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United Nations Office on Drugs and Crime

## **Issue Paper**

# **Corruption and the Smuggling of Migrants**



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**This document has not been formally edited.**

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## Executive Summary

Corruption often undermines national and international efforts to prevent and control the crime of smuggling of migrants, just as it affects the response to other forms of transnational crime such as trafficking in persons, in firearms, and in narcotics. Organized criminal groups make frequent use of the presence of corruption, often together with intimidation and violence, to facilitate their migrant smuggling operations. Migrant smuggling can generate large revenues that smugglers in turn can use to bribe officials and buy their complicity. Criminal organizations take advantage of systems of immigration control, border protection and public security that are weakened by corruption.

Corruption has emerged as a major obstacle to the prevention, detection, investigation and prosecution of migrant smuggling offences. It is also an obstacle to international law enforcement cooperation in the fight against migrant smuggling. Experience shows that law enforcement, immigration control and border protection activities can effectively be sabotaged and their impact neutralized by corruption. Migrant smuggling, like other forms of organized crime, flourishes where public officials are corrupt. In fact, many migrant smuggling operations would not last long without the steady fuel of corruption in one form or another. Combating corruption is therefore an essential element of any comprehensive and effective strategy to address the problem of migrant smuggling.

*The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling of Migrants Protocol)* provides a framework for effective action against migrant smuggling and for international cooperation. The *United Nations Convention against Transnational Organized Crime* (UNTOC) recognizes corruption of public officials as a major impediment to the fight against organized crime and therefore includes several provisions related to corruption. The Convention requires States Parties to adopt measures to prevent, detect, and punish related corruption of public officials. States must also establish the offence of corruption. States Parties are expected to provide each other with the widest possible mutual legal assistance for investigating and prosecuting the offences covered by the Convention (including corruption), and its protocols, including migrant smuggling offences.

In addition, the *United Nations Convention against Corruption* (UNCAC) requires that various measures be taken to prevent and combat corruption more efficiently and effectively. The Convention provides a strong framework for international cooperation in fighting corruption, particularly with respect to asset tracing, freezing and seizure, as well as asset recovery and anti-money laundering measures. It encourages cooperation between national anti-corruption agencies and other law enforcement agencies involved in the fight against organized crime, migrant smuggling and corruption.

This issue paper aims to assist policy makers and practitioners in preventing and addressing corruption related to migrant smuggling operations. It does not offer a review of all successful practices in the prevention of migrant smuggling as this has already been provided by other UNODC publications. Instead, it focuses more narrowly on the prevention of corruption activities that facilitate migrant smuggling or defeat efforts to respond to it.

The issue paper reviews available evidence on the links between corruption and migrant smuggling, including how corruption facilitates migrant smuggling and undermines efforts to control it. It reviews different forms of corruption associated with migrant smuggling, both in the public and private sectors, and offers examples of migrant smuggling cases involving corruption.

The prevention of corruption, as it relates to migrant smuggling, presents many challenges and this paper is a first attempt to identify emerging better practices in that regard. Experts agree that the prevention of such corruption requires comprehensive and strategic approaches, based on systematic assessments of the vulnerability to corruption in the various agencies involved in border protection, immigration control, law enforcement, and criminal investigation and prosecution. The paper reviews the kind of measures that can be implemented, as part of a comprehensive risk mitigation strategy, to prevent corruption as it relates to border protection, immigration control and migrant smuggling. It also examines promising practices with respect to the detection, investigation and prosecution of incidents or alleged incidents of corruption relating to migrant smuggling and how they could be enhanced, including through international cooperation. The paper concludes with a list of suggestions for consideration by policymakers and practitioners.



## 1. Introduction

Migrant smuggling could not occur on the large scale that it so often does without collusion between corrupt officials and criminals. Corruption seriously undermines national and international efforts to prevent and control the smuggling of migrants, just as it weakens the fight against other forms of transnational crime such as trafficking in persons<sup>1</sup>, in narcotics<sup>2</sup> or in firearms.

Like migrant smuggling, corruption can assume many different forms and the two types of crime are related in various ways. Corruption, in relation to migrant smuggling, may occur in countries of origin, transit, or destination. It may be systemic, institutional or individual. It may occur at various points of a smuggling venture, including the recruitment, transportation, illegal entry or harbouring. Corruption facilitates the falsification or use of fraudulent travel and identity documents. It even occurs after smugglers or smuggled migrants have been apprehended to facilitate their illegitimate release or to extort more money from smuggled migrants or their relatives. In other instances, corruption supports fraudulent adoption, marriage or employment schemes and various other forms of fraud linked to migrant smuggling.

Information on the role of corruption in migrant smuggling is still very limited. Corruption is mentioned in several studies and reports on migrant smuggling, usually without an in-depth analysis.<sup>3</sup> There is nevertheless, ample evidence that corruption plays a significant role in migrant smuggling operations, particularly when criminal networks and organizations are involved. In fact, an analysis of the business model of migrant smuggling reveals that corruption, whether in the private or the public sectors, is a key facilitator of this crime.<sup>4</sup> Corruption, wherever and at whatever level it is practiced, often determines the relative success of smuggling operations.<sup>5</sup>

Corruption is also a major obstacle to the prevention, detection, investigation and prosecution of migrant smuggling. Law enforcement, border protection and immigration control activities can be circumvented or sabotaged with the complicity of corrupt public officials. In every region of the world, there are instances where corrupt officials, whether border or immigration officials, police, soldiers, employees of port authorities, or staff in embassies and consulates, have facilitated migrant smuggling or at least turned a blind eye to it in exchange for a bribe or a share of the criminal proceeds generated.<sup>6</sup> There are also many

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<sup>1</sup> See: UNODC (2011). *Issue Paper - The Role of Corruption in Trafficking in Persons*. Vienna: United Nations.

<sup>2</sup> See: International Narcotics Control Board (2010). “Chapter One – Drugs and Corruption”, *Annual Report*. New York: United Nations.

<sup>3</sup> On a related topic, however, a recent study conducted on behalf of the Center for the Study of Democracy should be noted: Gounev, P., Dzhhekova, R. and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy.

<sup>4</sup> For a similar analysis in relation to human trafficking, see: OSCE (2010). *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*. Vienna: OSCE.

<sup>5</sup> Shelley, L. (2003). “The Trade in People in and from the Former Soviet Union”, *Crime, Law and Social Change*, 40: 231–249.

<sup>6</sup> UNODC (2011). *Global Review and Annotated Bibliography of Recent Publications on Smuggling of*

instances where corrupt individuals in the private sector played a role in facilitating the illegal entry of migrants, their fraudulent use of identity or travel documents, or their illegal stay in a country.

## 1.1. The Need for Comprehensive Strategies

Combating corruption must therefore be seen as an essential element of any comprehensive strategy to address the problem of migrant smuggling and the broader problem of organized crime.

The international community has adopted separate but related legal frameworks to deal with corruption, migrant smuggling, and organized crime. The main instruments are the *United Nations Convention against Corruption* (UNCAC), the *United Nations Convention against Transnational Organized Crime* (UNTOC) and its supplemental *Protocol against the Smuggling of Migrants by Land, Sea and Air* (the Smuggling of Migrants Protocol). Other international instruments on corruption also exist.<sup>7</sup> Migrant smuggling is only one type of transnational crime that involves organized crime or corruption and the two Conventions include measures that have a much broader scope than simply preventing and combating the smuggling of migrants.

### 1.1.1. *The United Nations Convention against Transnational Organized Crime*

The *United Nations Convention against Transnational Organized Crime* (UNTOC) was adopted in 2000.<sup>8</sup> Its purpose is to facilitate international cooperation in the fight against various forms of transnational organized crime (article 1), including the smuggling of migrants. Its provisions apply to offences established in accordance with the Smuggling of Migrants Protocol and therefore form part of the framework established to combat the smuggling of migrants.

The Convention recognizes corruption of public officials as a major impediment to the fight against organized crime and includes several provisions related to corruption, requiring States Parties to adopt measures to prevent, detect, and punish corruption of public officials.

### 1.1.2. *The United Nations Convention against Corruption*

The *United Nations Convention against Corruption* (UNCAC) was adopted by the General Assembly in October 2003.<sup>9</sup> Under the Convention, a State Party is required to introduce

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*Migrants*. New York: United Nations, p. 82.

<sup>7</sup> See: UNODC (2005). *Compendium of International Legal Instruments on Corruption, 2<sup>nd</sup> Edition*. New York: United Nations.

<sup>8</sup> There are presently 176 States Parties to the *UN Convention against Transnational Organized Crime*, and 136 States Parties to the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*.

<sup>9</sup> UNCAC is a widely ratified international instrument. At present, there are 166 States Parties to that Convention.

policies and programmes to prevent and control corruption. The Convention requires a number of measures relating to both the public and private sectors. They range from institutional arrangements, such as the establishment of a specific anti-corruption body, to codes of conduct and policies promoting good governance, the rule of law, transparency and accountability.

The UNCAC stresses the importance of preventing corruption before it occurs. The Convention calls for the criminalization of bribery of national public officials, foreign public officials, and officials of public international organizations; embezzlement, misappropriation and other diversion of public property; trading in influence;; and abuse of functions. It also requires the criminalization of other activities in support of corruption, such as obstruction of justice and the concealment or laundering of the proceeds of corruption. This criminalization is required in order to facilitate the effective detection and prosecution of corruption.

Very importantly, the UNCAC provides a strong framework for international cooperation in fighting corruption, particularly with respect to tracing, freezing and seizure of assets, as well as asset recovery and anti-money laundering measures. It also encourages cooperation between national anti-corruption agencies and other law enforcement agencies involved in the fight against organized crime, migrant smuggling and corruption.<sup>10</sup>

## 1.2. Purpose of the Issue Paper

This issue paper is primarily meant for policy makers and practitioners involved in the prevention and control of migrant smuggling. It reviews the various links between migrant smuggling and corruption. It focuses almost exclusively on preventing and mitigating the risk of corruption typically associated with migrant smuggling operations, particularly those involving organized crime. It does not review all successful practices in the prevention of migrant smuggling, as this has already been done in other UNODC publications.<sup>11</sup> Instead, it focuses more narrowly on the prevention of the kind of corruption that facilitates migrant smuggling or defeats efforts to control it.

Corruption and migrant smuggling are both clandestine activities. As such, neither of them are easy to detect, investigate or prevent. Their control presents some significant challenges which require strategic prevention approaches, proactive investigations, diligent prosecution and, often also, international cooperation. This issue paper identifies a number of good practices, and concludes with several suggestions drawn from the current analysis and the discussion that took place during an expert group meeting held in Vienna, in December 2012.

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<sup>10</sup> For more details on the UNCAC, see: UNODC (2006). *Legislative Guide for the Implementation of the United Nations Convention against Corruption*. New York: United Nations, and UNODC (2009). *Technical Guide to the United Nations Convention against Corruption*. New York: United Nations.

<sup>11</sup> For a list of available UNODC publications on the subject, see: <http://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuaside>.

## 2. The Role of Corruption in the Smuggling of Migrants

### 2.1. Definition of key concepts

#### 2.1.1. What is Migrant Smuggling?

The smuggling of migrants is a crime that involves the procurement, for financial or other material benefit, of the illegal entry of a person into a State of which that person is not a national or resident.<sup>12</sup> “Illegal entry” is the crossing of borders without complying with the necessary requirements for legal entry into a receiving State.<sup>13</sup>

In short, the combination of the following elements constitutes ‘migrant smuggling and related conduct’:

- Either the procurement of an illegal entry or illegal residence of a person;
- Into or in a country of which that person is not a national or a permanent resident; and
- For the purpose of financial or other material benefit.

Not all persons who migrate have the legal opportunity to do so. The desire to migrate, globally, far exceeds the limited existing possibilities to legally cross borders. Further, in response to improved border control measures, more migrants feel compelled to resort to services provided by profit-seeking smugglers. The smuggling of migrants is a highly profitable business in which criminals are at low risk of detection and punishment. As a result, the crime is becoming increasingly attractive to criminals and their networks.

Smugglers of migrants are becoming steadily more organized, establishing professional networks that transcend borders and regions. Some migrant smuggling ventures are very sophisticated, using corruption, fraudulent documents and other methods to reduce the risks involved to themselves and those smuggled. Others offer services that are low cost but highly dangerous to the health and safety of those they smuggle.

