. In others, victims are lied to, assaulted, threatened or manipulated into working under inhumane, illegal or otherwise unacceptable conditions.

Article 3.a of the Palermo *Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons* (TIP) as:

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

From this definition it is possible to recognize three constituent elements:

- ✓ The Act (What is done)
- ✓ The Means (How it is done)
- ✓ The Purpose (Why it is done)

For a deeper analysis, the checklist for the criminalization of Human Trafficking (Annex A) may be consulted.

The provision of Article 5 of the same protocol is another important element to be kept in mind during the following analysis of Human Trafficking.

[It] requires that "the conduct set out in article 3 be criminalized in domestic legislation".

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<sup>4</sup> In 2000, at the UN Convention against Transnational Organised Crime, the UN General Assembly adopted a definition of trafficking in persons. By September 2008, it had been signed by 117 states. And the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, as of February 2018, has been ratified by 173 parties.



Therefore, it is possible to understand the importance of a consistent and clear national legal framework, based on the broad definition set out in the Protocol; it is essential in order to respond effectively to trafficking. UN Protocol dictates a national regulation in which the definition should be dynamic and flexible to empower an effective response to trafficking crime.

The crime of Human Trafficking occurs not just cross-border but also within a country and stands for a range of exploitative purposes (not just sexual exploitation), victimization of not just women and children but also men and takes place with or without the involvement of organized crime groups.

Conventions and Protocols related to the two crimes of human smuggling and human trafficking can be considered relatively recent.

### **CONCEPTS: HUMAN SMUGGLING VS. HUMAN TRAFFICKING; TWO “BUSINESS MODELS”**

In smuggling, a service has been sold to bypass any possible problems during a movement for the irregular migration of a person/people. The relationship between smugglers and smuggled persons finishes when the service has been rendered and the money transaction has been completed.

In trafficking, the dynamics are completely different due to the purpose of a prolonged exploitation of human beings. This exploitation, aimed at earning payments or benefits to the person in control of the victim, is generated by threatening or using force, coercion, abduction, fraud, deception or abuse of power against vulnerable people. It often goes on for a long period of time, perhaps even the victim's entire life. Only in some cases, when the exploitation is concurrent with smuggling for an illegal migration, could it be limited to the time necessary to completely reimburse the service provided to ensure the migrant movement. In theory, it should be possible for a victim to emerge from such a situation but in practice, especially when the trafficking has continued over a long time, the reality is very different.

It is unquestionable that the two markets represent a very lucrative business in Africa which generates a vast amount of money whose profits foster corruption, criminal networks and Non-State Armed Groups (NSAGs).

Profits from Human Smuggling are estimated to be \$765 million annually along the Trans-Sahara route alone. Smugglers operate in the context of the historically rooted, informal trans-border trade and the current dense network of smuggling and trafficking of all kinds of goods (illicit or not) which takes place in the sub-region. Although these businesses represent a source of revenue and so sustain many of the local poor and already marginalized population, a relevant share of this money fuels criminal activities combining other forms of illicit trade such as that of drugs and weapons.

While there is a strong propensity to confusedly link human trafficking and irregular migration in the African context, Human trafficking is essentially a borderless crime (and the crossing or not of a border is irrelevant to its existence). Indeed, the UNODC estimates that 90% of sub-Saharan African trafficking is over short distances. Victims are habitually women and children who are subsequently exploited in a variety of sectors such as agricultural and domestic work, prostitution and even military organisations (e.g. child soldiers).

It has been estimated that 3.7 million people in Africa are in slavery and forced labour and the annual profits generated from this amount to \$13.1 billion in this region of the world. Many traffickers are known to the victims and include close family members, relatives and friends. Sophisticated, organized criminal groups are also present, and this makes the trafficking operation more dangerous.

While the criminal organizations' involvement creates a clear pattern in human trafficking, this became transnational when the exploitation occurred in a place different from the victims' home country. However, the extent of a direct link between the profits of human trafficking and terrorist activities is not easy to assess. While VEOs may rely on smuggling and trafficking activities as a source of income, it could be difficult to demonstrate the actual magnitude of these financial flows in respect to their other sources.

Armed groups financing from smuggling or trafficking activities is a particularly sensitive issue as it reinforces their socio-economic dominance in the context of those communities which, coupled with territorial control, might strengthen their de-facto legitimacy, eventually leading to a quasi-political role.

