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Women in Migrant Smuggling

A Case-law Analysis



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Executive summary

With regards to the smuggling of migrants, in the public mind the term ‘smuggler’ almost instinctively evokes a male figure. This characterization, however, provides only a partial view of the smuggling market in terms of its composition. Women – as guides, facilitators, coordinators, and providers of room and board, among other activities – are also actors of smuggling markets and along migrant routes worldwide.

This report seeks to provide answers regarding women’s participation in migrant smuggling. It relies on a sample of 98 migrant smuggling-related cases from 20 different countries from the Case Law Database of UNODC Knowledge Portal on Smuggling of Migrants¹ powered by SHERLOC.²

As UNODC’s first Global Study on the Smuggling of Migrants from 2018 shows, worldwide, data sources and research on the smuggling of migrants are scant.³ Furthermore, sources documenting the experiences of women in smuggling are limited, and if available, often incomplete.⁴

Gender dimensions have an impact on patterns of criminalization of smuggling-related conduct. The data of this study indicated that women are dynamic and engaged actors in the migrant smuggling market operating in various roles. The extent to which women lead or command smuggling ventures is not quite clear though. There was no indication that any of the women in this sample engaged in violent activity. Furthermore, there were also no references to the women involved in smuggling being connected to other organized criminal markets. On the other hand, most women who participate in smuggling do so seeking financial and material benefits. Most women in the sample also experienced varying levels of financial vulnerability which played a role in their decision to participate in smuggling for profit. Yet, there was no evidence that the financial returns generated by the women through their participation in migrant smuggling had led to their economic or social mobility.

In sum, the roles and motivations of the women participating in smuggling-related tasks are varied and complex. Yet, their backgrounds tend to be quite similar. Most of the women in the current sample were working class, low income residents of marginalized communities along the migrant journey with limited paths to social or economic mobility. They worked independently or in loose connection with others like themselves in an attempt to assist friends or family members reach a safe country, or to improve their quality of life. In doing so, they generally did not seek to enrich themselves but rather attempted to supplement limited fixed incomes.

This report highlights the need for additional and improved data sources and analysis on the gendered dimensions of migrant smuggling and its criminalization. Including a financial or material benefit element to qualify smuggling in the legislation of Member States, in line with the Smuggling of Migrants Protocol, along with a careful enforcement of the law by the criminal justice system to distinguish between situations that would constitute organized crime from less serious offences, could reduce the effect of the criminalization of the facilitation of irregular migration on women.

The preparation of this report generated important insights into the smuggling of migrants and related conduct but also identified research gaps. Research on gender-specific dynamics of migrant smuggling must be carried out. Furthermore, deeper insights of women self-perceptions of their roles in migrant smuggling are needed. In particular, studies that examine the involvement of smuggling networks in predatory migrant smuggling activities should be conducted to strengthen the evidence base in this field. A study of the reach and impact of anti-smuggling and related measures on persons fleeing conflict or persecution, as for example in cases where asylum seekers are charged with smuggling acts including the facilitation of their own border crossing with fraudulent documentation or using the services of smugglers (ie. a situation that is excluded from the Smuggling of Migrants Protocol – article 5), would help better assess how these measures may increase the vulnerability of certain populations, including women and children. Analysis of the interactions among migrant smuggling criminal organizations and other criminal actors also needs to be undertaken. Finally, research is needed to shed light on the effectiveness of criminal justice systems at addressing in a fair and just way the involvement of marginalized men, women and children in smuggling and related activities that compromise their safety and that of their families.

¹ <https://sherloc.unodc.org/cld/en/st/home.html?lng=en>

² SHERLOC stands for “Sharing electronic resources and laws on crime” and can be accessed at: <https://sherloc.unodc.org/cld/en/st/home.html?lng=en>. The sample includes cases of migrant smuggling understood in accordance with the definition of the Protocol (the procurement of illegal entry of a non-citizen or non-resident in a country for a financial or material benefit), but also cases of facilitation of irregular entry for non-profit related motives, and cases in which migrants were prosecuted for their own smuggling. For the purposes of this report, the term “smuggling-related offences” or “smuggling-related cases” refers collectively to all these types of offences

³ See UNODC, *Global Study on Smuggling of Migrants*, (2018), Vienna: UNODC, p. 22

⁴ *Ibid.*, p. 53

Introduction

Most representations of the smuggling of migrants in popular media involve men, who are in turn described as members of sophisticated criminal networks of transnational reach that facilitate the irregular migration of people worldwide while simultaneously playing a pivotal role in their victimization⁵.

Empirical research and official statistics (albeit scant) also characterize smuggling as a predominantly male enterprise. In the United States, government numbers indicate at least 75 per cent of those convicted for smuggling since the 1990s have been men.⁶ Zhang and Chin⁷ in their study on Chinese migrant smugglers also identified 82 per cent of the people in their sample as male, and studies of smuggling along the US-Mexico migrant trail have also identified the prevalence of men among those behind the facilitation of the journeys of US-bound migrants throughout history.⁸

These characterizations however, provide only a partial view of the migrant smuggling market in terms of its composition. Women – as guides, facilitators, coordinators, and providers of room and board, among other activities – are fundamental, if often invisible, actors of migrant smuggling markets and along migrant routes worldwide. References to women guiding migrants across the desert, transporting them in the trunks of cars, or providing care for those in transit are commonplace in migrants' accounts of their journeys.⁹ While less frequently, women are also present in law enforcement and prosecutorial accounts of facilitation of irregular migration, occasionally depicted as "ruthless criminal entrepreneurs".¹⁰

Journalistic accounts that describe the exploits of notorious female smugglers – most often in the context of smuggling tragedies – also generate significant, if temporary, interest in the roles of women in the smuggling of migrants. In fact, some of the better-known migrant smuggling cases have involved the actions of female smugglers. The tragedy of the Golden Venture, which in 1993 led to the death of 10 of the 300 migrants travelling on board a rickety cargo ship, was blamed on Sister Ping, a Chinese migrant living in New York's Chinatown and nicknamed the mother of all snakeheads¹¹. Another catastrophic case in 2003 involved the deaths of 18 migrants who suffocated while traveling on the back of a cargo truck with no ventilation in Victoria, Texas.¹² The tragedy was attributed to the actions of Karla Chavez, a Honduran female citizen who was described as the ringleader of "a sophisticated enterprise".¹³

While these high-profile cases do constitute important examples concerning the participation of women in the smuggling of migrants, they far from provide complete answers to a largely understudied phenomenon: the experiences of women as facilitators of irregular mobility. Who are the women behind migrant smuggling? How are they organized? What are the roles they perform? How has law enforcement responded to their actions? What are the legal implications of their participation in the smuggling of migrants? This report seeks to answer some of these questions.

⁵ EUROPOL – INTERPOL, Migrant Smuggling Networks: Joint Europol-INTERPOL Report. Executive Summary, (May 2016).

⁶ See UNODC, Global Study on Smuggling of Migrants, Vienna, (2018): UNODC. At: Booker Report 2012, Analysis of Immigration Offenses, at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/booker-reports/2012-booker/Part_C8_Immigration_Offenses.pdf. In combination with data from the US Sentencing commission, these reports point at an increase of at least 10 percent in the numbers of women convicted for migrant smuggling in the US between the late 1990s and 2016.

⁷ Zhang, Sheldon, and Ko-Lin Chin. "Characteristics of Chinese Human Smugglers. Research in Brief."

National Institute of Justice: United States Department of Justice, (2004).

⁸ See: Gamio, M. Mexican immigration to the United States. Arno Press, 1930; Spener, David. Clandestine crossings: Migrants and coyotes on the Texas-Mexico border. Cornell University Press, 2009; Izcara Palacios, Simón Pedro. "Coyotaje and drugs: Two different businesses." Bulletin of Latin American Research 34, no. 3 (2015): 324-339; Sanchez, Gabriella. "Women's Participation in the Facilitation of Human Smuggling: The Case of the US Southwest." Geopolitics 21, no. 2 (2016): 387-406.