Persons in need of international protection such as refugees may use the services of smugglers. In addition, migrants who become the object of smuggling, may become victims of crime during or as a result of the smuggling process. The consent of a person to be smuggled does not mean that he necessarily consents to the treatment he receives throughout the process. Smuggled migrants are also vulnerable to exploitation and their lives

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<sup>12</sup> Article 3 of the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* defines the smuggling of migrants as: “... 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”.

<sup>13</sup> The term 'migrant smuggling' will be used here to refer to all the elements that constitute the smuggling of migrants and related conduct.

are often put at risk: thousands of smuggled migrants have suffocated in containers, perished in deserts or drowned at sea. Smugglers of migrants often conduct their activities with little or no regard for the lives of the people whose hardship and lack of opportunity has created a demand for smuggling services.<sup>14</sup>

### **2.1.2. Smuggling Offences**

Article 6 of the Protocol requires the criminalization of the smuggling of migrants (as defined above) and of related conduct, such as enabling a person, who is not a national or a permanent resident of a country, to remain in that country, without complying with the requirements for legally remaining in that country or by illegal means, in order to obtain a financial or other material benefit.

Furthermore, an additional offence which States Parties are obligated to criminalize under the Smuggling of Migrants Protocol, is producing, procuring, providing or possessing of fraudulent travel or identity documents for the purpose of enabling the smuggling of migrants. The Protocol defines “fraudulent travel or identity documents” as any document that has been falsely made or altered, or that has been improperly issued or obtained through misrepresentation, *corruption*, duress or any other unlawful manner (article 3(c)(ii)).

The Smuggling of Migrants Protocol does not intend to criminalize migration as such. In this regard, article 5 states that the migrants themselves must not be held responsible for the crime of smuggling by virtue of having been smuggled.

Nor does the Protocol intend to criminalize persons such as family members or non-governmental or religious groups that facilitate the illegal entry or residence of migrants for humanitarian or non-profit reasons, but rather only those who profit from migrant smuggling and related conduct through financial or other material gain.<sup>15</sup>

### **2.1.3. What is Corruption?**

There is no globally accepted definition of corruption, even in the *United Nations Convention against Corruption* (UNCAC). UNCAC requires the criminalization of various clear manifestations of corruption and allows each State to go beyond the minimum standards thus set forth.

A definition commonly used is that corruption is the abuse of entrusted power for private gain. It can be *systemic*, affecting, for example, a whole border protection, law enforcement or justice system; it can be *institutional*, where various institutional practices have been perverted by corruption and a culture of tolerance of corruption has taken hold; it can also be *localized* (in a particular unit or part of an agency or business); or *individual*, where those involved take advantage of opportunities to exploit their professional position for personal gain. It can be petty (occurring on a small scale and even as a matter of routine), or on a large scale. For a public official, it involves giving or obtaining an advantage through illegitimate means or through means inconsistent with his/her duties.

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<sup>14</sup> See: UNODC (2010). *Issue Paper: A short Introduction to Migrant Smuggling*. Vienna: UNODC.

<sup>15</sup> Idem

UNCAC requires, or in some cases encourages, the criminalization of various forms of corrupt conduct associated with corruption. It identifies several types of corruption which should be treated as serious crimes, including:

- Bribery in the public sector;
- Bribery in the private sector;
- Trading in influence;
- Abuse of functions.

As will be seen, any of the above forms of corruption can be linked in one way or another to migrant smuggling and must therefore be addressed in order to prevent and control migrant smuggling and other forms of transnational crime.

**Bribery** (articles 16 and 21 UNCAC) is the act of conferring a benefit in order to improperly influence an action or decision. A corrupt transaction may be initiated either by a person who offers a bribe or by an official who requests or demands one. A “bribe” can also describe as a payment extracted by a public official from an unwilling member of the public, before the citizen can receive the service to which he or she is entitled. Strictly speaking, such a transaction is a form of “extortion”.

Bribes can be given directly or indirectly (to a third party or an intermediary such as a friend, a relative, or an associate) and they can take many forms, including cash and other valuables, favours (including sexual), inside information, company stocks, property, services, and employment or promises of employment. They can be given on a case-by-case basis or on an on-going basis as part of a continuing relationship in which officials receive regular benefits in exchange for regular favours. In many instances, corrupt officials cooperate with migrant smugglers for many years.

Officials who accept a bribe to facilitate the illegal entry of people, vehicles, or cargo into their country may not know exactly what crime they are actually facilitating. Thus, some officials may receive part of the bribes collected by other officials who are in collusion with migrant smugglers. Those who benefit from the bribes may not all be aware of the nature, scope or details of the smuggling scheme.

A bribe can be given “according to the rules” (to obtain something the official is withholding but is under a public duty to provide), or it can be “against the rules” (a payment to encourage an official to ignore the rules in favour of, or at the request of, the person offering the bribe). Once bribery has occurred, it can lead to other forms of corruption. By accepting a bribe, officials are effectively compromised and thereafter vulnerable to blackmailing and psychological pressure. They can easily be coerced into further and often more serious derelictions of their duties.

In discussions of corruption offences, the expressions “active bribery” and “passive bribery” are often used. “Active bribery” usually refers to the act of offering or giving a bribe, while “passive bribery” refers to the requesting or receiving of a bribe. A corrupt transaction may be initiated under either means: by a person who offers a bribe, or by an official who requests or demands one. Corruption is frequently linked to various forms of fraud, and when officials are actively seeking bribes (including “rent seeking”), corruption resembles extortion.

**Trading in influence** (article 18 UNCAC) involves the promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage to get that person to abuse his or her influence (real or supposed) in exchange for an undue advantage

for oneself. It may also involve the solicitation or acceptance of such an undue advantage by a public official or any other person.

An **abuse of functions** or position (article 19 UNCAC) is the performance of or failure to perform an act, in violation of laws, by a public official, in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity for personal gain.

Some corruption schemes specifically target those who are responsible for detecting, investigating and prosecuting migrant smuggling. Corruption schemes are more or less complex depending on the circumstances. As counter-corruption measures are strengthened, corrupt practices tend to become more sophisticated in order to avoid detection and investigation.

## 2.2. The Links between Corruption and Migrant Smuggling

There are multiple and complex links between corruption and migrant smuggling. Few of them have been explored systematically, but most have been observed repeatedly and in various contexts. The two types of crime are connected in various ways, depending on a country's level of development, the prevailing level of integrity in its various institutions and the country's institutional capacity to prevent and counter corruption. Cultural, political and economic factors are also significant, as are social and economic pressures with respect to emigration or immigration. Therefore, the role corruption plays in the smuggling of migrants varies considerably from country to country.<sup>16</sup>

There is evidence that corruption is a significant predictor of migrant smuggling out of a country because, like poverty, personal insecurity and violence, it may be a push factor for emigration and thus create a market for migrant smugglers.<sup>17</sup> This is consistent with research on transnational human trafficking which shows that corruption is a facilitator of human trafficking.<sup>18</sup>

Corruption can take place at any stage of the smuggling process from origin, through transit to destination. Because it weakens existing systems and measures to protect borders, control immigration, protect refugees, and enforce the law, it can have a very debilitating effect on efforts to curtail migrant smuggling. The considerable profits generated by migrant smuggling and human trafficking operations make corruption possible on a large scale. Bribery and other forms of corruption are used to create or exploit opportunities for migrant smuggling, such as to circumvent or neutralize the controls in place to prevent irregular migration, to exploit or abuse irregular migrants, and to protect smuggling operations from interference by law enforcement and the prosecution. Corruption also presents a very real

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<sup>16</sup> UNODC (2012). *Migrant Smuggling in Asia – A Thematic Review of the Literature*. Bangkok: UNODC.

<sup>17</sup> Aronowitz, A. A. (2001). "Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organisations that Promote It", *European Journal on Criminal Policy and Research*, 9 (2): 163–195, p. 171. Also: Bales, K. (2005). *Understanding Global Slavery*. Berkeley and Los Angeles, CA: University of California; or, Carling, J. (2006). *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, IOM Migration Research Series No. 23. Geneva: IOM.

<sup>18</sup> Zhang, S. X. and S. L. Pineda (2008) "Corruption as a Causal Factor in Human Trafficking", in *Organized Crime, Culture and Policies*, New York: Springer. Also, UNODC (2011). *Issue Paper: The Role of Corruption in Trafficking in Persons*. Vienna: United Nations.

obstacle to effective international cooperation in fighting migrant smuggling. It undermines any relationship of confidence and mutual trust that is essential for on-going cooperation across borders, whether in border management, immigration control, criminal investigations, or intelligence sharing.

### **2.2.1. Potential Actors Involved in Corruption enabling Migrant Smuggling**

#### **2.2.1.1. Public Sector Involvement**

When it involves government officials, corruption can occur at both high and low levels, from ministers, diplomats and consular officials<sup>19</sup> to border guards, police officers or cleaning staff at airports. At the higher level, for example, visa-issuing authorities and immigration directors may be offered bribes and benefits to provide a service or to turn a blind eye. At the lower level, immigration, security, airport and airline staff may be paid to do something as small as stamping a document without closely inspecting it or unlocking a door.

Left unchecked, low level corruption can become systemic and spread throughout a system or an organization, including those which are specifically tasked to control immigration and fight migrant smuggling. Once corruption has established itself within one of the very agencies established to prevent and control irregular immigration and migrant smuggling, it becomes most difficult to eradicate.

Many of the corrupt officials who become the accomplices of migrant smugglers are not simply opportunists succumbing to occasional bribes. Rather, the extent of their collusion with smugglers implies that they are themselves part of that criminal enterprise. There are instances where the officials actually are the instigators or leaders of a smuggling operation.<sup>20</sup> In other instances, they are engaged in various forms of extortion, fraudulent practices and protection rackets. Their involvement in migrant smuggling may be only one of the criminal activities in which they participate. On the other hand, there may be officials who are not personally involved in a migrant smuggling scheme, but find other ways to share in the profits of these criminal activities or exploit irregular migrants and refugees.

Corruption within law enforcement and border control agencies has some unique characteristics that make it particularly hard to control. For example, poor external oversight, the secrecy of many aspects of the work, the discretionary authority they enjoy, and the level of autonomy that typically exists within some units are all factors that make these agencies vulnerable to corruption. In addition, officers from these agencies are often in regular contact with informants and other criminal elements and may be under real pressure

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<sup>19</sup> In Somalia, for example, some major visa fraud was reported involving ministers, high officials, and diplomats. See: United Nations (2010). *Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1853 (2008)*, Security Council. S/2010/91, p. 34.

<sup>20</sup> Watson, J. (2013, June 21). Former border patrol agents sentenced to 30 years in immigrant smuggling case. *NBC News*. Retrieved from [http://usnews.nbcnews.com/\\_news/2013/06/21/19081188-former-border-patrol-agents-sentenced-to-30-years-in-immigrant-smuggling-case?lite](http://usnews.nbcnews.com/_news/2013/06/21/19081188-former-border-patrol-agents-sentenced-to-30-years-in-immigrant-smuggling-case?lite)



to engage in corrupt activities. Furthermore, there are some opportunities for corruption that are only available to law enforcement and border protection officials.<sup>21</sup>

To this, one might add, that a general prevalence of corruption and a lack of political will to control it, unfortunately go hand in hand. Predictably, corrupt officials who profit from migrant smuggling or have found ways to exploit irregular migrants are rarely willing to support effective measures against migrant smuggling or corruption.<sup>22</sup>

#### **2.2.1.2. Private Sector Involvement**

In addition to focusing attention on government officials, migrant smugglers can also find accomplices in the private sector. They often seek to corrupt or intimidate individuals in key private sector businesses and organizations, such as common carriers, transporters, employment agencies and employers, security service providers, fishing industry entrepreneurs and employees, education personnel, or ports and airport personnel. They may also find ways to infiltrate these private sector organizations. The utility of these private sector individuals lies in that they may have confidential information required by the smugglers or be capable of producing false documentation (proof of residency, certificate of employment, residency certificates, certificate of studies, etc.) in support of a visa, or immigration or refugee application. Individuals working for private security service providers at airport or other checkpoints can help smugglers and migrants avoid controls.