While existing evidence cannot support the hypothesis that Human Smuggling and Trafficking represent a major source of funding for terrorist activities, trafficking at large represents a clear challenge to the security at both national and regional level. In this context of blurred control over the borders, VEOs can take advantage of smuggling and trafficking in order to easily move weapons and combatants throughout Sahel, then northbound or southbound toward North Africa and (potentially) the Gulf of Guinea.

## THE “GREY ZONE”

In Africa, Human Smuggling usually entails irregular migration. Yet, it is also recognized that smugglers' services are often used even when they do not appear essential. For instance, in Western Africa, economic agreements permit people free border crossing but migrants habitually prefer to rely on smugglers instead of traveling alone and because they trust this will result in a less difficult and less dangerous trip.

It is certainly possible for Human Trafficking to be linked to both types of migrations, regular and irregular. People can be exploited in order to pay for smuggler services or can also be exploited without any border crossing when they move within their own country or, indeed, without any movement at all.

Moreover, when discussing smuggling, migration or trafficking, the shades of grey can seem to conceal one or other of the crimes and is very difficult to distinguish between them. Thus, when contemplating the actors involved, it is often hard to figure out who is guilty and what attributes are to blame.

A clear case study can be seen in the Libyan situation. There, migration that flows from the Sahel and sub-Saharan Africa engenders the smuggling activities in order to facilitate people's illegal movements and very frequently the smuggling degenerates into human exploitation, therefore trafficking.

The media and human rights organizations incessantly report violations, abuse and trafficking connected to the flow of migrants and smuggling activities. Many reports, through witnesses and interviews, claim that Libyan militias are directly involved in this lucrative criminal market.

Libya, which has been the destination of migrants for decades, has increasingly become a transit country. The country's policy of the arbitrary detention of migrants has worsened the already difficult migrants' situation and the poor control exerted by the Libyan authorities over local war-lords has further amplified the problem.

In shelters where migrants are detained, they are exposed to abuse and to a “vicious circle of smugglers and traffickers” who sell them improbable trips to Europe. Frequently this journey can include the practice of kidnapping for ransom (sometimes more than once) to extort as much money and earn as much as possible. All these illegal practices are managed by the same corrupted militias which, at the same time, back the state institutions and often replace them in governance.

The potential involvement of officials in this kind of practice can make addressing the issue even more difficult.

Similar situations can also be seen in the Sahel where, along the historical routes and even more so in the main hubs which link them, non-state actors (ethnic groups which locally control the territory, armed groups, transnational criminal organizations and Violent Extremist Organizations) to different degrees manoeuvre, sometimes with officials' knowledge of smuggling and trafficking activities, including those involving human victims.

In this rationale the three dynamics of migration, smuggling and trafficking can again appear considerably interconnected but it should be kept clear that they are also absolutely different in purpose and effect.

On the other hand, in relation to the actors involved, it is very hard to make a clear distinction between smugglers and traffickers such as between smuggled people and victims of trafficking

For instance, an individual who drives a dinghy of migrants across the Mediterranean Sea could be a smuggler or a trafficker independently of the nature of the human market or illegal service in which they are involved. Legally speaking, the nature of the crime could be defined from the posture towards the persons being carried. Smugglers may not intend to exploit them nor are they aware that the migrants will be exploited by others along the journey, or thereafter.

Alternatively, on a similar journey the people on the dinghy could be both smuggled and also victims of Human Trafficking (against their will or involving exploitation).

Article 16 of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air requests states to protect and assist smuggled migrants because risks of exploitation, torture or other forms of violence are present along all routes and governments are responsible for taking measures to address these risks in their territory.

## THE LOCAL (AFRICAN) PERSPECTIVE

As far as human smuggling is concerned, the gap between the local perspective and the western perspective is often considerable. As a matter of fact, where smugglers do play a role in irregular migration, they are usually not seen as stimulating the demand for migration but rather as facilitators and providers of assistance to meet a pre-existing demand for mobility by migrants.