⁹ Zhang, Sheldon X., Ko-Lin Chin, and Jody Miller. "Women's participation in Chinese transnational human smuggling: a gendered market perspective." Criminology 45, no. 3 (2007): 699-733; Vogt, Wendy. "Stuck in the middle with you: The intimate labours of mobility and smuggling along Mexico's migrant route." Geopolitics 21, no. 2 (2016): 366-386.

¹⁰ Federal Bureau of Investigation (FBI). The case of the snakehead queen: Chinese human smuggler gets 35 years. 17 March 2006. Available from: https://archives.fbi.gov/archives/news/stories/2006/march/sisterping_031706

¹¹ 1. Xiaoqing, Rong. "The Fading American Dreams of China's most notorious 'snakehead.'" Foreign Policy. (4 January 2017). Available from: <https://foreignpolicy.com/2017/01/04/the-fading-american-dreams-of-chinas-most-notorious-snakehead-sister-ping-illegal-immigration-school-retrospective-smuggling/>;

2. Snakeheads is the colloquial term given to migrant smugglers in China. See Zhang, (2007).

¹² Ramos, Jorge. Morir en el Intento: La Peor Tragedia de Inmigrantes en la Historia de los Estados Unidos. Harper Collins, (2012).

¹³ Zernike, Kate. "Deaths of immigrants uncover makeshift world of smuggling." The New York Times. (29 June 2003). Available from <https://www.nytimes.com/2003/06/29/us/deaths-of-immigrants-uncover-makeshift-world-of-smuggling.html>

The present report is an analysis of women's participation in the smuggling of migrants. It is based on a sample of 98 judicial decisions from the Case Law Database of the UNODC Knowledge Portal on Smuggling of Migrants, powered by SHERLOC. It documents the instances in which women were charged (and often convicted) for their participation in the smuggling of migrants or migrant smuggling-related offences as outlined by the legislation of 20 different countries.

The sample includes cases of migrant smuggling understood in accordance with the definition of the Protocol (the procurement of illegal entry of a non-citizen or non-resident in a country for a financial or material benefit), but also cases of facilitation of irregular entry for non-profit related motives, and cases in which migrants were prosecuted for their own smuggling. For the purposes of this report, the term "smuggling-related offences" or "smuggling-related cases" refers collectively to all these types of offences.

The report provides an overview of the profiles and roles of women in the transnational migrant smuggling market, descriptions of the organizations in which women were involved and, when available, the kinds of interactions that existed among their members. The report provides an overview of the prosecutorial data and the gendered impacts of counter-migrant smuggling enforcement. As part of the conclusions, the report also provides a series of research recommendations aimed to improve the collective understanding of migrant smuggling and its gender dynamics, but also to better inform policymaking at the national, regional and international level.

What is smuggling and why does it matter?

The United Nations (UN) Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Smuggling of Migrants Protocol) provided the first internationally agreed upon definition of migrant smuggling (article 3):

For the purposes of this Protocol:

- (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;
- (c) "Fraudulent travel or identity document" shall mean any travel or identity document:
 - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
 - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
 - (iii) That is being used by a person other than the rightful holder.

UNODC is mandated to support UN Member States in their efforts to fulfil their obligations as parties to the Smuggling of Migrants Protocol. To this effect, UNODC aims to provide evidence-based tools that may help dismantle organized migrant smuggling networks and bring top level organizers to justice. Strengthening the capacities of criminal justice practitioners to investigate, prosecute and adjudicate cases of migrant smuggling perpetrated by organized crime groups through the provision of technical assistance and by encouraging international cooperation is key in this respect.¹⁴

While the Protocol is a pivotal framework for the administration of justice, its implementation has presented challenges. Migrant smuggling is not always understood in accordance with the definition set out on the Smuggling of Migrants Protocol.¹⁵ Many States Parties to the Protocol do not include the "financial or other material benefit" element as a requirement to the establishment of the smuggling of migrants as a crime.¹⁶ This has in turn led to the criminalisation of acts like the facilitation of illegal entry for no financial

¹⁴ UNODC. Issue Paper: The Concept of "Financial or Other Material Benefit" in the Smuggling of Migrants Protocol. New York: United Nations Office on Drugs and Crime. (2017).

¹⁵ Gallagher, Anne. "Whatever happened to the Migrant Smuggling Protocol?" In Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration. International Organization for Migration, Geneva 2017. (105-110).

¹⁶ Ibid., UNODC, (2017).

motive nor material benefit in multiple countries, which could include the provision of humanitarian assistance to escape conflict or persecution¹⁷, and the criminalization of smuggled migrants as accomplice in their own smuggling.¹⁸

Another challenge concerns the conflation of smuggling of migrants with other crimes, particularly trafficking in persons. Smuggling of migrants involves migrants who have consented to being smuggled – even if, in cases where the smuggling is undertaken in dangerous or degrading conditions, migrants may not have consented to the risk or abusive treatment involved. Trafficking victims, on the other hand, have either never consented to their exploitation or, even in the event they might have initially consented, their consent is rendered invalid through the coercive, deceptive or abusive means used by their traffickers. A second difference between the two crimes involves exploitation. The smuggling of migrants ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victim in some manner to generate illicit profits for the traffickers. Lastly, migrant smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken across borders or only moved from one place to another within the same country¹⁹. Both the absence of a uniformed interpretation of the smuggling of migrants in accordance with the Protocol and the frequent conflation of migrant smuggling with trafficking have raised concerns over the impact that dissimilar understandings or interpretations of migrant smuggling may have on coordinated law enforcement responses, as well as on the development of adequate policies to prevent and combat these two crimes and protect those affected by them.²⁰

In addition to some of the challenges related to the interpretation of the Smuggling of Migrants Protocol, the international community also lacks data concerning migrant smuggling itself. While there is significant data on migrants' journeys, few researchers have embarked on the empirical study of the smuggling of migrants. The most commonly cited explanation for this gap is the claim that as executors of an underground, clandestine, dangerous and criminal activity, migrant smugglers are reluctant to talk much about their activities.²¹ This has in part led to understandings of migrant smuggling to be informed by the most extreme, dramatic and publicized of smuggling tragedies, and by narratives in which perspectives of law enforcement prevail.²²

On the other hand, the high visibility of contemporary migratory flows worldwide combined with our limited understanding of migrant smuggling practices have played a role in the growing calls for empirical data and analyses concerning migrant smuggling and its actors within policy, academic and even law enforcement circles. This is in part the result of the growing awareness of the nature of migrant smuggling as a path – sometimes the only path – for people who need to leave situations of grave danger to reach safety.²³ The growing field of critical migrant smuggling studies has also provided important insights into the nature of migrant smuggling. Some researchers have pointed out that while sometimes expensive, migrant smuggling is not inherently abusive or exploitative and that instead, smuggler-migrant transactions are often grounded on trust and community ties.²⁴ Other scholars have also warned against depicting the smugglers of migrants solely as violent and exploitative males and migrants as their victims. Work carried out along the migrant trail in Africa and the Middle East and Asia, for example, indicates that smugglers are often seen by migrants not as criminals, but instead as trusted allies and benefactors.²⁵ Furthermore, there is also an indication that many migrants perform migrant smuggling-related tasks as part of their efforts to reach their destination and/or in support of the journeys of their friends and family members.²⁶ Collectively,

¹⁷ Guild, Elspeth, Sergio Carrera, Jennifer Allsopp, Rutvica Andrijasevic, Michael Collyer, Angeliki Dimitriadi, Anniina Jokinen et al. *Irregular Migration, Trafficking and Smuggling of Human Beings: Policy Dilemmas in the EU*. CEPS Paperback, (22 February 2016).

¹⁸ Sanchez, Gabriella. "Women's Participation in the Facilitation of Human Smuggling: The Case of the US Southwest." *Geopolitics* 21, no. 2 (2016): 387–406.

¹⁹ See https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_1-2.pdf

²⁰ *Ibid.*, UNODC, (2017).