#### **2.2.1.3. Organized Crime Involvement**

Migrant smuggling does not always involve organized criminal groups. When it does, however, these organizations typically rely heavily on corruption, often along with intimidation and violence, in order to facilitate their migrant smuggling and other transnational criminal activities. Criminal organizations are ready to take advantage of immigration control, border protection and security systems that are weakened by corruption. Migrant smuggling is essentially a business and, like any other business, the criminals involved in it wish to reduce their costs, maximize their profits and reduce their exposure to risk, including in this case, the risk of arrest and prosecution. When smuggling operations are conducted on a large scale or a regular basis, corruption allows the smugglers to maximize their profits and reduce their risks. They use the large revenues generated by their smuggling activities to corrupt officials and buy their complicity. Corruption is an easy means of circumventing or neutralizing immigration control, border protection and law enforcement measures. It allows smugglers to offer a “reliable service” to irregular migrants and to charge even more for their services. In the worst cases, corruption allows migrant smuggling organizations to function with relative impunity.<sup>23</sup>

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<sup>21</sup> Gounev, P., Dzhekova, R. and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy, p. 7.

<sup>22</sup> Aronowitz, A. A. (2001). "Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and The Organisations that Promote It", *European Journal on Criminal Policy and Research*, 9 (2): 163–195, p. 185. Also Carling (2006), see note above.

<sup>23</sup> Carling, J. (2006). *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, IOM Migration Research Series No. 23. Geneva: IOM.

Criminal groups involved in migrant smuggling frequently attempt, and often succeed in intimidating, bribing and otherwise corrupting public officials responsible for immigration and border control, or officials responsible for producing, issuing or authorizing travel and identification documents. Corruption is, in fact, a regular feature of all trafficking and smuggling operations involving organized crime groups.<sup>24</sup> In some cases, criminal groups go to great lengths to identify vulnerable officials who are likely to respond to overtures or to infiltrate law enforcement or border protection agencies.<sup>25</sup>

When corruption exists, whether in border protection, immigration control or law enforcement agencies, its impact is not necessarily limited to migrant smuggling. On the contrary, whenever corruption can facilitate migrant smuggling, it can also be used to facilitate other forms of transnational crime. Once public officials have been compromised, their cooperation can be used in various ways. They themselves may not always realize the exact nature and full extent of the criminal activities their collusion with criminals actually facilitates.

The importance of corruption, not surprisingly, is reflected in the way many migrant smuggling networks are organized. Bribing and maintaining relationships with various corrupt officials is even treated as a distinct function in many migrant smuggling networks.<sup>26</sup> It is often an essential function. For example, in their conversations with snakeheads in Asia, researchers heard that many understood that it was essential for them to entertain, bribe and maintain good relationships with key public officials. They needed their help to obtain passports, obtain the information needed to avoid controls, and identify compliant officials. The costs of this aspect of their operations were considerable, but there was usually enough money for everyone to benefit from the smuggling schemes.<sup>27</sup> Within the criminal networks researched, only a few of the individuals involved were actually in contact with the corrupt officials, and typically, these were restricted to the few who were in the inner circles of smuggling organizations.<sup>28</sup> There is also evidence that smuggling networks that do not have contact with corrupt officials sometimes cooperate with members of networks who do, including by sharing access to corrupt officials able to facilitate various aspects of migrant smuggling.<sup>29</sup>

Research suggests that there may not be any major difference between organized criminal involvement in trafficking in persons when committed across borders on the one hand, and smuggling of migrants on the other.<sup>30</sup> If so, this would suggest that much of what is known about the role of corruption in the facilitation of human trafficking also holds true for corruption in the context of migrant smuggling. On the other hand, not all migrant smuggling operations necessarily involve a criminal organization. Some of them clearly

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<sup>24</sup> See also: Richards, K. (2004). "The Trafficking of Migrant Workers: What are the Links Between Labour Trafficking and Corruption?", *International Migration*, 42 (5): 147-165.

<sup>25</sup> Gounev, P., Dzhekova, R. and T. Bezlov (2012). *Study of Anti-corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy, p. 66.

<sup>26</sup> UNODC (2010). *Issue Paper: Organized Crime Involvement in Trafficking in Persons and Smuggling of Migrants*. Vienna: United Nations Office on Drugs and Crime.

<sup>27</sup> Zhang, S. and K.-L. Chin (2002). *The Social Organization of Chinese Human Smuggling - A Cross National Study*. San Diego (CA): San Diego State University, p. 20.

<sup>28</sup> Idem.

<sup>29</sup> UNODC (2010). *Issue Paper: Organized Crime Involvement in Trafficking in Persons and Smuggling of Migrants*. Vienna: United Nations Office on Drugs and Crime.

<sup>30</sup> Idem.

involve less formal networks. Furthermore, migrant smuggling operations are not always dependent on infiltration of public agencies or on other modes of corruption.<sup>31</sup> In some instances, particularly where immigration control and border protection measures are weak, they need not involve officials in their smuggling schemes. For example, a study of the smuggling of Filipinos to Italy showed that a large proportion of smuggling took place without resorting to bribing public officials, but that nevertheless, several cases of smuggling of larger groups of migrants involved organized crime and collusion with public officials.<sup>32</sup> In other instances, corruption is almost always necessary. For example, interviews with smugglers in Asia indicated that systematic corruption and bribery were essential in migrant smuggling because few people could leave the country with ease without the collusion of government officials.<sup>33</sup>

### **2.2.2. Frequency and Patterns of Corruption**

It is not currently possible to estimate the prevalence of corruption related to migrant smuggling and irregular migration. Countries typically do not publish data on corruption incidents in their law enforcement, border protection, or immigration control agencies. That said, there are frequent indications that, in some countries or in some specific law enforcement or border control agencies, corruption is endemic and facilitates migrant smuggling on a very large scale.<sup>34</sup>

In some regions, particularly when borders are relatively porous and poorly protected, it is the whole region that is affected by the large amount of migrant smuggling facilitated by corruption. In many parts of Africa, for example, while immigration control is practiced at major border crossings, in general, the long borders between states remain porous and immigration officials are open to corruption.<sup>35</sup> In parts of that continent, corruption has not only allowed migrant smuggling to become a major industry, but it has significantly weakened local law enforcement and border control institutions and affected their legitimacy and public credibility. In some regions, the distrust engendered by the presence of endemic corruption, has all but eliminated international cooperation in migration and border management and protection, law enforcement, and even refugee protection.

Corruption is considered one of the main factors influencing, both the prices charged to migrants by smugglers and the smugglers' own changing *modi operandi*.<sup>36</sup> The cost of the

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<sup>31</sup> Staring, R. (2008). "Controlling Human Smuggling in the Netherlands: How the Smuggling of Human Beings Was Transformed into a Serious Criminal Offence", in D. Siegel and H. Nelen (eds.), *Organized Crime: Culture, Markets and Policies*, New York: Springer, pp. 165-181. See also: Zhang, S. and K.-L. Chin (2004). *Characteristics of Human Smugglers*, NIJ Research in Brief, Washington (D.C.): U.S. Department of Justice, National Institute of Justice.

<sup>32</sup> Aronowitz, R. (2003). *Illegal Practices and Criminal Networks Involved in the Smuggling of Filipinos to Italy*. Turino: UNICRI.

<sup>33</sup> Zhang, S. and K.-L. Chin (2002). *The Social Organization of Chinese Human Smuggling - A Cross National Study*. San Diego (CA): San Diego State University.

<sup>34</sup> See also: Johnston, M. (1998). "Cross-border Corruption Points of Vulnerability and Challenges for Reform", in *Corruption and Integrity Improvement Initiatives in Developing Countries*. New York: UNDP.

<sup>35</sup> Coluccello, S. and S. Massey (2007). "Out of Africa: The Human Trade between Libya and Lampedusa", *Trends on Organized Crime*, 10 (1):77-90, p. 82.

<sup>36</sup> De Haas, H. (2007). *The Myth of Invasion: Irregular Migration from West Africa to the Maghreb and the European Union*, IMI Research Report. Oxford: Oxford International Migration Institute. See also

bribes or the amount of profit that the smugglers must share with corrupt officials affects the prices for the services of smugglers. Similarly, anti-corruption measures may also affect the smugglers' *modi operandi* and the price they charge for their services. The strengthening of police controls and border patrols may increase the risk of interception for smugglers who may then need to invest more in corruption in order to successfully manage their business. It may also bring them to change their routes and to try to recruit new corrupt officials.

### 2.3. Types of migrant smuggling and related conduct concerned

Typically, smuggling of migrants and related conduct can be facilitated by corruption in relation to:

- Illegal border crossing by land, sea or air and illegal stay of migrants;
- Producing, issuing and using fraudulent or fraudulently obtained documents for the purpose of migrant smuggling (or enabling stay).

A typical *modus operandi* for migrant smuggling is the abuse of legal channels of migration such as asylum procedures, family reunion procedures, work and study schemes, tourist visa schemes and the like. Corruption in the public and private sectors can play a significant role in the establishment of fraudulent filiation or adoption, or in the arrangement of sham marriages for the purpose of migrant smuggling.

For instance, in Europe, a journalist uncovered a scheme in which asylum seekers could allegedly buy their confidential immigration files from an official and were offered a chance to "fix" their application so they could stay in the country.<sup>37</sup> In one African country, officials who were not directly involved in immigration control, border protection, or the prevention of migrant smuggling registered hundreds of fraudulent marriages between the country's nationals and foreign nationals, so as to help the latter get permanent resident status in the country.<sup>38</sup> Asylum procedures are also often reportedly abused by smuggling rings that provide migrants with scenarios of persecution and documents to support their illegitimate claim for international protection.<sup>39</sup>

Each of the links and their impact will be reviewed here separately. In addition, corruption within financial, regulatory and other institutions makes the laundering of the illegal profits made by smugglers and their accomplices possible.

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reports that irregular migrants in Malawi began taking more dangerous routes following a law enforcement crackdown: "Horn Migrants Use New, More Dangerous, Routes through Malawi" KARONGA, 21 January 2013, Humanitarian News and Analysis. <http://www.irinnews.org/Report/97289/Horn-migrants-use-new-more-dangerous-routes-through-Malawi>.

<sup>37</sup> Mahmood, M. (2013, November, 11). 'My man can fix immigration papers to keep you in Britain'. *The Sunday Times*. Retrieved from [http://www.thesundaytimes.co.uk/sto/news/uk\\_news/National/article820984.ece](http://www.thesundaytimes.co.uk/sto/news/uk_news/National/article820984.ece).

<sup>38</sup> LaFraniere, S. (2004, September 5). Unwitting wives are prey in South Africa scandal. *The New York Times*. Retrieved from [http://www.nytimes.com/2004/09/05/international/africa/05africa.html?\\_r=0](http://www.nytimes.com/2004/09/05/international/africa/05africa.html?_r=0)

<sup>39</sup> (2012, March 15). Chinese reportedly abuse Australian asylum process. Voice of America. Retrieved from <http://www.voanews.com/content/chinese-reportedly-abusing-australian-asylum-process--142909085/180302.html>

### **2.3.1. Corruption and the Illegal Entry and Stay of Migrants in a Country**

There are many ways in which corruption can be used to facilitate the movement of migrants, their illegal entry or their illegal stay in a country. Some of the most frequent include:

- Petty corruption of law enforcement, immigration control and border control officials who then abuse their function for personal benefits and exploit travelers, migrants, and irregular migrants;
- Corruption, infiltration and intimidation of immigration control and border protection officials to facilitate border crossing and illegal entry into a country;
- Corruption of immigration officials involved in reviewing refugee applications, authorizing an immigrant's stay in the country, or executing deportation orders;
- Corruption of officials to prevent smuggled migrants from returning to their country of origin;
- Abuses of function by officials;
- Systemic corruption in government agencies, including participation in conspiracies to smuggle migrants;
- Corruption of private sector employees (e.g., air carrier and common carrier staff, travel or agencies, private security personnel) to circumvent the controls in place to prevent illegal entry into a country.

#### **2.3.1.1. Corruption of Public Officials**

Not all forms of corruption necessarily involve large conspiracies. Acts of petty corruption or routine corruption involving individuals or small groups of officials may be unrelated to migrant smuggling networks. Officials may have found ways to exploit their position for personal advantages. Some of them may accept bribes to fast track legitimate applications for visas, passports, and other identification documents. They may offer preferential treatment to those who offer a bribe. They may delay the performance of their function until a favour is given or promised, using various techniques to create artificial and unnecessary delays or creating, or threatening to create, excessive difficulties in the required process.