Cases of abuse have been documented, particularly in the area of Gao (Mali). However, migrant perceptions suggest that smugglers tend to enjoy a greater degree of trust than the law enforcement apparatuses tasked with repressing smuggling activities. Indeed, the Security and Defence Forces (SDF) are the most accused by respondents to the Mixed Migration Monitoring Mechanism Initiative (4Mi) survey<sup>5</sup> as the main perpetrators of illegal protection incidents and are perceived more as a threat, even for those travelling regularly. The most prevalent form of illegal protection incidents reported by migrants and refugees interviewed in transit in Liptako-Gourma (Burkina Faso) is the extortion of bribes, gifts or other services. Other protection incidents include robbery (10% of total reported incidents) and physical abuse or harassment (10%).

As for human trafficking, it is likely true to say that some traditional practices<sup>6</sup> in Africa may contribute to the exploitation of human beings, especially women and children. The uses of children for begging or forcing young women into ritual servitude are common examples of these phenomena.

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5 “Navigating borderlands in the Sahel.” - Mixedmigration.org. 2020. [online] Available at: [http://www.mixedmigration.org/wp-content/uploads/2019/12/083\\_navigating\\_borderlands.pdf](http://www.mixedmigration.org/wp-content/uploads/2019/12/083_navigating_borderlands.pdf) [Accessed 2 March 2020].

6 Trokosi, Wahaya, Ukuthwala, payments of dowry, male dominance, female genital cutting, witchcraft, and child marriage can be seen as customary practices which lead to exploitation and abuse, thus human trafficking. Some women and young girls, often from rural to urban areas, find themselves forced by their families to leave their homes because of these cultural beliefs.

*Trokosi or “slaves of Good”*: Ritual servitude which is practiced in Ghana, Togo, Benin, and South-western Nigeria where traditional religious shrines take human beings, usually young virgin girls, in payment for services, or in religious atonement for alleged misdeeds of a family member. The trokosi culture violates children's rights conferred upon them by the Constitution as it tears girls from their families, denies them access to education, denies them payment for their work, and denies the shrine's support for the children they bear to the priests. Because the girls are left under the complete control of the shrine priests, they are often sexually abused and exploited for their labour, which exposes them to moral and physical hazards.

*Wahaya* are girls and women bought and exploited as property by many dignitaries (mostly religious leaders or wealthy men). The women are used for free labour and for the sexual gratification of their masters, who assault them at will when they are not with their legitimate wives. The wahaya is practiced mostly in Niger, which is situated in West Africa. Niger is a predominantly Muslim country which allows polygamy because the Qur'an permits a Muslim man to have up to four wives, as long as he treats them equally. Each wife after the first four is considered to be a wahaya, or ‘fifth wife’. The fifth wife is the unofficial wife who acts as a slave to the first four wives and the husband. These wahaya are often young girls, usually between the ages of nine and 14, who are enslaved when their parents are sold into slavery. This culture of slavery is passed down from generation to generation, and it has become a kind of social class.

*Ukuthwala* (kidnapping girls for marriage) is a traditional custom of kidnapping girls for marriage, which is still a popular practice in Southern Africa. This cultural practice goes back to the days when girls whose parents did not approve of their boyfriends arranged for the abduction so that the families would be forced to allow their marriage. However, when children and women are being abused, violated, forced into marriage, and trafficked in the name of and under the guise of “culture,” society does need to re-evaluate its values about these practices. This culture leads to child marriages and therefore constitutes a serious legislative breach and a violation of children's rights. –“Tradition and culture in Africa: practices that facilitate trafficking of women and children” – Norah Hashim Msuya [online] Available at: <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1007&context=dignity> [Accessed 20 Jan. 2020]

In Nigeria, Senegal, Togo and other countries, the practice of placing poor girls in the homes of wealthier families to work as domestic servants in exchange for accommodation and education may be well considered as another form of human trafficking, at least according to the international definition. Indeed, victims of trafficking are often approached with false job offers by people in their communities, winning the trust of victims and their parents.

These crimes have been taking place surreptitiously for a long time. Although incidents have been reported, and charges such as statutory rape and kidnapping are filed against the perpetrators, these have been largely unsuccessful due to the authorities not knowing that they constitute the offense of trafficking.

Many times, driven by bad will, the family of the victims has been forced to send their children to wealthy urban families in order to protect their relatives from poverty. Unfortunately, they do not realise what awaits their relatives: servitude, slavery, and other forms of exploitation. In Africa, as in every poor context around the world, children (often as young as six years old) are often considered as a means of support for the household.

Although almost all African countries acknowledge the internationally-agreed protocols on Human Trafficking,<sup>7</sup> the existence of these practices is facilitated by the weak enforcement of these rules and the absence of consistent data on the phenomena.