²¹ McAuliffe, Marie and Frank Laczko, eds. *Migrant Smuggling Data and Research: a global review of the emerging evidence base*. International Organization for Migration (IOM): Geneva, (2014).

²² Zhang, Sheldon. *Smuggling and trafficking in human beings: all roads lead to America*. Greenwood Publishing Group, (2007).

²³ Carling, Jorgen. "How should migrant smuggling be confronted?" In *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration*. International Organization for Migration, Geneva 2017. (97–104); Guild et al (2016).

²⁴ Koser, Khalid. "Why migrant smuggling pays." *International Migration* 46, no. 2 (2008): 3–26; Khosravi, Shahram. *'Illegal' traveller: an auto-ethnography of borders*. Palgrave MacMillan, London (2010).

²⁵ Majidi, Nassim. *Community dimensions of smuggling: the case of Afghanistan and Somalia*. *The ANNALS* 678, no. 1 (2018):97–113; Ayalew, Tekalign M. *Refugee protections from below: smuggling in the Eritrea-Ethiopia context*. *The ANNALS* 676, no. 1 (2018): 57–76.

²⁶ Achilli, Luigi. *The Smuggler: hero or felon?* Policy Brief, Migration Policy Centre, Florence. (2015); Sanchez, Gabriella and Sheldon X Zhang. "Rumours, encounters, collaborations and survival: the migrant smuggling-drug trafficking nexus in the US Southwest." *The ANNALS* 676, no.1 (2018): 135–151.

these insights map the complex processes of migration and provide more effective ways to understand and potentially counter migrants' vulnerability.²⁷

Despite the crucial findings derived from this scholarship, gender continues to be a missing element of its analysis²⁸. Most smugglers described in the academic work on migrant smuggling are male. If mentioned, women tend to be depicted as either victims of smugglers, their romantic companions, or ruthless heads of ethnic-based criminal networks.²⁹ Furthermore, studies on the impact of migrant smuggling organizations, of their practices and of their criminalization on women remain scant.

Aware of these gaps, this report seeks to improve our understanding of the identities, roles, and criminalization of women in migrant smuggling.

Methodology

This report is the result of a qualitative and quantitative analysis of the summaries of 98 cases featured in the UNODC Smuggling of Migrants Knowledge Portal. The Portal is powered by SHERLOC, an online knowledge management portal where resources and case law are stored and publicly shared to disseminate information regarding the UN Member States' implementation of the United Nations Convention against Transnational Organized Crime (UNTOC) and its supplementing Protocols. The summaries are prepared using legal cases submitted by different contributors to SHERLOC for consideration and inclusion in the portal.³⁰ These 98 summaries were selected from the universe of 758 cases on migrant smuggling contained in the database at the time of research (2017), as they have been identified as involving the participation of at least one woman.

The summaries were analysed and coded for content using a list of indicators that sought to identify data on the migrants transported, the profile of the women charged with the smuggling of migrants, the nature of the criminal organizations women were part of and the women's involvement in other criminal activities, as well as the criminal justice responses to migrant smuggling cases, in which women were named as defendants.

Some limitations concerning the data must be noted. Not all case summaries contained data on all indicators – said data were not always provided to SHERLOC by the submitting party or were not part of the documents available to prepare the summary. For example, some cases referred to women as parties of smuggling cases but provided no further data on them. Other cases did not provide information on the roles played by women but identified their number or profile (in other words, accounted for them and provided some details about their demographics but did not explain their roles). Demographic information on the women (age, place of birth, etc.) was also not submitted consistently. Finally, data concerning sentences were also sometimes incomplete. Many of the cases involved appeals or post-conviction relief orders and the original sentence was not reported.

In order to improve the validity of the analysis, original court cases and documents accompanying the case, when available, were also consulted. This allowed for an expanded understanding of the particularities of the cases and often provided additional information concerning their parties, including other smugglers. When the full court case did not accompany the entries, online searches for legal documents and journalistic coverage were also conducted to supplement the available information on the cases. The use of these two additional sources, combined with the summaries available through the UNODC Knowledge Portal³¹, allowed to corroborate the data and on occasion also provided information altogether absent in the case summaries. The findings were backed up by a selected bibliography quoted throughout the report.

²⁷ Vogt, Wendy. "Stuck in the middle with you: The intimate labours of mobility and smuggling along Mexico's migrant route." *Geopolitics* 21, no. 2 (2016): 366–386; DeHass, Hain. "Don't blame the smugglers: the real migration industry." 23 September 2015. Available at: <https://blogs.worldbank.org/peoplemove/dont-blame-smugglers-real-migration-industry>

²⁸ Zhang, Sheldon X., Ko-Lin Chin, and Jody Miller. "Women's participation in Chinese transnational human smuggling: a gendered market perspective." *Criminology* 45, no. 3 (2007): 699–733; Sanchez, Gabriella. "Women's Participation in the Facilitation of Human Smuggling: The Case of the US Southwest." *Geopolitics* 21, no. 2 (2016): 387–406.

²⁹ *Ibid.*, Zhang, Chin and Miller (2008); Sanchez (2016)

³⁰ Further details on the guidelines regulating the cases submitted for inclusion in SHERLOC can be found here: <https://sherloc.unodc.org/cld/en/st/contribute/contribute.html>.

³¹ <https://www.unodc.org/cld/en/v3/som/>

It is simultaneously important to emphasize that this analysis does not intend to be representative of the experiences of all women who participate in migrant smuggling. It is only reflective of the experiences of the women involved in cases submitted, analyzed and stored in the Knowledge Portal. Yet, at the same time it seeks to trigger a conversation on the need for research on the role of gender in migrant smuggling and on the gendered impacts of the criminalization of the smuggling of migrants which, as other critical examinations into organized criminal practices have shown, may be especially harmful on the lives of women and their families.

The sample

The initial sample included 98 cases prosecuted between 1995 and 2017 in 20 different countries. Ninety-six of the cases concerned offenses prosecuted starting in the year 2000, the year when the Smuggling of Migrants Protocol was adopted by the UN General Assembly. Half of the cases involved smuggling convictions from the year 2010 to 2017. While included in the initial count, 10 cases involving human trafficking offenses were ultimately not included in the analysis.³²

The sample does not contain cases only from States Parties to the Smuggling of Migrants Protocol: two of the 20 countries were not parties to the Protocol at the time of this study. It should also be noted that the sample is not representative of the prevalence of the phenomenon, nor does it try to make any assessment on the countries where the cases originate. At least two of the cases offered examples of international cooperation – that is, they involved the collaboration of at least two different countries in the prosecution and investigation of a smuggling case. There are more cases from some countries than others. However, a larger number of cases should not be interpreted as an indicator of higher smuggling activity in a given country.

³² Initially, 10 human trafficking cases were included in the total count, as they had been classified as smuggling of migrant offenses in the SHERLOC database. The reason for this classification was that in these cases women were charged with at least one count of smuggling or a smuggling-related offense, but were ultimately charged with human trafficking. For this reason, these 10 cases were ultimately excluded from the analysis.

**Migrant smuggling
ventures or related conduct
involving women**

Dominant narratives of migrant smuggling suggest most migrant smuggling operations involve the transportation across borders of large groups of migrants. This section provides some insights into the type of migrant smuggling or related ventures involving women and the relationship between the women and the migrants whose journeys they facilitate.

In the cases examined, women were most often involved in small-scale migrant smuggling-related offences – that is, involving small number of migrants. These included women’s 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. At least thirteen cases involved the attempt to commit smuggling-related offences while trying to facilitate the illegal border crossing or illegal residence of a family member (a woman’s own siblings, children and/or the children of friends). There were an additional 11 cases of women who were charged with smuggling-related offences as a result of providing room and board to a migrant. On at least five of these cases the migrant was the woman’s husband or romantic partner who had become irregular by virtue of having entered the country without authorization or being in violation of migration law. In sum, 27 per cent of all cases in which women were charged with smuggling involved their friends, relatives or acquaintances. The rest of the cases involved third parties, or people not explicitly known to them.