In one country, for example, travellers with or without a proper visa were frequently delayed and intimidated at an airport until they agreed to pay a small bribe to the official verifying their documents. Even though this relatively petty form of corruption may appear insignificant from the point of view of seeking to counteract large scale migrant smuggling conspiracies, it should be noted that these corrupt officials may have been identified by criminal elements and, given that they are compromised, they may be blackmailed into cooperating with migrant smugglers. In some instances, the corrupt conduct can also have dire consequences for the irregular migrants. In one instance, for example, a dozen Central Americans nearly suffocated in a vehicle where they were being held by immigration agents demanding a bribe.

Officials may accept bribes for disclosing confidential or protected information. Law enforcement officials, for example, may tip smugglers about on-going investigations, new

control measures or any other action taken by their agency to detect and prevent migrant smuggling. This type of corruption sometimes plays an important role in facilitating migrant smuggling but is particularly hard to detect.

In exchange for a share of the illicit profits from migrant smuggling activities, officials may refrain from enforcing the law or do so incompetently so as to allow criminals to operate relatively freely. Succumbing to such corruption can often lead these officials to more serious criminal involvement, as their low-level corruption is subject to being further exploited by criminal elements. As noted, since they have already been compromised by their own actions, such officials are more vulnerable to pressure and threats by smugglers who seek their collaboration.

An official may be guilty of “trading in influence”. In one case, for example, a senior immigration official was found using her position to facilitate the illegal entry of foreign workers and their prolonged stay in the country so that they could work for a foreign company doing business locally. She was doing this in exchange for the promise of a comfortable job for her husband within that company and the possibility of post-retirement employment for herself.

It is worth noting that some corrupt officials and migrant smugglers do not necessarily perceive themselves as criminals. Some smugglers perceive themselves as upstanding business people making a living by helping their friends and neighbours. According to a study of migrant smugglers in an Asian country smugglers reported that corruption and bribery are essential components of their operations. Many of the corrupt officials involved in migrant smuggling tended to occupy low-level but crucial government functions such as reviewing and approving passport applications, inspecting travellers at border checkpoints, or producing residential or marital certificates and other documentation.<sup>40</sup> According to the researchers, both migrants and smugglers considered transnational migrant smuggling more in the nature of a “good deed” than a crime, which may help explain why so many otherwise law-abiding people become involved in migrant smuggling.<sup>41</sup> In some cases, the migrants may even believe that they are paying for a legitimate service.

In some cases of migrant smuggling, the corruption involved is an abuse of function or discretion. For example, a corrupt official may “sell” or leak information about police intelligence or warn criminals about forthcoming law enforcement activities.

In one case, an officer responsible for reviewing applications for work visas deliberately stalled the process to create opportunities for his accomplice, an immigration lawyer, to seek commissions from applicants to speed up the process of application. He passed case information to the lawyer who then approached the applicants who eventually fell victim to that scheme. Similarly, an officer responsible for reviewing applications for permanent resident status stalled reviews and called applicants to suggest that they hire the services of a broker/lawyer whom she recommended. She also offered preferential treatment to the clients of the suggested broker/lawyer. In another case, a border control and immigration officer was caught illegally renewing previously granted permits to friends and relatives.

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<sup>40</sup> Zhang, S. and K.-L. Chin (2004). *Characteristics of Human Smugglers*, NIJ Research in Brief, Washington (D.C.): U.S. Department of Justice, National Institute of Justice, p. 10.

<sup>41</sup> Idem.

Such abuses of function are often associated with bureaucracies which allow for broad individual discretion and have inadequate oversight and accountability structures. Abuse also flourishes where decision-making rules are so complex that they neutralize the effectiveness of any accountability mechanisms that do exist. Not all such abuses necessarily compromise the enforcement of the laws the officials are charged with enforcing. For instance, officials may unlawfully use information to which they have access in their position. This was the case, for example, of a senior border protection officer, who used a law enforcement data management system to which he had access in order to access information about someone by whom he was being sued in relation to an alleged assault.

Corruption and intimidation are often two sides of the same coin. For example, some criminal organizations are known to gather intelligence on inspectors at ports of entry (e.g., by using binoculars). They observe border protection officials in order to identify those who have a drinking, gambling, financial or other problem and can easily be compromised.<sup>42</sup> Once they have identified such vulnerable officials, they find ways to further compromise them or offer a bribe or other benefit. The officials are told that if they refuse to cooperate, they or members of their family will be victimized. Once compromised and corrupted, these officials are under constant threat of violence, or of being denounced to the authorities; they no longer feel they have the option of refusing to cooperate with the criminals. The amount of the bribes varies, depending on the services rendered and other circumstances, but they tend to be relatively small and yet sizable enough for the officials to become dependent on receiving them. Fear, rewards and dependency are thus used to control corrupt officials and ensure their continued collaboration.

Officials involved in border protection, immigration control, consular services, and law enforcement may find themselves at a greater risk of corruption than others. Some, because of the function they perform or the position they occupy, have more potential to be corrupted than others and they are sometimes aggressively recruited by organized crime groups involved in migrant smuggling and other forms of transnational crime. In that sense, they belong to a group that presents a “higher risk of misconduct”, a group that deserves special attention from the point of view of corruption prevention. Some functions within law enforcement and border protection agencies may also be at a greater risk of corruption or infiltration by criminal elements because they offer significant opportunities for corruption or are particularly relevant to the operations of migrant smugglers.

While transporting irregular migrants within or through a country, smugglers often have long-standing arrangements with corrupt senior police officials whom they contact and pay in advance when a “shipment” of irregular migrants is being moved to a different location. The senior officials then ensure that their colleagues who are responsible for road blocks and checkpoints are informed and know to let the migrants move without interference. Part of the bribe must then trickle down to the rank and file of the police. In such cases, an entire police unit or police system is compromised and not just a few individual officers.<sup>43</sup>

The collusion between migrant smugglers and corrupt officials sometimes leads to extortion and robbery by these officials. A recent IOM study in East Africa revealed that in some cases,

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<sup>42</sup> See the results of the survey of border protection agencies in the EU: Gounev, P., Dzhekova, R. and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy.

<sup>43</sup> Gastrow, P. (2011). *Termites at Work – A Report on Transnational Organized Crime and State Erosion in Kenya*. New York: International Peace Institute, p. 71.

the military and the police were well-versed in the “benefits of intercepting migrants”.<sup>44</sup> Migrants interviewed for that study told stories of corruption and robbery by police and the military during their journeys.<sup>45</sup> In some countries, being robbed, ‘shaken down’ for small immediate payments, or harassed by police and other officials is also a common experience for irregular migrants.<sup>46</sup>

### **2.3.1.2. Corruption in the private sector**

Private sector firms and employees responsible for producing various documents or permit applications, arranging travel or employment, or facilitating or controlling the movement of goods and people, may be bribed to facilitate a smuggling operation. This sometimes also occurs among charitable or humanitarian organizations and even among staff and volunteers working in immigration assistance and refugee protection agencies. Employees in private security firms, common carriers, airports, ports, security agencies, travel and employment agencies, IT service providers and technicians, and even educational institutions are all potentially vulnerable to bribery by migrant smugglers. Members of the fishing industry may also be recruited by organized crime groups to facilitate migrant smuggling by sea.<sup>47</sup>

Employees of private transportation companies may permit undocumented migrants to stow away as passengers on passenger or cargo ships, ship containers or airliners. In some instances, the individuals involved may simply be trying to further their own legitimate business interests as, for example, in the case of a private travel agency aiding in the issuance of cash purchase airline tickets without verifying the purchaser’s identity or by maintaining inaccurate records, thus making law enforcement more difficult. Corrupt banking and finance officials can also be bribed to provide false documents, or to facilitate the laundering of proceeds of migrant smuggling operations.

There are also examples of bribery in the private sector which are perhaps better described as extortion. For instance, a private employer may misappropriate all or part of the wages earned by irregular migrants, claiming exaggerated or non-existent expenses. The employer may use the threat of exposure or deportation to extract funds from these irregular migrants, sometimes in collusion with immigration or law enforcement officials. In some instances, public officials are active participants in such schemes.

### **2.3.2. Corruption and Fraudulent Documents for the Purpose of Migrant Smuggling**

Various forms of identity-related crime, such as the misappropriation of genuine documents, the theft of blank documents that are then filled out with fabricated identity information,

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<sup>44</sup> IOM (2009). *In Pursuit of the Southern Dream: Victims of Necessity*. Geneva: International Organization for Migration.

<sup>45</sup> See also similar accounts by smuggled migrants reported in: Yitna, G. (2006). *Stranded Ethiopian Migrants in Bossaso, North East Somalia/ Puntland - Field Mission Report*. Nairobi: IOM.

<sup>46</sup> RMMS and DRC (2012). *Desperate Choices – Conditions, Risks & Protection Failures Affecting Ethiopian Migrants in Yemen*. Nairobi: The Regional Mixed Migration Secretariat and the Danish Refugee Council, p. 47.

<sup>47</sup> UNODC (2011). *Transnational Organized Crime in the Fishing Industry*. Vienna: United Nations.



falsification, forgery, the unlawful issuance of documents and the procuring of passports or visas under false pretenses, appear to be on the rise as a means of deceiving border control officials. In 2007, UNODC released a study on “Fraud and the Criminal Misuse and Falsification of Identity”.<sup>48</sup> The study noted the use of corruption to support identity-related crime. For example, passports and similar documents have become difficult to forge or falsify, making the active and passive bribery of officials to obtain a genuine document an easier alternative in many cases. Similarly, crimes of corruption can be used to alter or falsify information in systems used to validate or verify identity.<sup>49</sup>

Some of the ways in which corruption can facilitate the use of fraudulent documents for the purpose of migrant smuggling include:

- Corruption in the issuance of false travel and identity documents;
- Corruption to facilitate the use of fraudulent documents;
- Corruption in the issuance of genuine travel and identity documents on the basis of fraudulent support documents, issued by the public administration or the private sector;
- Corruption of private sector business and organizations in support of fraudulent applications for passports, visas, or permanent residency (e.g., fraudulent certificates of marriage, paternity, filiation, employment, registration in an academic institution).

### 2.3.2.1. Corruption of Public Officials

Fraudulent documentation often plays a major role in migrant smuggling schemes and corruption plays an important role in the production and use of fraudulent documents.<sup>50</sup> One form of documentation fraud involves the buying of passports and visas through corrupt officials in embassies. According to the Programme against Corruption and Organised Crime (PACO), corrupt members of staff at Western embassies may be involved in this form of fraud.<sup>51</sup> In some countries, because of weaknesses in government administration, inefficiency and widespread corruption, it is relatively easy to get genuine documents with partially or completely false information in exchange for a bribe.<sup>52</sup>

Some of the technological advances to protect the integrity of official identification and travel documents can be defeated by corruption. For example, the replacement of a bio-data page in a passport requires the involvement of a person with access to specialized techniques. However, it may be much easier for a corrupt official to issue documents by fraud rather than

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<sup>48</sup> E/CN.15/2007/8 and Add. 1, 2 and 3.

<sup>49</sup> *Idem*, Add. 3, p. 13.

<sup>50</sup> Russian organized crime involved in migrant smuggling in the United States is known to routinely make use of forged documentation and bribery. See: Sukhareenko, A. (2004). "The Use of Corruption by "Russian" Organized Crime in the United States", *Trends in Organized Crime*, 8 (2): 118-129.

<sup>51</sup> Spencer, J., Aromaa, K., Junninen, M., Markina, A., Saar, J. and T. Viljanen (2006). *Organised Crime, Corruption and the Movement of People across Borders in the New Enlarged EU: A Case Study of Estonia, Finland and the UK*. Helsinki: HEUNI.

<sup>52</sup> Carling, J. (2006). *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, IOM Migration Research Series No. 23. Geneva: IOM, p. 23.

to alter a document. Fraudulent supporting documents may be used to obtain a genuine passport or visa.

Corrupt officials may agree not to scrutinize these documents too carefully or may even agree to certify certain documents that they know have been forged or altered. In fact, corruption often ensures that poor-quality falsified or fraudulent documents are not submitted for careful inspection.