The African Union is aligned to the regulatory requirements of UNTOC and the TIP and encourages member states to ratify these UN acts and incorporate them into their legislations with the purpose of protecting trafficked persons and persecuting traffickers, and recommends to its member states to develop and implement counter trafficking strategies.

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<sup>7</sup> Since 1981, African countries have historically joined global efforts to combat human trafficking by ratifying the African Charter on Human and Peoples' Rights (ACHPR,) instruments which prohibit slavery and human trafficking.

## CONCLUSIONS AND RECOMMENDATIONS

The concepts of Human Smuggling and Human Trafficking were conceived in a specific historical (early 2000) and geo-strategic context, when migration was already a matter of concern as far as security was concerned, but it was not such a divisive issue in the public debate and western domestic politics as it is today.

The Human Smuggling concept (and definition) was elaborated in accordance with the conventional approach to state-security, giving priority to 'legality' and the traditional implementation of state sovereignty over public order and fiscal resources.

The Human Trafficking concept and definition are focused on the protection of human beings, emphasizing the human-security approach and related priorities.

These two concepts and definitions lived together, side-by-side, addressing two different sets of priorities, until the arrival of significant growth in migration flows, or the changed perception of these phenomena, imposed to re-assess their true meaning.

Today, more often than not, the two crimes are not easily separated when human smuggling practices morph into some kind of trafficking, i.e. exploitation and violence against migrants.

Nevertheless, the need to clearly distinguish these crimes is even more important today than before. Actually, the criminalization of irregular migration by way of anti- human smuggling measures, while weakening the protection of migrants by making them more vulnerable, leads to the further strengthening of traffickers and the increase of violent practices. Thus, paradoxically, measures intended to reinforce state-security (counter smuggling activities) ends in fuelling organized crime and national as well as regional instability.

Keeping an eye on the bigger picture of human migration is also of utmost importance. Due to demographic, socio-economic trends and sometimes due to very complex condition of life, migration flows will inevitably increase over the next decade or two, both within Africa and between Africa and Europe. This challenge needs to be addressed through policies which should be internationally shared.

Therefore, when addressing either or both human smuggling and human trafficking, policy makers have to properly understand and consider local perceptions, since anti-trafficking and anti-smuggling policies could be easily perceived as anti-migration measures, hampering the few remaining opportunities to safely move toward richer and safer countries.

The same cautious approach should be followed by NATO decision-makers, if the need to adapt the current policy against human trafficking becomes a priority. Although irregular migration is of particular concern, due to the implications which affect the political and security developments on NATO's borders, the Alliance is not a lead player in border security. However, it is adding value in several ways, not least through its naval missions in the Mediterranean. Other added value is given by partnership mechanisms aimed at supporting Capacity Building in developing countries (e.g. assisting the border and coast guard services of partner countries).



The approach to the trafficking of human beings is different. NATO is definitely not the primary actor in fighting human trafficking. As in the Balkans and Afghanistan, NATO's missions there support other relevant actors, in accordance with the Alliance policy.<sup>8</sup>

However, while expanding its engagement in the Middle East and, more relevantly, in Africa, NATO will inevitably be ever more entangled in local socio-political dynamics, where the issues of unregulated migration, the connected practice of human smuggling and the various forms of human trafficking are almost inextricably mixed.

Taking into proper consideration the complexity of such social and cultural environments, and considering also the persistent negative perception of the Alliance in many African countries,<sup>9</sup> keeping the issues of irregular migration and human smuggling completely separate from the fight against human trafficking is highly recommended for NATO. For its credibility and the preservation of its long-term interests, it is paramount to avoid the risk of the Alliance being perceived as actively engaged in counter-migration measures.

On the other side, NATO may "project stability" by fostering cooperation with existent Regional Organization (e.g., AU, RECs, UN, etc.) and create, indirectly, the conditions for improved local governance while empowering the regional Institutions role, mainly in the common fight against Terrorism and against the malign influence of Non State Actors.<sup>10</sup>

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8 The Kosovo Forces (KFOR) in support of UN Mission in Kosovo (UNMIK) where UNMIK-Police is lead in theme of trafficking. Similarly, the International Security Assistance Forces (ISAF) support the Afghan government in countering human trafficking and IOM which is designed as lead agency on the issue by the UN Assistance Mission in Afghanistan (UNAMA); ISAF also acts as a hub to facilitate contact and relation with all other agencies involved in human rights' protection.