Women were less often involved in large migrant smuggling enterprises. However, two cases stand out given their magnitude. One case, according to the prosecution, was believed to have potentially facilitated the irregular migration of between 1,300 and 1,500 migrants over a number of years.³³ The women who participated in this case were criminally charged for providing room, board and transportation to migrants. A second case involved a woman working as embassy staff, who recruited potential migrants. It is believed that this operation led to the illicit entry of at least 2,206 people.³⁴

As the former paragraph shows, the summaries of cases reviewed do not always provide an exact count of the migrants smuggled. In fact, about 15 per cent of the summaries did not include any data concerning the number of migrants who had been smuggled as part of a specific operation. This absence was even more visible in summaries discussing what were described as long-term investigations by law enforcement targeting large migrant smuggling networks. Several of these cases only provided estimates concerning the people who could have potentially entered a country different than their own as a result of a migrant smuggling network’s actions, a fact that constituted a matter of concern to some of the magistrates that presided over the cases. In sum, the data show that not only migrant smuggling operations vary greatly in terms of size and complexity, but the actual numbers of migrants they involve might be only estimates, rather than confirmed and validated counts.

A total of 83 cases did contain data on the nationality of smugglers and those who travelled with them. The nationality of the migrants matched that of the smugglers on 37 occasions, or 44 per cent of the cases.

Almost 30 per cent of the cases (or 24 of them) involved smugglers who were citizens of countries different from those of the migrants they transported. It is also important to mention that while smugglers and their clients did not always share the same nationality, they often came from the same region or had similar ethnic backgrounds. For example, smugglers of Vietnamese origin living in Europe legally as permanent residents or citizens were often among those facilitating the journeys of Vietnamese migrants,³⁵ while in the United States, Mexican-American men and women were often behind the journeys of irregular migrants from Mexico.³⁶ An Iraqi woman who was a permanent resident of Australia was found guilty of facilitating the illegal entry of Iraqi nationals.³⁷ Twenty-one of the cases contained no information concerning the nationality of smugglers or the persons object of migrant smuggling. Most often smugglers were citizens of the country where the case was prosecuted, some of them having become naturalized citizens of the countries where they operated.

³³SHERLOC AUTx045, 2002. Entry: 130s44/02 (OGH, 26 June 2002). Available from: https://sherloc.unodc.org/cld/case-law-doc/criminalgroupcrimetype/aut/2009/12os15708t_ogh_15_january_2009.html?lng=en&tmpl=som

³⁴SHERLOC AUTx054, 2009. Entry: 120s157/08t (OGH, 15 January 2009). Available from:

https://sherloc.unodc.org/cld/case-law-doc/criminalgroupcrimetype/aut/2009/12os15708t_ogh_15_january_2009.html

³⁵SHERLOC GBRX020, 2011. Entry: R v Chocat & Chocat (2011) 1 Cr App R (S) 56. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2010/r_v_chocat.html?

³⁶ See, for example, SHERLOC USAx067, (2012). Entry: USA v. S.L.C 1 June 2015 (anonymized). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/usa/2015/usa_v_s.l.c.html, and USAx012, 2014. Entry: United States v Gutierrez De Lopez (10th Cir, No 13-2141, 1 August 2014). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/usa/2014/united_states_v_gutierrez_de_lopez_10th_cir_no_13-2141_1_august_2014.html?lng=en&tmpl=som

³⁷SHERLOC AUSx093, 2010. Entry: R v Kanani (2010) NSWDC. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/aus/r_v_kanani_2010_nswdc.html?lng=en&tmpl=som

While the data indicated both men and women travel with smugglers, it was not possible to establish who was more likely to travel using this kind of assistance, as data regarding the gender of smuggled migrants was not always disaggregated. On multiple occasions, there was no data pertaining to the smuggled migrants at all.³⁸

Who are the smugglers?

From the universe of migrant smuggling cases contained in the Knowledge Portal/ SHERLOC at the date of the research (758), 98 or 13 per cent of them involved women. Not all summaries however provided complete data on the accused parties. While some provided the number of people accused under a migrant smuggling operation, they did not outline how many men or how many women participated in it. In at least two cases, the sex of the defendants could not be established from the documents available in the database, and no additional sources that would allow to make that determination were found. Some summaries simply stated that the group was likely larger than what the evidence indicated, thus it could be that non-identified network members may have been women. Most summaries however, included data on the defendants who were arrested and charged.

As noted earlier, about 23 percent of the cases involved women charged with committing or attempting to commit their own smuggling or smuggling acts on behalf of their friends and family for no profit. Some of the cases included in the Knowledge Portal and coded as smuggling cases involved asylum seekers who, fleeing extreme conditions of violence in their countries, were initially charged with migrant smuggling as a result of having travelled or seeking admission into a country using altered or counterfeit documents or having relied at least in part on the services of a smuggler.³⁹ While in the context of their asylum cases their criminal charges for migrant smuggling were eventually dismissed, they were initially charged and sentenced to incarceration terms while their cases were being decided.⁴⁰

As noted previously, in criminalizing migrant smuggling, many States Parties to the Protocol have not included a financial or material benefit element, despite it being a key component of the international definition.⁴¹ The Protocol creates obligations for States to criminalize migrant smuggling, but also contains a provision to prevent migrants from becoming liable to criminal prosecution under the Protocol for the fact of having been the object of migrant smuggling. The provisions of the Protocol do not however prevent prosecution or conviction for facilitation of illegal entry when committed for non-profit purposes, for example when related to the facilitation of irregular entry of their own child.

The high costs of smuggling may also force women to opt for lower-cost options, like forgoing the services of a smuggler and attempting the journeys on their own with counterfeit documents, as the cases used for this analysis indicate.⁴² Labelling or criminalizing their own attempts to reach or enter a country different from their own as migrant smuggling may hinder their ability to access protection for themselves and their families. Women charged with their own smuggling or that of their children and family had as motivations family reunification, attempts to transport children (their own or those of friends or family members) out of countries where their safety could have been compromised, and efforts to live with spouses or romantic partners who were irregular migrants. Yet, the facilitation of one's own irregular entry does not constitute smuggling under the Smuggling of Migrants Protocol.

³⁸ While there were no data concerning the numbers of women who pursue smuggling as a migration strategy, empirical research on their journeys indicates women who can afford them (either on their own or with the help of friends and family members) rely on smuggling or smuggling-related services as these are perceived as a safer option vs. traveling on their own (Hagan, 2008; O'Leary 2016).

³⁹ All three examples involve people whose asylum claims were eventually approved, and their smuggling-related sentences dismissed or reduced: SHERLOC UKh013, (2012). Entry: R. v K.P.M. et al. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2013/r_v_k.p.m._et_al..html; SHERLOC GBRx037, 2008. Entry: R v Mohammed (2008) 1 WLR 1130. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2007/r_v_mohammed_2008_1_wlr_1130.html; and SHERLOC UKh009, 2006. Entry: R. v L. M. (2006). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2006/r_v_l.m..html?lng=en&tmpl=sherloc

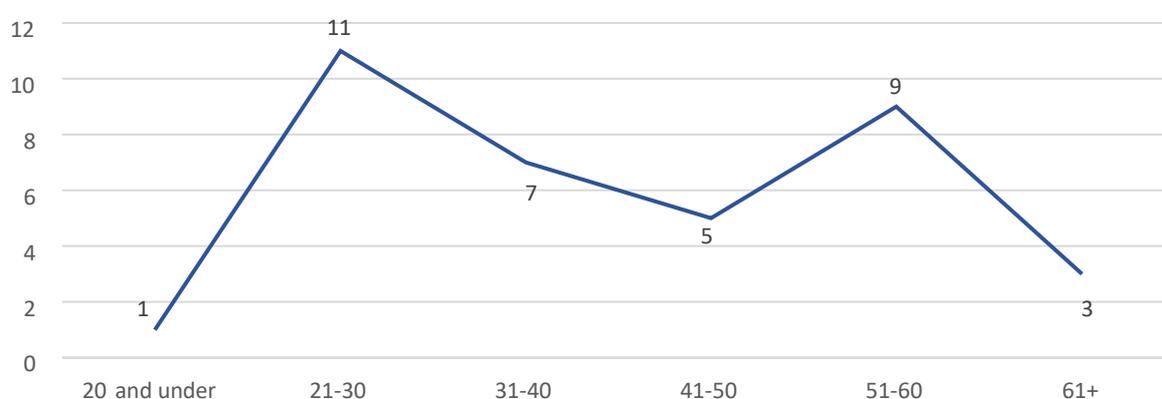
⁴⁰ For further legal analysis, see Costello's (2017) analysis on article 31 of the 1951 Convention Relating to Refugees.