Document fraud, often facilitated by corrupt officials, can significantly affect the credibility of the official documentation issued by certain governments and agencies and affect all who are relying on such documents (passports, visas, etc.) to move and travel to other countries or to conduct their business. There are examples of documents from certain countries being blacklisted by other countries or subjected to additional or lengthy verifications for this reason.<sup>53</sup>

Officials may be involved directly in the theft or falsification of official documents. For example, in North America, in the course of an investigation, undercover agents unravelled an on-going scheme whereby several officials working together had found ways to steal blank passports, work permits and visas which they then sold on the black market for use by migrant smugglers. In a South Asian country, there were reports of travel agents making deals for the extension of visas or the issuance of registration papers and various certificates by immigration officials after normal business hours, when there were no cashiers operating at the time and no one to account for cash transactions or to issue receipts. Large sums of money had been misappropriated that way.<sup>54</sup>

In one case, for example, a senior attorney working for an immigration control agency solicited and accepted bribes from dozens of immigrants seeking documentation to stay in the country or face possible deportation. The corrupt official and her spouse even created fictitious companies to file permanent employment certificates. The official was also able to influence the decisions made in the cases of these migrants.<sup>55</sup>

In yet another case, a customs and border protection inspector received large bribes to allow more than a dozen foreign employees of three restaurants and their spouses to illegally extend their stays in the country. The inspector altered law enforcement databases and provided false immigration and travel documents to show the restaurant workers and spouses had just entered the country and were eligible to stay in the country legally for another year, when in fact they were not. Another official was bribed to participate in the brokering of official travel documents to irregular migrants wishing to enter into and travel through the country. He fraudulently produced permits for irregular migrants who did not present themselves in person for inspection, as was required by law.<sup>56</sup>

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<sup>53</sup> Van Dijk, R. (2001), "'Voodoo' on the Doorstep: Young Nigerian Prostitutes and Magic Policing in the Netherlands", *Africa*, 71 (4):558-586.

<sup>54</sup> (2012, January 18). Travel agent held on charges of conniving with MHA official. *The Financial Express*. Retrieved from <http://www.financialexpress.com/news/travel-agent-held-on-charges-of-conniving-with-mha-official/901041>

<sup>55</sup> Federal Bureau of Investigation. *Immigration agency attorney convicted if federal corruption charges for taking thousands of dollars in bribes from immigrants seeking status in U.S.* Retrieved from <http://www.fbi.gov/losangeles/press-releases/2010/la042010.htm>

<sup>56</sup> Immigration and Customs Enforcement. *Former midway airport customs officer indicted for allegedly taking bribes.* Retrieved from <http://www.ice.gov/news/releases/1006/100628chicago.htm>

In a Southeast Asian country, a police officer falsely notified immigration authorities that the continued presence of certain foreigners was required for a police investigation and to act as prosecution witnesses. As a result, they were issued special passes to prolong their stay in the country.<sup>57</sup>

### 2.3.2.2. Corruption in the private sector

A frequent modus operandi for migrant smugglers is ‘visa smuggling’ whereby regular visas (including travel, student and business visas) are obtained through fraudulent means. Visa smuggling is often planned well ahead of the actual travel and combines a variety of methods for different stages of the journey. This may include the creation of fictitious companies to obtain executive visas to a particular destination country for the purpose of working in a phantom branch of that company, with the help of a lawyer or other actor in the destination country. Visa applications can also be supported by other counterfeited documents including flight tickets, boarding passes, and resident permits, often obtained through corruption, to show that the identity of the visa applicant is the same as that in their passport.<sup>58</sup>

Abuse of “approved destination status” processes can result in successful irregular entry of another person. After a person gains entry into a country with a legitimate visa, the passport with the visa is returned to the country of origin with exit stamps, while the person to whom the visa was issued remains in the destination country. In one instance, for example, a national from a South Asian country who was legally in a western country declared his passport “lost” and had it replaced at his country’s consulate. He then sold the original document to a broker in his native land. The broker found someone in need of a passport with a valid foreign visa and sold the doctored document at a high price. In that instance, as is frequently the case, the broker worked in collusion with a travel agency. To smoothe the client’s journey, they offered bribes to airline counter personnel.

In another case, a foreigner travelled to an Asian country under a programme which allowed professional visits. She was registered as a singer with a Karaoke Television establishment. A few months later, she decided not to sing anymore but wished to remain in the country. Through her agent, she made an arrangement for the establishment to falsely maintain her employment contract as a singer, without her actually fulfilling it. Under this arrangement, she agreed to pay \$800 to the employer and \$200 to the agent every month. She then made a false declaration when re-applying for her professional visit pass.<sup>59</sup>

## 2.4. Impeding the Criminal Justice Process

Corruption also threatens the integrity and success of law enforcement and justice agencies responsible for the investigation and prosecution of migrant smuggling activities. In many

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<sup>57</sup> *Corrupt Practices Investigation Bureau*. Retrieved from <http://www.icac.org.hk/news/issue36eng/button2.htm>

<sup>58</sup> UNODC (2010). *Issue Paper - Migrant Smuggling by Air*. Vienna: United Nations, p. 9.

<sup>59</sup> *Corrupt Practices Investigation Bureau*. Retrieved from <http://www.icac.org.hk/news/issue36eng/button2.htm>

instances, as mentioned before, corruption allows migrant smugglers to function with few risks and relative impunity.

There are many ways in which corruption can help smugglers circumvent or defeat law enforcement efforts to investigate and prosecute migrant smuggling. Some of them are:

- Corruption and intimidation of law enforcement officials to prevent the successful investigation of migrant smuggling incidents;
- Corruption and intimidation of law enforcement officials to prevent the successful investigation of allegations of corruption;
- Corruption and intimidation of prosecutors and members of the judiciary to prevent the successful prosecution and conviction of smugglers;
- Corruption relating to the obstruction of justice (e.g., corruption and intimidation of witnesses);
- Corruption to facilitate the laundering of the proceeds of migrant smuggling and other criminal activities;
- Extortion practiced by corrupt law enforcement officials.

In many countries, there are frequent reports of police officers, prosecutors, judges or other officials being bribed to ensure that migrant smuggling activities are not properly investigated or prosecuted or, if they are prosecuted, to ensure a favourable outcome.

There are also numerous examples of bribery in relation to the detention and deportation of irregular migrants. In an East African country, law enforcement officials charged with executing the deportation of irregular migrants, as ordered by a court, accepted bribes in exchange for failing to execute the deportation order. It is thought likely that their supervisors were also involved. In another country, two border control officers arrested migrants who were being smuggled into the country. Once in custody, two of the migrants who were later revealed to be the smugglers, were released from custody after they paid a substantial bribe to the two officers. In a Central American country, government officials were bribed to let a dozen or so irregular migrants escape a detention centre by smashing a hole through a wall. The officials claimed to have heard nothing, and did not report the escape for hours.

In a European country, a border guard helped a member of an organized crime group fabricate a false alibi by entering information into the official information system showing that the criminal had left and re-entered the country on certain dates and had been outside the country during a certain period of crime. In North America, after a two year investigation triggered by a tip from an informant, a special agent in an immigration enforcement unit was caught abusing her function by illegally accessing and transferring sensitive government documents to family members and associates with strong ties to drug trafficking organizations. Similarly, a junior law enforcement officer was intercepted talking about conducting government database checks on members of a drug trafficking organization. The resulting investigation revealed that he had regularly been conducting unauthorized government database checks on members of a smuggling organization and providing that information to the organization.

Even more troubling, are the reported cases of police and border protection officials colluding to facilitate the arrest of smuggled migrants in order to further extract payment

and bribes from them. In some cases, the migrants are physically robbed of all their possessions. In others, they are detained until a relative or other third party pays a bribe (tantamount to a ransom). One study reported cases where smuggled Somali males were vulnerable to demands for extra payments in excess of the agreed fee, apparently to cover additional, unforeseen costs which typically included bribes to cross borders, to get out of trouble and/or to be sprung from jail. The report noted that the frequency of cases in which police and robbers located the smuggled Somalis with a view to extorting them while in transit or while hiding in forested areas or in houses suggested a level of collusion between the police and/or robbers and the smugglers.<sup>60</sup> In a South-East Asian country, there were allegations that the navy and the police, after intercepting migrants arriving by boat, “sold” these individuals to smugglers who extorted them.<sup>61</sup>

Irregular migrants tend to feel vulnerable and try to avoid getting into trouble with the authorities. Too many officials do not hesitate to take advantage of that vulnerability. In a South American country, a group of corrupt officials from various enforcement agencies was arrested on suspicion of practicing extortion. They used their access to immigration data and law enforcement information about irregular migrants to identify potential victims. They then visited them at home, intimidated them and demanded large sums of money from them in order to avoid deportation. In a Middle-Eastern country, migrant workers from Ethiopia whose work permit had expired were harassed by local law enforcement officials who charged them a fixed monthly rate, as a kind of “rent”, in order to avoid deportation. In an East African country, reports were made of immigration personnel at airports and land border checkpoints routinely fleecing irregular migrants and then, in most cases, letting them proceed. In an Asian country where border protection and immigration control officials are poorly remunerated, travellers and migrants in irregular situations have reportedly become a major source of illegal income for these officials. Extracting bribes from thousands of travellers and migrants is a highly organized operation and manifestly occurs with the collusion, consent and active support of higher level officials. The proceeds are distributed throughout the organization.

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<sup>60</sup> IOM (2009). *In Pursuit of the Southern Dream: Victims of Necessity. Assessment of the Irregular Movement of Men from East Africa and the Horn to South Africa*. Geneva: International Organization for Migration, p. 80.

<sup>61</sup> Fisher, J. (2012). "Burmese Refugees Sold on by Thai Officials", BBC News, Phuket, Thailand, 21 January 2013, <http://www.bbc.co.uk/news/world-asia-21115728>.

## 3. Prevention of Corruption

The main approaches to the prevention of migrant smuggling are detailed in the Smuggling of Migrants Protocol. The Protocol identifies several measures that can be taken to prevent migrant smuggling, including border control, information exchange between jurisdictions, measures to ensure the security and control of documents, and public awareness programmes. The prevention of corruption, as was made obvious in the preceding discussion, is also essential to the effective prevention of migrant smuggling.

Systems and organizations in place to control migration, protect borders and prevent migrant smuggling are each vulnerable to corruption in various degrees and in different ways. As a result, the foundation of an effective corruption prevention strategy for any given agency usually resides in a systematic assessment of the risk of corruption at all levels of that agency's operations, the identification of its existing vulnerabilities to corruption, and the development and implementation of an effective risk mitigation strategy. The agency's risk of corruption can be accordingly managed and mitigated in a way which will help prevent migrant smuggling.

In this section, the focus will be on prevention in public agencies, but many of the good practices recommended may be applied in the private sector.

### 3.1. Corruption Prevention

The main methods of preventing corruption within the public agencies responsible for preventing or controlling migrant smuggling are well known. However, despite this theoretical knowledge, actually combating corruption within any large organization, whether in the public or private sectors, usually remains a challenging task.

In a border protection, immigration control or law enforcement agency, a culture of corruption may arise out of failures in a number of related areas. These include:

- Biased or corrupt recruitment, training and promotion practices;
- Inadequate resources;
- Faulty or perverted compensation, reward and incentive structures within the organization;
- Weak governance and weak accountability structures;
- A lack of transparency;
- Cultural traditions that inhibit the development of professional and ethical standards;
- An internal sub-culture which perpetuates an acceptance of corruption and helps legitimize it.

Integrated approaches are therefore required in order to effectively address the numerous factors that enable and propagate corruption.<sup>62</sup> In a given agency, preventing corruption generally involves taking decisive action in a number of areas,<sup>63</sup> including:

### **Policy and Governance**

- Adopting and enforcing a no-tolerance policy *vis a vis* corruption;
- Adopting high ethical standards and codes of conduct for everyone in the organization in line with international standards.<sup>64</sup>

### **Decision Making**

- Promoting transparency and accountability in all decisions;
- Implementing “four eyes” policies establishing a requirement for every decision to be taken by at least two people and obligating front-line officers to work in rotating teams of at least two.