9 "Perception on NATO in North Africa and Sahel". Thesouthernhub.org. [online] Available at: [https://thesouthernhub.org/resources/site1/General/NSD-S%20Hub%20Publications/Webinar Perceptions of NATO in NA and SAHEL.pdf](https://thesouthernhub.org/resources/site1/General/NSD-S%20Hub%20Publications/Webinar%20Perceptions%20of%20NATO%20in%20NA%20and%20SAHEL.pdf) [Accessed 19 Feb. 2020].

10 This effect may be achieved with an active territorial presence and/or a credible partnership with the mentioned regional actors

## Annex A

### Checklist for Criminalization of Human Trafficking

***The UN Protocol Article 3 of the Trafficking in Persons Protocol sets out the following elements:***

**Acts** (what is done)

- i. Recruitment
- ii. Transportation
- iii. Transfer
- iv. Harboursing
- v. Receipt of persons

**Means** (how it is done)

- i. Use of force
- ii. Threat of the use of force
- iii. Other forms of coercion
- iv. Abduction
- v. Fraud
- vi. Deception
- vii. Abuse of power or of a position of vulnerability
- viii. Giving or receiving payments or benefits to achieve the consent of a person having control over another.

**Purpose** (why it is done)

- i. Prostitution
- ii. Other forms of sexual exploitation
- iii. Forced labour or services
- iv. Slavery
- v. Practices similar to slavery
- vi. Servitude
- vii. Removal of organs

## Annex B

### *Counter trafficking African Union recommended strategies:*

#### **Prosecution and Investigation**

- Develop policies and guidelines on how to investigate and prosecute trafficking in persons, and provide training to relevant criminal justice officials such as police officers, prosecutors and judges.
- Establish specialised, multi-disciplinary counter-trafficking law enforcement units or specialised prosecutors' offices to effectively investigate and prosecute trafficking cases.
- Increase prosecution of traffickers and others involved in such activities, including through greater transnational cooperation, such as mutual legal assistance, and extend witness protection to trafficked persons who want to testify against traffickers.

#### **Partnership**

- Increase the use of international cooperation when investigating and prosecuting cases of trafficking.
- Sign bilateral cooperation agreements in the fight against trafficking in persons supported by memoranda of understanding between States.
- Encourage cooperation among Member States and RECs to tackle human trafficking through the development and use of appropriate mechanisms, such as the Economic Community of West African States (ECOWAS) Model Bilateral Agreement on cooperation and mutual legal assistance in protecting children from trans-border trafficking.

Source: Migration policy framework for Africa and plan of action (2018 – 2030)

## Annex C

### Paragraph 5 of the official text:

#### NATO policy on combating trafficking in human beings

This policy is developed by NATO in consultation with its Partners and nations contributing forces to NATO-led operations. Allies re-affirm their commitment to ratification, acceptance or approval of the UN Convention and relevant Protocol and agree:

- a. to review national legislation and report on national efforts to meet obligations associated with the UN Convention and its Protocol in accordance with the relevant decisions taken by the Parties to those treaties;
- b. to encourage all nations contributing forces to NATO- led operations to ratify, accept or approve the UN Convention Against Organised Crime and relevant Protocol and adhere to the OSCE Code of Conduct;
- c. that this policy is aimed at securing standards of individual behaviour;
- d. that all personnel taking part in NATO led-operations should receive appropriate training to make them aware of the problem of trafficking and how this modern day slave trade impacts on human rights, stability and security, as well as being informed of their own responsibilities and duties and the respective responsibilities of International Organisations in this field;
- e. in the conduct of operations, to continue efforts, within their competence and respective mandates, to provide support to responsible authorities in the host country in their efforts to combat trafficking in human beings;
- f. to incorporate contractual provisions that prohibit contractors from engaging in trafficking in human beings or facilitating it and impose penalties on contractors who fail to fulfil their obligations in this regard; and
- g. to evaluate implementation of their efforts as part of the on-going reviews carried out by the competent authorities.

Source: NATO e-library [on line] Available at:

[https://www.nato.int/cps/en/natohq/official\\_texts\\_71856.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_71856.htm?selectedLocale=en)