⁴¹ Ibid., UNODC, (2017).

⁴² Vogt (2016) and Sanchez & Zhang (2018) also identified women's partnerships with other migrant and with smugglers as a way to facilitate their journeys.

Data on the ages of women prosecuted for migrant smuggling were limited. Forty-six of the cases had no information concerning the women’s ages. However, all women prosecuted for migrant smuggling for whom records were available were adults.⁴³ In total, age-related data for a total of 36 women were identified, their ages ranging from 18 to 72. While the small size of the sample constitutes a limitation, data indicate that participation in migrant smuggling among women appears to peak at two different periods in life: between the ages of 21 and 30 (often considered child-bearing age), and between the ages of 51 and 60, when employment opportunities for elderly women tend to be limited. While scant, data seem to indicate that younger women were more often charged with migrant smuggling when facilitating their own illegal entry, or of their friends and family members, while among older women, migrant smuggling charges were often related to cases involving the provision of housing for undocumented or in-transit migrants, in what appears constituted attempts to supplement limited fixed incomes. Figure 1 shows an increased participation in smuggling activities among women aged 21-30 and 51 to 60.

Figure 1: Age distribution for female smugglers



Data also reveal some of the factors that may play a role in women’s decision to pursue migrant smuggling as a for-profit activity. Many women were migrants without legal or permanent immigration status and in turn often lacked the ability to work legally to support themselves or their families. Others had endured spousal abuse or were unable or unwilling to return to their countries of origin since they had children and were often responsible for their support. In one case, two women were accused of participating in a scheme to manufacture false visas and travel documents. One of them was married to the primary defendant in the case and they had a child together while the second (a younger woman) also maintained a spousal-like relationship with him. Both women worked and lived together. The younger woman was in a particularly vulnerable position, as she was pregnant with the male defendant’s child at the time of the offense. The women were sentenced to 8 and 4 years in prison respectively for their involvement in the case.⁴⁴ A second case in the EU involved a North African woman who had failed to report the involvement of her husband in the smuggling of his nephew fearing her husband’s pattern of abusive behaviour towards her. While she received no financial or material compensation from her actions, she was charged with crimes against the rights of foreign citizens and sentenced to 18 months in prison.⁴⁵

⁴³ Some researchers have also highlighted the participation of children and young people in smuggling facilitation. See Palmer and Missbach, 2017 on the Indonesian case, and Moreno-Mena and Avedano-Millan (2015) and Derechos Humanos Integrales en Acción DHIA. 2017. Neither criminals nor illegals: children and adolescents in the migrant smuggling market on the US-Mexico border. DHIA: Ciudad Juárez, Mexico.

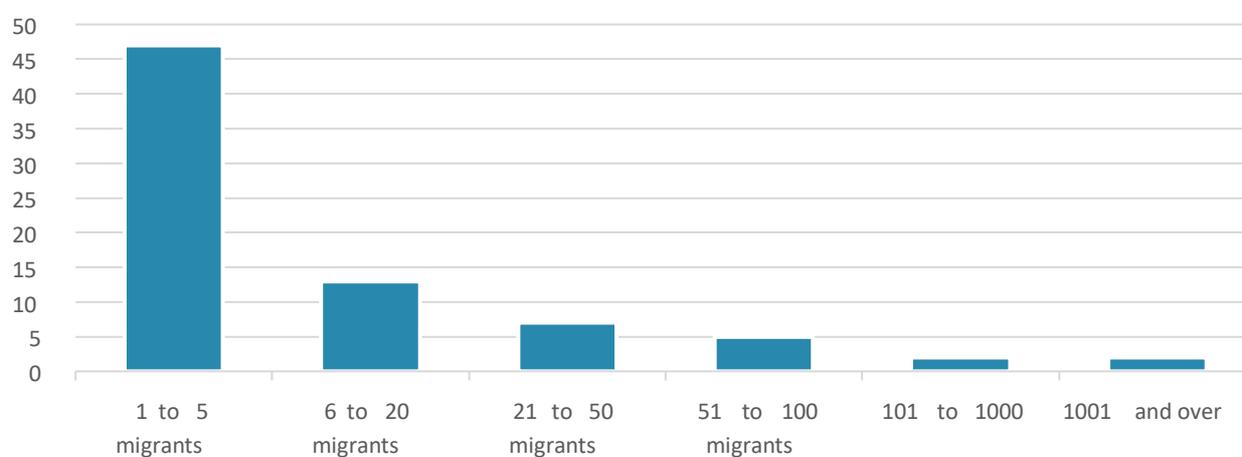
⁴⁴ SHERLOC GBRx024, (2009). Entry: R. v Shahi. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2010/r_v_shahi.html?lng=en&tmpl=som

⁴⁵ SHERLOC ESPh054, (2006). Entry: Resolución 21/2006, 27 January 2006. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/esp/2006/resolucion_212006.html

The Criminal Organizations

The summaries indicate that while women participated in smuggling organizations of varying size and complexity, most worked in small-scale operations.⁴⁶ Out of the 88 cases in which women were ultimately convicted for smuggling-related offences, 47 of them, or 52 per cent, involved the smuggling of five people and less, and included the smuggling of friends and/or family members, and/or their own illegal entry. Thirty per cent of cases (n=27) involved the smuggling of just one person, including sometimes the procurement of the own entry of the women. Of all cases, 66 per cent involved the smuggling of between 1 and 20 migrants. Only 16 of the cases in which women participated involved the smuggling of 21 migrants or more. Figure 2 reflects how women are more frequently involved in small scale smuggling activities: the larger the number of migrants smuggled, the less present – or visible – women appear to be in migrant smuggling operations.

Figure 2: Number of women involved vs. size of smuggling ventures



Data suggest that, despite the Protocol's exclusion provisions, many women are charged with migrant smuggling for procuring their own entry (or that of their children).⁴⁷ After these, the second most common instance of women charged with migrant smuggling-related offences involved women who were wives, romantic partners, mothers and daughters to male co-defendants.⁴⁸ At least fifteen cases involved women who were charged with migrant smuggling-related offences alongside their husbands or romantic partners. Two of the cases involved mothers who had travelled with their sons as they committed the migrant smuggling-related offense, and one related to a daughter-father duo. While there were at least two cases in which there was no indication the women were aware of their co-defendant's intentions,⁴⁹ and at least two more in which the women disclosed having accompanied or worked with their male partners out of coercion or fear, the rest of the cases show no explicit indication of women being misled, forced or coerced into migrant smuggling activities.

Most ventures in which women participate – that is, individual and two-person arrangements – involve people of their same nationality and/or ethnic group. However, as migrant smuggling groups grow larger in size, and begin to operate across different continents or countries, their degree of nationality-based heterogeneity increases. This was particularly evident in cases involving the smuggling of Chinese, Vietnamese and Eastern European migrants. These operations tended to involve larger groups of offenders of multiple

⁴⁶ As outlined above, the actual numbers of migrants smuggled as part of the case was not always clearly indicated, but estimates were included in the case summary or court documents.