### **Human Resources Management**

- Implementing good human resources management policies and practices, including sound recruitment, screening, vetting, training, promotion and disciplinary measures;
- Identifying those at “risk of misconduct” and taking special measures to supervise, protect and support them (including, for example, lifestyle checks);
- Identifying functions, processes or systems within the organization that might be vulnerable to corruption or under special pressure to engage in corrupt practices;
- Reviewing the organization’s incentives structure;
- Providing clear guidance and training in the use of discretionary authority and making sure that it is accompanied by appropriate supervision and oversight;
- Strengthening the management and supervision functions across the agency, and subjecting personnel in high-risk roles to particularly strong supervision;
- Proceeding with regular random changes in shift allocation and duration, random rotation of officers with respect to duty rosters, rotation of team members and rotation of officers at different posts;<sup>65</sup>
- Planning for the rotation of staff to different locations, posts or positions to reduce the likelihood of entrenched corrupt relations.<sup>66</sup>

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<sup>62</sup> The World Customs Organization, for example, has identified a number of areas that should be focused on in order to prevent corruption in customs operations: leadership and commitment; adequate regulatory framework; transparency; automation; reform and modernization; audit and investigation; code of conduct; human resource management; and morale and organizational culture.

<sup>63</sup> See, for example: Miller, J. (2003). *Police Corruption in England and Wales: Assessment of Current Evidence*, Report 11/03. London: Home Office..

<sup>64</sup> Code of Conduct for Law Enforcement Officers, General Assembly Resolution 34/169 of 17 Dec. 1979 A/RES/34/169

<sup>65</sup> Gounev, P., Dzhekova, R. and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy, p. 92.

<sup>66</sup> Idem

### **Inspections, Audits and Oversight**

- Making use, as appropriate, of electronic surveillance and monitoring equipment;
- Setting in place effective inspection, independent audit and oversight functions;
- Implementing integrity testing procedures and protocols;
- Conducting regular independent audits of all functions within the organization;
- Providing for an independent oversight function for all activities of the agency.

### **Complaint Mechanisms**

- Implementing an independent complaints mechanism accompanied by appropriate follow-up actions and, when appropriate, credible disciplinary measures;
- Providing protection for whistle-blowers.

### **Response to Corruption**

- Detecting, investigating and prosecuting incidents of corruption;
- Inter-agency collaboration in detecting and investigating corruption.

### **Resources**

- Making sure that adequate human and financial resources are available for the prevention, detection, investigation and prosecution of corruption.

The promotion of integrity, honesty and responsibility among public officials requires that they be adequately trained, as well as supported and rewarded for ethical conduct. Codes of conduct can be adopted and implemented, stating the standards of behaviour expected of public officials and translating them into specific and clear expectations and requirements of conduct.<sup>67</sup>

There must also be requirements and means for public officials to disclose financial or family interests, gifts and hospitality. Officials must be encouraged to report or discuss concerns not only about the conduct of other officials but also pressure and undue influence that might be applied to them by colleagues or others. Officials must be assured that reporting will be treated confidentially and will not adversely affect their career.

Fair organizational practices are also important. Various aspects of organizational justice have implications for how staff react when faced with different management approaches. Organizations that are perceived as unjust by their employees or management practices that are perceived as lacking in integrity or legitimacy create a climate that may be conducive to employee deviance and misconduct.<sup>68</sup> For example, since rotation of staff may be a useful means to prevent corruption, policies should be implemented to ensure a fair, transparent system of postings and regular turnover of staff within posts.<sup>69</sup>

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<sup>67</sup> See also: Prenzler, T. (2009). *Police Corruption: Preventing Misconduct and Maintaining Integrity*. Boca Raton FL: CRC Press-Taylor and Francis.

<sup>68</sup> Wolfe, S. E. and A. R. Piquero (2011). "Organisational Justice and Police Misconduct", *Criminal Justice and Behavior*, 38 (4): 332-353.

<sup>69</sup> Miller, J. (2003). *Police Corruption in England and Wales: Assessment of Current Evidence*, Report 11/03. London: Home Office.



### 3.2. Assessing the Risk of Corruption

The implementation of anti-corruption measures should ideally rest on a systematic assessment of the risk of corruption in law enforcement, border protection, immigration and other agencies concerned with migrant smuggling and irregular migration. A systematic review should include an analysis of existing practices and systems, as well as an assessment of the threats and pressures to which they must respond, and the agency's capacity to mitigate the risk of these materializing.<sup>70</sup>

A corruption vulnerability assessment process can be extremely useful as an instrumental step in addressing corruption and understanding the nature of the problem. This typically involves process mapping, identifying and classifying risks, checking existing controls and evaluating the adequacy of existing safeguards.

Posts, functions or activities that are particularly vulnerable to corruption should be identified - for example, functions that involve discretionary authority or activities that may not be easily supervised. For instance, some agencies have found that overseas consular services and visa regimes are particularly vulnerable, especially when they must recruit personnel locally. Other agencies hiring very large numbers of border guards found that employees with family relations and friendships on both sides of a border may be particularly vulnerable to pressure to help their relatives and friends cross illegally.

Additionally, some borders may have particular points of vulnerability. A survey of border control agencies in Europe revealed that land borders and sea borders provide significantly more corruption opportunities than major border crossing points and airports. Along land borders, the study noted, border patrols often find themselves in a situation where they are unsupervised and the probability of detection is minimal.<sup>71</sup> These vulnerable points may be at particular times of the day, or particular times on particular days, or at the point of shift change.<sup>72</sup> They represent weaknesses that may be exploited by migrant smugglers.

Similarly, noting that in cases involving smuggling by air, the smugglers tend to rely more frequently on fraudulent documents and visa fraud, and that the vulnerabilities to corruption in such instances may exist within diplomatic staff and other personnel delivering identification and travel documents.<sup>73</sup>

The nature and extent of the risk involved at each vulnerable point must be well understood. Some border protection and immigration control agencies, for example, have found that surveys of migrant smugglers who were arrested or of migrant repatriates can help understand where existing practices and systems are most vulnerable. At an operational level, it is important for managers and supervisors to carry out a risk assessment in relation to the activities and functions for which they are responsible. They may find it useful to hold discussions with officials of various ranks on how to protect both them and the activities from corruption.

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<sup>70</sup> Mercer, T. (2012). "Border Security: Responding to Modern-Day Challenges ", *Migration Policy and Practice*, 2 (3): 9-13.

<sup>71</sup> Gounev, P., Dzhekova, R., and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy, p. 59.

<sup>72</sup> Spencer, J., Aromaa, K., Junninen, M., Markina, A., Saar, J., and T. Viljanen (2006). *Organised Crime, Corruption and the Movement of People across Borders in the New Enlarged EU: A Case Study of Estonia, Finland and the UK*, Helsinki: HEUNI.

<sup>73</sup> UNODC (2010). *Issue Paper: Migrant Smuggling by Air*. Vienna: United Nations.

For example, it may be useful to determine the specific risks of corrupt behaviour at the various stages of the border clearance process and, if appropriate, to develop a “risk map” outlining the extent to which various elements of the existing process facilitate potential violations and create opportunities for corruption.

A similar exercise can be undertaken with respect to the visa application, review and issuance process in consulates.

Such an exercise, for example, can address the following questions:

- Where are the opportunities for corruption?
- Has the entire consular staff been screened and vetted?
- Has the authority level of each category of staff been clearly delineated and communicated to?
- Are the responsibilities given to staff (including foreign nationals) commensurate with their security clearance level?
- Are foreign nationals involved in providing some of the services vulnerable to corruption in different ways than other staff?
- How is the security clearance level established?
- Who has access to blank visas and other official documents?
- How and where are information systems most vulnerable to penetration, misuse, or unauthorized access or alterations?
- Who can approve an application for a visa and are there different levels of approval authority for different types of visas?

### 3.3. Developing a Corruption Risk Mitigation Strategy

Every agency involved in immigration control, border protection or law enforcement should develop a comprehensive corruption risk mitigation strategy, including specific measures to prevent the kind of corruption generally related to migrant smuggling. The kind of risk assessment exercise mentioned above should obviously provide the starting point for designing such a strategy, but the strategy should then be monitored, tested and refined periodically.

At a minimum, such risk mitigation strategies would include:

- Collaboration with private sector businesses and organizations that may be vulnerable to corruption or intimidation in relation to migrant smuggling;
- Periodic reviews of immigration, travel and identity document control systems and related regulations to ensure that they do not offer loopholes and opportunities for corruption;
- Use of technology to protect the integrity of documents and hold accountable all officials responsible for approving or issuing them;
- Data protection measures;

- Use of technology to protect the integrity of official databases and prevent their unlawful use ;
- Efficient, transparent and objective systems for the recruitment, hiring, retention, promotion and retirement of public officials involved in border protection, immigration control, consular services, and law enforcement;
- Adoption of corruption prevention procedures and human resources management as part of a workforce integrity plan (e.g., use of polygraph examinations to screen applicants and potential recruits; regular appraisals; requirement of disclosure of conflicts of interest, incompatibilities and associated activities);
- Implementation of integrity training programmes for all employees as well as corruption prevention training for line managers;<sup>74</sup>
- Adoption of guidelines on what constitutes corruption in the specific context of the agency and what constitutes a conflict of interest, how to avoid it, with whom to consult, to whom to report to and what the consequences are;
- Systems for the declaration and registration of assets, interests and gifts by all staff and managers, as well as adequate procedures for monitoring the accuracy of those declarations;
- Measures to enhance information security, including use of information technology and physical security policies and the promotion of a ‘need-to-know’ culture;
- Regular inspections and audits of all systems, units, functions and practices;
- Recurring integrity training to equip staff with the tools they need to recognize, report, and respond to the integrity challenges they encounter, as well as integrity and leadership training for supervisory and management personnel;
- Policies and procedures to mitigate the risk of corruption linked to post-separation employment;
- Measures to encourage and facilitate the confidential reporting of corrupt activities and other related misconducts within the various agencies involved;
- Measures to encourage and facilitate the confidential reporting of corrupt activities by migrants, non-governmental organizations, and members of the public;
- Measures to protect those who report in good faith alleged incidents of corruption or misconduct among officials responsible for immigration control, border protection, and law enforcement (“whistleblower” protection);
- Measures to ensure the independent, expeditious and effective investigation of alleged incidents of corruption.

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<sup>74</sup> For example, the International Centre for Migration Policy Development (ICMPD) and other international organizations include corruption prevention in their training programmes. See: European Commission (2010). “Chapter 11- Fighting Corruption”, *Guidelines for Integrated Border Management in European Commission External Cooperation*. Brussels: EuropeAid Cooperation Office, European Commission.

***An example of a comprehensive risk mitigation approach***

In the United States of America the Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) within the U.S. Department of Homeland Security (DHS) works on the basis of an overall risk mitigation strategy that ensures the integrity of ICE through a three tier approach involving its security, inspections and investigations. Each component is of vital importance. The **security component** involves initial screening of the workforce for employment suitability, criminal record checks, periodic in-service background investigations and physical protection of information and facilities. OPR administers a continuous evaluation program which is a method of evaluating people after their initial investigation and adjudication. These evaluations depend on employees and supervisors to report incidents of misconduct as well as events that could potentially have a significant effect on an employee's personal finances, thereby potentially making him susceptible to committing acts of fraud.<sup>75</sup>

The **inspection component** verifies the workforce adherence to agency policy in order to mitigate operational and procedural risks. The OPR utilizes the inspectional approach to identify problematic areas for programme offices that require corrective action. The OPR inspectional strategy proactively reduces vulnerabilities by providing inspectional services and requiring programme offices to review procedures that are susceptible to corruption.

The **investigation component** collects and documents facts for resolution of alleged employee misconduct for both ICE and Customs and Border Protection (CBP).<sup>76</sup> The OPR prevents corruption activity involving the immigration system through intelligent enforcement aimed at protecting the integrity of the immigration system through conducting internal criminal and administrative investigations. The OPR uses a variety of methods to accomplish this task. The use of undercover operations and confidential sources has proven extremely successful.

In addition, employees are exposed to continuous **integrity-based training** principles throughout their career in an effort to establish and maintain a culture of integrity throughout the organization. The OPR conducts integrity training in a classroom setting and through web-based programs to reinforce good behaviour patterns. All new law enforcement agents and officers, as well as all new supervisors, receive integrity training at the ICE Academy. ICE has also developed a mandatory annual Integrity Awareness Programme Training for all employees, which reinforces the standard that every employee is responsible for upholding the integrity of ICE.

Because the falsification of travel or identity documents is often instrumental in migrant smuggling operations, the integrity of immigration, travel and identity document control

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<sup>75</sup> It is worth noting that CBP is mandated to conduct pre-employment polygraph screening for all law enforcement positions, something which has proved extremely successful in identifying applicants that are unsuitable for employment.

<sup>76</sup> OPR has been delegated the authority to conduct investigations involving CBP employees since the creation of DHS in 2003, and does so in coordination with CBP's Office of Internal Affairs.

systems is crucial to the prevention of migrant smuggling. The control systems dealing with these documents may contain loopholes and opportunities for corruption. A corruption risk mitigation strategy requires that the control systems and associated policies and regulations be reviewed periodically and strengthened as necessary. Technology can be used to protect the integrity of documents and official databases (e.g., use of surveillance cameras; electronic tracking of applications; limited and secure access to documents; electronic monitoring of data entries and queries). Measures can be taken to prevent the misuse of documents and hold officials accountable for approving or issuing documents and protecting their confidentiality (e.g., creating an obligation to protect confidential information as a condition of employment and/or an accountability structure for data management and protection).

A number of specific measures can be taken to protect the integrity of data and databases, including:

- Clearly defining the responsibilities of persons involved in data security, possibly in connection with the respective job specifications;
- Ensuring that only persons with specific authorisation (of different levels) may have access to data and to equipment used to process data, and recording their access to data;
- Ensuring that the relevant databases may only be accessed when this is required to carry out the tasks for which the user is responsible;
- Establishing chains of command and clearly defining procedures so as to ensure that security incidents or suspected security incidents are reported as quickly as possible;
- Ensuring that all contravention of security rules are disciplined to the extent necessary.<sup>77</sup>

These risk mitigation steps are in line with the Smuggling of Migrants Protocol by which States Parties are required to take measures to ensure that travel or identity documents issued by them are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; to additionally ensure the integrity and security of travel or identity documents issued by them; and to prevent their unlawful creation, issuance and use (article 12 - security and control of documents). They are also required, upon request, to verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in their name and suspected of being used for the smuggling of migrants (article 13 - legitimacy and validity of documents). However, many of the elaborate controls and precautions put in place by States Parties can be defeated by corruption and identity-related crimes.

Document security measures should include both measures intended to make documents more difficult to forge and system-based measures intended to protect authentic documents and issuance systems from theft, diversion and corrupt issuance. Document validation and verification practices can be strengthened, especially through the use of telecommunications and databases protected by encryption and similar measures used to compare the document

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<sup>77</sup> See: European Commission (2010). *Guidelines for Integrated Border Management in European Commission External Cooperation*. Brussels: EuropeAid Cooperation Office, European Commission, p. 97.

and the person holding it, with reference information at the time the document is used. Biometric elements can be used to link identity to unique physical characteristics.

Security audits to assess overall system security can be conducted, examining all elements of the system, including: document issuance and revocation; the updating of documents and information; information security practices; the validity and renewal cycle of documents; and the global interoperability of systems and security measures.

#### ***A service of the International Organization for Migration***

The International Organization for Migration (IOM) has developed Immigration and Visa Support Solutions (IVSS) for governments and migrants worldwide. Within this scope of work, IOM operates Visa Application Centres (VACs) on behalf of diplomatic missions. IOM operated Visa Application Centres handle all the time-consuming administrative tasks of the visa application process and work to ensure that only properly completed visa applications are submitted, along with all required supporting documentation. Such outsourcing partnerships result in reduced costs and workloads for visa and immigration offices, faster visa processing, and improved service standards for visa applicants. Most importantly, such partnerships enable visa and immigration officers to make informed decisions based on complete information and assist officers to focus on their core function of delivering visas. In support of national migration programmes, and with the consent of the applicant, IOM facilitates verification with the issuing authority, verifying documents such as academic records and trade qualifications, work references and work records, as well as public legal documents such as birth, death, marriage and divorce certificates, adoption papers and passports. IOM also conducts due diligence site visits when invited to do so by governments, as required by said governments. These services have the potential to reduce the risk of corruption in embassies and consular services.<sup>78</sup>

### **3.4. Implementing, Testing and Refining a Risk Mitigation Strategy**

Agencies must take steps to assess the effectiveness of the pro-integrity and corruption prevention measures they have implemented and undertake to improve them if necessary.

A most important part of any risk mitigation strategy is the process of “integrity assessment” or “testing”. Integrity testing is a continuous process whereby the various aspects of an agency’s risk mitigation strategy are subjected to a rigorous test to ensure that they actually function and address the particular risk they were designed to mitigate. It is a form of audit in which the risk mitigation strategies and the control process that have been put in place are tested to ascertain that they are actually applied and, if so, with what results. This on-going process provides a basis for constantly refining and improving the agency’s corruption risk mitigation measures.

Public integrity assessment tools usually aim at assessing the institutional framework for promoting integrity and combating corruption across the public sector and/or to identify

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<sup>78</sup> IOM (2011). *The International Organization for Migration and Immigration and Visa Support Solutions*. Geneva: IOM.

corruption and corruption risks within specific government agencies and/or among public officials. The majority of assessment tools focus on assessing the integrity of an institution as a whole, as opposed to that of individuals. In some instances, institutions and agencies have tested public officials' integrity by simulating corruption opportunities (i.e., integrity testing) or checking their lifestyle and background (i.e., lifestyle check). This other type of "integrity test" focuses on individuals rather than systems and institutions and is more likely to prove relevant to the task of detecting corruption rather than to the development of comprehensive risk mitigation strategies. The recent survey conducted on behalf of FRONTEX showed that, within the European Union, methods of integrity testing are usually employed during investigations, rather than for corruption prevention or as an on-going monitoring measure.<sup>79</sup>

The Organisation for Economic Co-operation and Development (OECD) has developed an assessment framework for public sector integrity which provides policy makers and managers with a useful roadmap to design and organize sound assessments in specific public organizations and sectors. It includes practical checklists, decision-making tools and options for methodologies based on good practices. That tool contains an inventory of methods and solutions used worldwide for conducting well-designed assessments.<sup>80</sup>

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<sup>79</sup> Gounev, P., Dzhékova, R., and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy, p. 99.

<sup>80</sup> OECD (2005). *Public Sector Integrity: A Framework for Assessment*. Paris: OECD.

## 4. Detection and Investigation of Corruption Related to Migrant Smuggling

Early detection of corrupt conduct and schemes is vital in order to limit the spread of corruption within an organization and to minimise the damage it causes. Supervisors and managers can often detect possible corrupt conduct through supervision and checking processes. Detection can be greatly facilitated by an effective internal organizational reporting system, sound and accessible complaint and grievance processes and a comprehensive internal audit and work review programme. Detection of corruption can also occur in the process of investigating migrant smuggling cases.

In this section, the focus will be on prevention in public agencies, but many of the good practices recommended may be applied in the private sector.

### 4.1. Detection of Corruption

#### 4.1.1. Awareness raising and training

All supervisors and senior managers should be alert to the risk of corruption in their respective areas of responsibility. They need to have an understanding of what corruption is and how it can occur. They should be aware of things that might constitute red flags, or indicators of corruption. Corruption is likely to continue undetected if the relevant managers and supervisors do not remain alert to the possibility of corrupt conduct and are essentially unaware of the corruption risks in their own respective areas of responsibility.

#### 4.1.2. Indicators of corruption

Some “indicators of migrant smuggling” have been identified which may alert investigators and others to the possible presence of migrant smuggling.<sup>81</sup> Similar indicators can be developed and used within an agency to detect potential incidents of corruption. The following are just a few examples:

- A certain office or post is always late in submitting activity reports and data that can be used to monitor its activities. The data submitted is full of mistakes and corrections;
- An individual never takes holidays and therefore does not create opportunities for others to understand how he performs his functions;

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<sup>81</sup> See: UNODC (2011). *In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants*. New York: United Nations.



- Some checks and balance systems in place to monitor decisions taken by certain individuals have been neutralized;
- Certain types of smuggling operations (involving certain groups, regions, nationals) are rarely if ever investigated by a certain law enforcement agency;
- Important documents are frequently lost, including documents and forms that are hard to falsify;
- A certain border control unit rarely finds difficulty with travellers' documentation or refuses entry to anyone;
- Certain individuals visibly live above their means and have seemingly acquired new wealth without a credible explanation;
- The number of complaints concerning an office is either much higher or much lower than the number of complaints normally received about an office of similar size and importance;
- Investigations are suddenly stopped without explanation;
- Certain types of investigations are never or very rarely brought to completion.

***A controversial detection means: integrity testing***

Reported by some experts as a successful means of detecting corruption, integrity testing is not authorized in many legal systems which find such methods to be in breach of fundamental principles. In jurisdictions where integrity testing is allowed, extensive safeguards need to be in place to avoid any human rights abuses and to ensure admissibility of the evidence gathered in such a way in court.

According to the OECD, "integrity testing" is a tool by which public officials are deliberately placed in potentially compromising positions without their knowledge, and tested, so that their resulting actions can be scrutinized and evaluated by the relevant authorities.<sup>82</sup> There are two main types of integrity tests: (i) random, which applies to any official in any government agency/unit; and, (ii) targeted, which applies only to officials suspected of corruption. For example, an official may be offered what appears to be a genuine bribe by a person acting as a member of the public, while under surveillance by the official's employer or a law enforcement or anti-corruption agency.<sup>83</sup> Other methods include: the tracking, surveillance and monitoring of targeted officials, their movements, their associates, telephone calls, financial transactions, and other indicators of possible corrupt activity; the use of polygraph tests; background/security checks of potential employees; random or targeted inspections of an employee's workplace or vehicles; document-based inspections; drug and alcohol tests; monitoring of personal life-styles; comparing disclosed income with spending; and assessment of debt.<sup>84</sup>

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<sup>82</sup> OECD (2005). *Public Sector Integrity: A Framework for Assessment*. Paris: Organisation for Economic Co-Operation and Development, p. 68.

<sup>83</sup> Idem.

<sup>84</sup> Gounev, P., Dzhekova, R. and T. Bezlov (2012). *Study of Anti-corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy.

### ***4.1.3. Effective supervision and work reviews***

Managers should be accountable for the work performed in their areas of responsibility. They should have processes in place to ensure that the work performed in their areas of responsibility is correctly carried out and performed in the manner expected by the agency. Managers should also conduct regular work reviews.

Work reviews are processes and systems that review transactions and other work performed by staff to ensure that it is correct and consistent with agency policy. Work review processes can be designed specifically to identify corrupt conduct. Ideally, such processes should occur in the ordinary course of operations, including during regular management and supervisory activities.

Work reviews can be done regularly as part of an agency's on-going programme or randomly in response to a particular concern, such as identification of a new corruption risk or elevation of an existing risk. As part of an agency's corruption risk mitigation process, work review processes should be monitored and evaluated to ensure that they operate as intended.

Effective supervision and performance checking practices are an essential part of any effective strategy for detecting corruption. They are also an important means of preventing corruption by reducing the opportunities for motivated individuals to engage in corrupt conduct. In fact, a review of past cases of corruption in an agency or a unit often reveals that inadequate supervision had contributed to the problem.

Managers at all levels must be held accountable for the actions and work of their staff. They need to be proactive in their management styles. They need to actively supervise their staff and have measures and systems in place to inform them about what their staff is doing and how they are doing it. Direct supervisors should have a reasonable understanding of each staff member's level of skill, attitudes and overall performance. They should be alert to signs that staff are experiencing difficulties in the workplace or require assistance.

### ***4.1.4. Complaints and grievances***

An effective complaints system that deals with complaints and reports made by customers or others outside an agency can provide information that may be useful to an agency in detecting corrupt conduct even if it does not specifically refer to corrupt conduct.

Any individual complaint, whether is about quality of service, delays, or unprofessional conduct, may lead to an investigation which can uncover corrupt conduct. Well trained staff and managers should be available to receive and respond to these complaints. In addition, agencies should regularly analyse their complaints data to identify trends, problematic staff, units, locations or functions, and other matters that might require further investigation. This analysis should be provided to senior management on a regular basis and be used in the agency's corruption risk identification process.

### ***4.1.5. Internal reporting***

Because corruption can affect the very agencies that are meant to control migrant smuggling, it is usually difficult to detect it without the help of people within these agencies. An

important means of identifying breaches of a code of conduct and potential incidents of corruption is to introduce an effective system for reporting suspected misconducts in general and corruption in particular (whistleblowing).