⁴⁷ For example, the case of a woman seeking asylum who was traveling with the assistance of a smuggler. See SHERLOC UKh013, (2013). Entry: R. v K.P.M. et al.; Mateta & Ors, R v [2013] EWCA Crim 1372 (30 July 2013). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2013/r._v_k.p.m._et_al..html?lng=en&tmpl=sherloc

⁴⁸ There was only one case involving two women working together: one who identified would-be migrants, and the one who assisted her in getting visa-related paperwork approved. See: SHERLOC AUSx093.

⁴⁹ One of these cases involved a woman who while traveling with a female friend found a migrant was hiding in the trunk of their car as they were being inspected.

nationalities who worked along with local residents and citizens in transit and destination countries. While women were less prevalent in these larger groups, they still performed important roles like transporting or housing migrants or securing documents for their journeys.

There was not enough information in the summaries concerning leadership structures within the migrant smuggling groups. As outlined, most ventures were individual, low-scale and by extension, non-hierarchical in nature. Most summaries lacked any specific information regarding structure or organization, aside from occasional references to male and female smugglers as “heads” or “leads.” It is not clear if these characterizations as leaders had been articulated by migrants, co-defendants or law enforcement. There was one reference in the sample that identified a woman as a smuggler’s ‘right arm’ for example – but neither the extent nor the nature of responsibilities was explained in much detail.⁵⁰

Simultaneously, there were also cases that stood out given the degree of control of some women over some aspects of migrant smuggling operations. For instance, one case involved a woman from South America who, along with her husband, organized the smuggling of men and women into the United States through the Bahamas using yachts. In legal documents, the migrants who travelled with her described her as the contact person in charge of travel arrangements and of training would-be migrants to act as tourists so to avoid detection by law enforcement.⁵¹ A second example involved the case of a woman who coordinated the smuggling of migrants from Dominican Republic into Chile across the Atacama Desert. For this purpose, she had partners who facilitated migrants’ transit through Colombia, Bolivia and Chile. She was identified as the head of the organization by migrants and their families, since she was the person who coordinated journeys and collected smuggling fees from the Dominican Republic.⁵² While noticeable given their complexity, examples of this kind were uncommon. Furthermore, coordinating roles should be interpreted with caution, as they do not necessarily convey overall or hierarchical leadership (Sanchez 2016). Most often, it appeared individual smugglers had different degrees of control along specific sections of the route and were able to make their own decisions without a central authority or command.

When it came to roles performed by women, the following table (Table 1) synthesizes those most commonly reported among the analysed sample of cases.

Table 1: Roles of women in smuggling.

Role	Times reported in the sample ⁵³
Manufacturing, use, distribution or display of fraudulent documents	19
Driving a vehicle	14
Provision of housing for migrants in transit	14
Sham marriages (as wife or as a recruiter)	13
Coordination of journeys (e.g., traveling with migrants)	6
Coordination (lead or head of group)	6
Companion to male or female smuggler	5
Recruitment (of migrants and other smugglers)	5
Financial tasks (collection of payments)	2

⁵⁰ SHERLOC ITAh038, (2017). Entry: Proc. nr. 615/2017 DDA R.G.N.R. Available from https://sherloc.unodc.org/cld/case-law-doc/moneylaunderingcrimetype/ita/2017/proc_nr_6152017_dda_r.g.n.r.html

⁵¹ SHERLOC USAh001, (2012). Entry: Case No. 12-20792, United States District Court Southern District of Florida. Available from: https://sherloc.unodc.org/cld/case-law-doc/criminalgroupcrimetype/usa/2012/case_no_12-20792_-_superseding_indictment_-_us_district_court_southern_district_of_florida.html?lng=en

⁵² SHERLOC DOM008, (2015). Entry: Resolución n. 4445 of Corte de Apelaciones de Iquique. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/dom/2015/resolucion_n_4445_of_corte_de_apelaciones_de_iquique.html?lng=en&tmpl=sherloc

⁵³ Some women performed multiple tasks. Numbers indicate times the task was reported on the legal record.

Lastly, there was no indication that smugglers in this sample came into contact with or engaged in other transnational criminal activities – aside from those pertaining to their roles in the migrant smuggling venture. While many analysts and policy makers have argued that migrant smuggling is connected to other illicit activities and/or markets, none of the cases in the sample contained evidence of such connection. This is in line with what some researchers have reported concerning some migrant smuggling markets⁵⁴ but their conclusions may also be a consequence of the size of the sample used for this analysis, as other researchers have repeatedly suggested the smuggling of migrants has converged with other organized criminal markets.⁵⁵ It is therefore safer to argue that migrant smugglers, in the context of their activities, and as a result of these being clandestine and hidden may come into contact with actors of other clandestine markets with whom they often interact, but not always partner.⁵⁶

⁵⁴ Izcara Palacios, Simón Pedro. "Coyotaje and drugs: Two different businesses." *Bulletin of Latin American Research* 34, no. 3 (2015): 324-339.

⁵⁵ Slack, Jeremy, and Howard Campbell. "On Narco-coyotaje: Illicit Regimes and Their Impacts on the US–Mexico Border." *Antipode* 48, no. 5 (2016): 1380-1399.

⁵⁶ Sanchez, Gabriella and Sheldon X Zhang. "Rumours, encounters, collaborations and survival: the migrant smuggling–drug trafficking nexus in the US Southwest." *The ANNALS* 676, no.1 (2018): 135–151.

The Response of Criminal Justice Systems

All cases identified were prosecuted in the countries where the activities were last known to be performed, with the exception of one case in which the defendant was charged in both the country where she operated (Dominican Republic) and the country where migrants whose journeys she coordinated were detected (Chile).⁵⁷ The sample included also at least three examples of law enforcement agencies from different countries working together to identify and prosecute women who had participated in the smuggling of migrants.⁵⁸ The rest of the cases were investigated by their corresponding national agencies only.

Smuggling of migrants was the most common charge brought against women in the cases reviewed. It was closely followed by facilitation of illegal entry and facilitation of illegal stay. This last charge also applied to women whose actions facilitated the smuggling of their own children, siblings, friends and romantic partners. The table below (Table 2) provides a few examples of the charges present in the sample.

Table 2: Examples of smuggling related charges in the case sample.

Protocol offence / related offences	Corresponding common charges in the case sample
Smuggling of Migrants (ie. for the purpose of obtaining a financial or other material benefit)	Conspiracy to transport aliens within the national territory for financial gain Transporting and attempting to transport an alien into the country for financial gain Participation in an organized criminal group with the purpose of promoting migrant smuggling Transporting illegal aliens Trafficking in persons to enter or leave the country illegally
Facilitation of Illegal Entry (no financial benefit motivation)	Enabling illegal entry Crimes against the rights of foreign citizens Conspiring to transport an alien Conspiracy to facilitate the commission of a breach of national immigration laws by non-citizens
Producing a Fraudulent Document	Assistance to illegal immigration Falsification of documents Obtain leave to remain in the country by deception Conspiracy to defraud Possession of criminal property Smuggling of migrants Forgery of protected documents Membership of a criminal organization
Procuring, Providing or Possessing a Fraudulent Document	Smuggling of migrants Forgery of protected documents Membership of a criminal organization
Facilitation of Illegal Stay	Migrant smuggling in its modality of facilitation of illegal stay Smuggling migrants Aggravated smuggling of migrants for commercial purpose and as part of a criminal group Sham marriage

As argued throughout this paper, while some courts determined some of these cases involved neither material nor financial benefit – and therefore did not constitute cases of migrant smuggling as defined internationally – other jurisdictions charged women and, on several occasions, convicted them for migrant smuggling on the basis of national legislations that did not reflect the definition of migrant smuggling set in the Protocol. Some courts provided reduced sentences, and on occasion altogether dismissed charges. Most women, however, regardless of the final outcome of their case, were often detained, incarcerated or separated from their families,

⁵⁷ Ibid, SHERLOC DOM008.

⁵⁸ The cases involved: one in Greece for which the court of appeal denied extradition, see SHERLOC GREH004, (2013)

Entry: Decision no.108/2013. Available from https://sherloc.unodc.org/cld/case-law-doc/criminalgroupcrimetype/grc/2013/decision_no_1082013.html?lng=en&tmpl=som, one in Chile (ibid SHERLOC DOM008) and one in Austria (ibid, SHERLOC AUTx054).

and/or fined, either at the pre-trial stage or as a result of a first instance judgment.⁵⁹ In one case, the three children of a Cameroonian woman who had attempted to smuggle them, were sent back to their country of origin while she underwent her legal process.⁶⁰

While some courts acknowledged that the actions of the women could have been humanitarian in nature as a result of being carried out on behalf of loved ones and ruled on that basis, in many cases existence of family ties between a woman and those she smuggled did not prevent the imposition of guilty verdicts and penalties. A Somali woman described as “de facto mother of 8 children” was sentenced to 9 months of incarceration for using her passport in an attempt to allow for the entrance of her half-sister into the United Kingdom.⁶¹ In some instances, even if the women were eventually found not guilty or their charges were dismissed, the legal process had serious consequences in the lives of their families. The charges against a woman who forged the names of her children on her passport in order to introduce them to the UK were dismissed on appeal, yet her children had been long returned to their country of origin.

Information on conviction and sentences was not always included in the summaries of the cases analysed for this report. Furthermore, some of the summaries from the database concern outcomes of appeals, without mention of the original sentence or case disposition. This translates into the data only providing a general sense of the sentences given to women, which ranged from fines to incarceration and from supervised release to lengthy prison terms. Prison terms alone ranged from 4 to 84 months across jurisdictions. Given the large number of countries considered in the sample, it was also difficult to establish if there were common trends in sentencing, and most importantly for this analysis, to establish if the sentences given to women differed from those given to men.

There were also indications that in some instances gendered expectations on the part of judges played a role in the sentences imposed onto women. A judgement against a woman charged as party of a fraudulent marriage, claimed the woman’s pregnancy (which he labelled as “cynical”) justified a more severe sentence. The appeal judgment read: “The appellant’s offending, including [the fact that she became pregnant] after she had been arrested, made her more culpable and therefore required a more severe sentence”.⁶² Some courts used language that could be perceived as patronizing or condescending to describe women’s participation in the smuggling of migrants, particularly when they were of foreign origin and/or did not speak the language of the jurisdiction where the case was heard, yet they did not hesitate to impose harsh sentences. One case involved a Vietnamese woman who was behind the wheel of the car her son used to smuggle Vietnamese migrants.⁶³ The court stated that the woman was “guided by a misguided belief to help her son” yet sentenced her to three years in prison, despite the fact that the court had also established the woman had “limited knowledge of the purpose and circumstances of the smuggling venture” and that “she did not, and did not expect to receive any financial gain from the offence”. Her sentence was eventually reduced on appeal to two years imprisonment.

The summaries also showed evidence of how racial and/or ethnic stereotypes concerning women may come into play during migrant smuggling and migrant smuggling-related investigations and court proceedings. An investigation leading to charges against a Czech woman was initiated when the pastor who had married the woman to a Nigerian man reported the couple to the authorities on the grounds that they spoke different languages and had visible cultural and religious differences and therefore should have not been allowed to marry.⁶⁴ While it was in fact established that the woman had been paid to marry the man, the case showcases how marriages among people profiled as belonging to different groups are likely to be scrutinized and deemed unnatural if not fraudulent.

⁵⁹See SHERLOC FRAh022, 2009. Entry: Jugement Nr 713/2009. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/fra/2009/jugement_nr_7132009_.html?lng=en&tmpl=som ; SHERLOC FRAh023, 2008. Entry: Jugement No. 2394. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/fra/2008/jugement_n_2394.html?lng=en&tmpl=som ; SHERLOC FRAh047, 1995. Entry: Pourvoi du 30 octobre 1995. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/fra/1995/pourvoi_du_30_octobre_1995.html?lng=en&tmpl=som

⁶⁰ SHERLOC FRAh026, 2001. Entry: Case 01/00550. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/fra/2001/case_0100550.html?lng=en&tmpl=som

⁶¹ SHERLOC GBRx023, 2009. Entry: R v Darays and Ibrahim. Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2009/r_v_darays_and_ibrahim.html?lng=en&tmpl=som

⁶² SHERLOC GBRx014, 2011. Entry: R v Lawrencia Mintah [2011] EWCA Crim 3121 (21 December 2011). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2011/r_v_mintah.html

⁶³ See SHERLOC GBRx020, 2011.

⁶⁴ See SHERLOC GBRx016, 2010.

⁶⁴ SHERLOC GBRx016, 2010. Entry: R v Monika Slepckova [2010] EWCA Crim 2715 (28 October 2010). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2010/r_v_slepckova.html

The summaries and the jurisprudence also provide evidence that many of the women involved in the smuggling of migrants come from low-income and working-class backgrounds. Many women were single heads of household, worked in low-wage occupations, and were members of marginalized ethnic groups. Several defendants openly declared that their involvement in migrant smuggling had been the result of long-standing financial pressures. Women often envisioned their participation in the smuggling of migrants as a path to gain access to resources for their children, or to reduce the economic impact of low-paying jobs, medical conditions or unemployment. One woman convicted of migrant smuggling was an indigenous woman employed as a caregiver for wards of the state on a salary slightly above the poverty threshold. A statement from her attorney outlined she lived on a reservation “in a one room house with dirt floor and no windows”.⁶⁵ A woman in Australia who was charged with processing paperwork to obtain legitimate passports that were used to smuggle migrants, was a post office clerk who lived with her ailing father.⁶⁶ A 22 year old migrant woman in the EU, facing growing medical bills, accepted an offer to be part of a marriage scam. While she was offered £3,000, she only received £300, £200 of which went immediately to her landlord in order to avoid eviction.⁶⁷ A Guyanese mother of three who worked as a cashier at a grocery store, was charged during an undercover operation with picking up and driving three Guyanese migrants for profit and was sentenced to two years in prison (the confidential informant in the case received CAD\$75,000 for his collaboration).⁶⁸

⁶⁵ SHERLOC USAx039, 2014. Entry: United States v Ortega (9th Cir, No 12-10586, 10 April 2014). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/usa/2014/united_states_v_ortega_9th_cir_no_12-10586_10_april_2014.html?lng=en&tmpl=som

⁶⁶ Ibid, SHERLOC AUSx093.

⁶⁷ SHERLOC GBRx015, 2011. Entry: R v Lirina Iljina [2011] EWCA Crim 975 (23 March 2011). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/gbr/2011/r_v_iljina.html

⁶⁸ SHERLOC CANx014, 2011. Entry: R v Singh-Murray [2011] NBPC 34 (30 September 2011). Available from: https://sherloc.unodc.org/cld/case-law-doc/migrantsmugglingcrimetype/can/2011/r_v_singh-murray.html

Conclusions

While this report constitutes a much-needed summary on the gender dynamics in committing smuggling present in the cases from the Knowledge Portal, it also stands as proof of the incomplete and limited nature of our knowledge of migrant smuggling and its impacts, and how it is addressed by criminal justice systems and practitioners around the globe. Dramatic cases involving migrant suffering and death dominate most of the narratives on the smuggling of migrants, but the data reveal the latter is a much more complex enterprise, in many cases less tragic than its mediated representations may suggest, but still poorly understood.

Worldwide, data sources and research on the smuggling of migrants are scant. Furthermore, sources documenting the experiences of women in migrant smuggling are limited, and when available, often incomplete. There is also limited recognition of the negative impacts emerging from the inconsistent implementation of the Smuggling of Migrants Protocol. In particular, how the uneven handling of similar situations across the world in application of national law may impact women's wellbeing and safety.

The criminalization of migrant smuggling-related conduct has gendered consequences. Women often facilitate the illicit movement of people known personally to them and with whom they have a close, personal connection and for no financial or material return. Many States Parties to the Smuggling of Migrants Protocol punish the procurement of illegal entry when not committed for a financial or material benefit, which falls outside of the criminalization requirement of the Protocol.⁶⁹ This has led to the criminalization of women for acts others than those of concern to the Protocol, which may enhance their vulnerability, especially in situations of conflict or violence.

On the other hand, most women who participate in migrant smuggling do so seeking some financial and material benefits. In fact, over 70 percent of the women whose cases were identified in the sample participated in the smuggling of third parties or people not known to them in exchange for some sort of compensation. It appears that most women who participate in migrant smuggling do so as part of their personal attempts to improve their quality of life.

And yet, most women in the sample experienced varying levels of financial vulnerability which played a role in their decision to participate in migrant smuggling for profit. Many of the women who participated in migrant smuggling were from socio-economically marginalized groups. Among the women apprehended, charged and convicted for migrant smuggling related offences in this sample were indigenous people, irregular migrants, blue collar employees, single mothers, and single heads of household. Many held low-paying jobs as caregivers, supermarket cashiers or office clerks. Interestingly, the sample also showed two peaks in the involvement of women in smuggling related conduct: between the ages of 21 and 30, and between the ages of 51 and 60, when employment opportunities for elder women tend to be limited. Women were often paid only small amounts of money for their involvement in migrant smuggling. At times they were paid less than what they had been promised, and in fact sometimes they were not compensated at all.

There was no evidence that the financial returns generated by the women through their participation in the smuggling of migrants had led to their economic or social mobility. Most offenders charged with migrant smuggling for a financial benefit in the sample simply sought to generate an immediate if often modest return that could allow them to cover immediate, pressing needs. The data challenge the characterization of migrant smuggling as a highly profitable activity – especially in the case of women.

The data also indicated women operate in various roles in the migrant smuggling market. In most of the cases examined, they operated independently as part of individual attempts to generate income, or in pairs, often with spouses or romantic partners; less often they participated in large-scale migrant smuggling operations or among those taking place in multiple countries. Most women worked within their own communities and countries of residence. Women held a wide array of roles: they transported migrants across segments of their journeys; they manufactured, secured and distributed counterfeit documents; they housed and fed migrants in transit; they coordinated smuggling activities for and alongside other smugglers; they recruited migrants and other smugglers; they also provided care for children, the elderly and other vulnerable people.

The extent to which women lead or command migrant smuggling efforts on the other hand is not quite clear. In the sample there were references to women as coordinators of multiple activities – for example, arranging complex travel logistics with the support of different actors. There were also occasional references to leadership and/or to women being 'leads' or 'right hands.' It was not clear if these characterizations were based on migrants' claims concerning their experience with the women, or on the perception of law enforcement of women's involvement. While some cases do reveal high levels of control and involvement on the part of women, the overall structure

⁶⁹ UNODC (2017). Issue Paper. The Concept of "Financial or Other Material Benefit" in the Smuggling of Migrants Protocol. https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/UNODC_Issue_Paper_The_Profit_Element_in_the_Smuggling_of_Migrants_Protocol.pdf

of the migrant smuggling operations identified in this sample did not appear to be hierarchical in nature. Rather, most groups were comprised of independent actors forging collaborations with one another. These are observations that other smuggling scholars have raised regarding the structural composition of the market.⁷⁰

There was no indication that any of the women in this sample engaged in violent activity. Furthermore, there were also no references to the women involved in migrant smuggling being connected to other organized criminal markets. Additional data and further research are needed in this regard, especially given the prevalence of crimes against migrants along migration routes worldwide. The study was not able to establish either whether there are common trends in sentencing women in migrant smuggling cases, or whether the sentences given to women differ from those given to men.

In sum, the roles and motivations of the women participating in migrant smuggling-related tasks are varied and complex. Yet their backgrounds tend to be quite similar: most of the women in the sample were working class, low income residents of marginalized communities along the migrant journey with limited paths to social or economic mobility, working independently or in loose connection with others like themselves in an attempt to assist friends or family members reach a safe country, or to improve their own quality of life.

⁷⁰ Zhang, Sheldon. *Smuggling and trafficking in human beings: all roads lead to America*. Greenwood Publishing Group, 2007; Campana, Paolo. 'The market for human smuggling into Europe: a macro perspective', *Policing: A Journal of Policy and Practice*. *Policing: A Journal of Policy and Practice* 11, no. 4. (2017):448–456; Sanchez, Gabriella. "Women's Participation in the Facilitation of Human Smuggling: The Case of the US Southwest." *Geopolitics* 21, no. 2 (2016): 387-406; Spener, David. *Clandestine crossings: Migrants and coyotes on the Texas-Mexico border*. Cornell University Press, 2009.

Recommendations

This report highlights the need for additional and improved data sources and analysis on the gendered dimensions of the smuggling of migrants and its criminalization. Yet, the action that could have the greatest impact at reducing the effect of the criminalization of migrant smuggling on women would be to exclude conduct aimed at facilitating the movement of close family members, when not done to obtain a financial or other material profit, and their own movement, from the scope of migrant smuggling offences. Including a financial or material benefit element to qualify migrant smuggling in the legislation of Member States, in line with the Smuggling of Migrants Protocol, could have such an effect, so would a careful enforcement of the law by the criminal justice system to distinguish between situations that would constitute organized crime from less serious offences.

More broadly, policy makers and scholars have often called for reducing “demand” for migrant smuggling services more than on curbing “supply”. Accordingly, one of the ways to help strengthen protection for migrants and counter predatory forms of migrant smuggling involves the reinforcement and the effective use of channels of legal entry and respect of the non-refoulement principle. This could translate into the granting of humanitarian visas; the creation of humanitarian corridors between transit and destination countries; the expansion of resettlement programmes and the development of additional effective legal routes for migrants – such as family reunification channels, university fellowships and scholarships, training programmes, private sponsorships and labour mobility matching the needs of destination countries.

The preparation of this report generated important insights into the facilitation of migrant smuggling but also identified some research gaps. Some suggestions for additional work that has the potential of advancing knowledge on the smuggling of migrants and the creation of policy and practice to counter its negative impact on Member States as well as on persons in vulnerable situations and dependent on smugglers, are outlined next.

- Research on gender-specific dynamics of the smuggling of migrants must be carried out. Most women appear to be involved in small scale migrant smuggling. Few appear to assume leadership roles or positions, yet when they do, they often coordinate complex operations. Roles also appear to be gendered. In this sample there is no evidence of women’s participation in violent acts in the context of migrant smuggling. Deeper insights of women’s self-perceptions of their roles in the smuggling of migrants are needed.
- Studies that examine the involvement of migrant smuggling networks in predatory smuggling activities should be a priority, especially given the variety of profiles of migrants and the situations of vulnerability, discrimination or risk they may find themselves in, and the ubiquitous reports of kidnapping, extortion and torture of migrants along migration routes worldwide.
- Analyses of the interactions among migrant smuggling organizations and other criminal actors that are empirically based and draw not only from the perspective of law enforcement personnel or policy makers, but from those directly impacted by criminalization processes can shed light on criminal justice systems and their effectiveness at addressing injustice and impunity. A viable path to reduce the negative impacts of predatory smuggling on migrants, and the involvement of marginalized men, women and children in migrant smuggling activities that compromise their safety and that of their families begins with understanding the context of the regions where their very experiences take place and addressing the human security factors that may impact them.

This research shed some light on areas for improvement in the collection and analysis of cases in the Knowledge Portal. Bearing in mind that the amount of information available in the decisions that are uploaded in the Case Law Database on the Smuggling of Migrants does not always allow for in-depth analysis and categorization of the cases, the systematic inclusion of information on the demographics and roles of perpetrators of migrant smuggling related offences, including women, is recommended. When available, including more detailed information about the organization and leadership structures in migrant smuggling ventures, and about the persons smuggled would also be useful. Dedicated efforts to obtain full sets of court decisions as well as sentences should be pursued in order to inform evidence-based approaches and allow for more in-depth analysis.