Agencies should have measures in place to facilitate the reporting by public officials or members of the public of acts of corruption, misconduct, or conflicts of interest that come to their attention. Confidential phone lines and other practical measures may be used for that purpose. Poster campaigns and other means to encourage reporting may also be considered.

Whistle-blowing, or public interest disclosure, should be encouraged in order to tackle corruption and misconduct (UNCAC, article 8). Whistleblower protection may be mandated in national legislation. Protecting whistleblowers against reprisal is essential to ensure public interest disclosure and, ultimately, the integrity of the organization (UNCAC, article 33).<sup>85</sup> Ensuring that whistleblowers do not suffer negative consequences within or outside the agency should be an organizational priority. It is also important to create protected opportunities to “blow the whistle” without raising suspicion.<sup>86</sup> Without strong measures to protect the confidentiality of the information received and, in particular, the identity of the individual bringing the matter to the attention of the authorities, reports of corruption and misconduct will not be forthcoming.

Reports of suspicious activities potentially involving corruption or other forms of misconduct by border protection, immigration control and law enforcement officials must obviously be followed by diligent investigations. Decisions concerning any aspects of these investigations must be taken independently and lead, as necessary, to disciplinary measures or effective prosecution.

#### ***4.1.6. Use of informants and witnesses***

Given the consensual and secretive nature of many corruption offences, in the majority of cases, persons who have information about these incidents fail to report them to the police, either because they fear the consequences of doing so or wish to avoid incriminating themselves.

Corruption investigations tend to require the identification of individuals who are in a position to assist in an investigation by providing information about a corrupt official and his or her activities. Information sources vary, depending on the nature and extent of the cooperation they provide to investigators. To be successful, investigators must be experienced in the identification and handling of witnesses (who may have reported a single instance of corrupt conduct) and “sources” (able to provide information on a continuing basis). This places a heavy onus on investigators to exercise good judgment in managing the activities of sources and witnesses and to have appropriate procedures in place for the processing of the information they provide and, if necessary, for protecting their identity.

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<sup>85</sup> Under article 33 of UNCAC, States Parties are required to consider incorporating into their domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

<sup>86</sup> Punch, M. (2009). *Police Corruption, Deviance, Accountability and Reform in Policing*. Cullompton: Willan Publishing.

Smuggled migrants and even the smugglers themselves may be prepared to give information and evidence against corrupt officials. In countries where a plea discussion (bargaining) system exists or where leniency can be offered to those who collaborate with the investigation of a crime, smugglers may be persuaded to assist in the investigation of alleged corruption or bribery offences. Because they may be exposing themselves to considerable personal risk by doing so, it is often necessary to offer informants and witnesses special protection against intimidation or retaliation.<sup>87</sup>

Physical and psychological intimidation of witnesses and their relatives can and does take place in a variety of contexts. The successful investigation or prosecution of corruption, particularly when it is related to organized crime activities, usually requires that effective measures be taken to protect witnesses and persons who have participated in organized criminal groups or in corruption related offences and wish to cooperate with law enforcement (as required by the UNCAC (articles 32 and 37) and UNTOC (articles 24 and 26)).

These measures include legislative and practical measures to ensure that witnesses may testify freely and without intimidation, including the criminalization of acts of intimidation or reprisals, the use of alternative methods of providing evidence, physical protection, relocation programmes, permitting limitations on the disclosure of information concerning their identity or whereabouts, and in exceptional circumstances, protecting the anonymity of a person providing evidence.

In some instances, incentives may be offered to informants, smuggled migrants or smugglers to provide information and collaborate in the investigation of suspected corruption. In the case of a smuggled migrant, for example, this may assume the form of some financial assistance or an offer of a temporary residence permit.

#### **4.1.7. Detection of corruption during migrant smuggling investigations**

It is not uncommon for signs of corruption or suspected corruption to emerge during a routine investigation of migrant smuggling cases. However, that information does not necessarily lead to a follow-up investigation. This is so because it is not always necessary to establish that the crime was facilitated by corruption in order to conclude the investigation and obtain a conviction. Thus, the evidence of corruption is sometimes not acted upon or otherwise dealt with. In many instances, the corruption does not take place in the country where the investigation is being conducted and there may be little evidence that it actually took place. There may indeed be some valid reasons for not pursuing that aspect of the investigation more actively. However, there is always a risk that undue pressure has been placed on the investigators to dissuade them from pursuing the corruption aspect of their investigation. There may also be pressure exercised on the smugglers to admit to the crime or plead guilty in order to bring to an end, any further investigation of corruption, collusion or complicity.

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<sup>87</sup> On witness protection, see: UNODC (2008). *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*. New York: United Nations. Also, Dandurand, Y. and K. Farr (2010). *A Review of Selected Witness Protection Programs*. Ottawa: Law Enforcement and Policy Branch, Public Safety Canada.

In these situations, it is preferable to open an additional investigation focused on the potential corruption, or to bring about the initiation of such an investigation by a specialized anti-corruption unit. It is also necessary to keep track of any such evidence of corruption that may surface in the course of several migrant smuggling investigations and analyse it regularly to identify any recurring patterns.

It is important for officers responsible for investigating migrant smuggling cases to establish good working relationships with internal investigation teams and specialized corruption investigation teams or bodies. In some instances, as will be described later, joint investigation teams may be required.

#### **4.1.8. Data analysis**

A key method of detecting the possible presence of corruption related to migrant smuggling operations is the collection and analysis of systemic intelligence and data. As part of an internal audit, a work review or a probe, data analysis techniques can be used to detect corrupt conduct. Data can be analysed retrospectively or continuously, and for example, on a daily, weekly or monthly basis. A wide range of data, including surveillance data, can be collected to monitor the ‘ethical health’ of a police force or other key agency. This process can be used to identify risks and problems within the organization.<sup>88</sup>

“Data mining” where, for example, cases already cleared are searched for certain patterns, and “data washing” where comparisons between two different sets of data are made to detect anomalies, can both be useful.<sup>89</sup> Such analyses can help identify patterns, such as unexpected relationships between officials, unexpected frequent contacts among certain officers or suspicious contacts between officers and private businesses, which may reveal the potential presence of fraudulent activity. These analyses can compare computer records held for different purposes or by different bodies to identify discrepancies and anomalies. In this way, thousands of official transactions can be analyzed efficiently and cost effectively.

At the operational level, as part of their supervisory and work review processes, line managers can make use of simple data analysis tools and techniques to extract information that may indicate fraudulent activities in their areas of responsibility. This may include looking for the following:

- Patterns of non-enforcement or selective enforcement of laws and regulations;
- Unusual patterns or coincidences in the behaviour of officers (including any potential signs of collusion);
- Certain unusual patterns of border crossing, at certain checkpoints, certain times, or when certain individuals are in charge;
- Patterns in the frequency of identification (or non-identification) of suspicious or forged documents;
- Patterns of “errors” in recording data, completing forms or reporting;

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<sup>88</sup> Miller, J. (2003). *Police Corruption in England and Wales: Assessment of Current Evidence*. London: Home Office.

<sup>89</sup> Gounev, P., Dzhekova, R., and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy, p. 109.

- Anomalies or unexpected changes in financial reports and accounts;
- Relationships between individuals, organizations and events.

Such patterns may become even clearer when various enforcement agencies put their information together and compare their data, sometimes across borders. If data are automated, various types of relational analysis software can be applied to border crossing, operational immigration, and enforcement data.

#### **4.1.9. Internal audits**

An internal audit involves an independent, objective review designed to systematically evaluate, and eventually help improve, the effectiveness of risk management, control, reporting and governance processes within an organization. Internal auditing covers not only an organization's finance function, but all the operations and systems in an organization. An internal audit may specifically focus, for example, on an agency's corruption risk prevention and mitigation strategies and programmes. Internal audits are an important way in which an agency can detect fraud and corruption. Thus, internal audits have a role to play in both the prevention and the detection of corruption.

#### **4.1.10. Role of oversight agencies**

Most modern law enforcement and border control agencies function under the vigilant eye of an independent oversight agency which has some direct responsibility for the prevention of corruption within the agency. These agencies may be called upon to play an active role in preventing and detecting corrupt practices related to migrant smuggling.

These oversight agencies often rely on multi-jurisdictional, multi-agency task forces through which the many concerned agencies share information, intelligence, and investigative resources in an effort to combat corruption related to migrant smuggling.

## **4.2. Investigation of Corruption**

Decision-making concerning corruption investigations should ideally be strategic, taking into account organizational risks, public risks, requirements for justice, prospects of success, and resource implications. Realistically, efficient investigations might also involve focusing resources primarily on cases with the most serious corruption facets.

The investigations are often complicated by the fact that it is often difficult to obtain evidence to corroborate tips and other information about potentially corrupt conduct. Corruption cases, like all conspiracies, present some particular investigative difficulties. For example, effective action against corruption in a law enforcement or border protection agency requires an internal or external capacity to conduct complex investigations. In some countries, the use of specialized, multi-agency and sometimes multi-jurisdiction task forces has proven particularly successful.

Most agencies still rely on reactive investigations (following a complaint or a tip) rather than proactive investigations (initiated on the basis of information collected by the agency itself or

by an external oversight body). The results that can be achieved by reactive investigations are often limited and the difficulties of obtaining corroborating evidence of corruption after a complaint can be substantial.<sup>90</sup> This is why proactive investigations based on audit results, financial investigations, electronic surveillance, undercover agents, integrity testing, and data mining are now frequently recommended.<sup>91</sup>

#### **4.2.1. Building an internal investigation capacity**

All agencies involved in border control, immigration control and law enforcement should ideally have an internal capacity to thoroughly investigate and report on any alleged incident of corruption or misconduct on the part of officials and staff. This may be done by internal affairs agencies which exercise varying powers and authority, though, as a rule, their mission is one of oversight, including the investigation of all incidents of alleged corruption. In some instances, they share this responsibility with other external agencies, such as a comptroller general office, a law enforcement agency, or an anti-corruption body.

Specialized internal investigation teams are often called upon to proceed with the investigation of alleged incidents of corruption. This, at times, may seemingly complicate on-going migrant smuggling investigations. The effective management of the concurrent investigations, under adequate supervision, may be sufficient to address any coordination issue that may arise and may eventually reveal that the two investigations are in fact complementary.

The selection of members of an effective internal investigation team is crucial to the success of an investigation. Members should possess the specific investigative skills likely to be needed, should have proven integrity, and should be willing to undertake the work. The backgrounds of investigators should be thoroughly checked from time to time, including social and family ties and lifestyles.

#### **4.2.2. Investigative task forces**

The successful investigation of incidents of corruption usually requires a multi-agency response, such as that provided by anti-corruption agencies or the task force approach. The task force approach serves as a force multiplier on corruption investigations and allows for a higher level of return on the investment of appropriated resources. In instances, where several task forces are created across the country, it is often necessary to create a national task force to coordinate the activities of the regional task forces, especially in the areas of investigations, training, and inter-agency cooperation. In other instances, where a particular corruption scheme involves transactions across borders, it may be useful to create a task force bringing together members of various agencies from the various countries involved.

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<sup>90</sup> For example, when a tip is received that a border control officer may have let people through a border checkpoint without a diligent inspection of their documents, it may still be very difficult to prove that the officer did it intentionally or not through incompetence rather than in exchange for a bribe.

<sup>91</sup> Gounev, P., Dzhejkova, R., and T. Bezlov (2012). *Study of Anti-Corruption Measures in EU Border Control*. Sophia: Center for the Study of Democracy.

### **4.2.3. Security and integrity of investigation and prosecution**

The autonomy and security of investigations are both crucially important, not only to encourage and protect those who report corruption or assist the investigation in other ways, but also to ensure that the results of investigations, whether they uncover corruption or not, are valid and credible. The same is true for the prosecution process.

Not every suspected case can be fully investigated and prosecuted. Given the extent of corruption, the range of cases likely to exist, the variety of possible outcomes, and the limits imposed by human and financial resource constraints, most national programmes will find it necessary to make priority choices as to the cases to pursue, and the outcomes to seek.

Prioritizing involves the exercise of considerable discretion. This must be managed carefully to ensure consistency, transparency and the credibility of both the decision making process and its outcomes. A major element of the process is the setting and, where appropriate, the publication of criteria for case selection. This can help to ensure that like cases are dealt with a similar manner, and to reassure those who submit complaints, as well as members of the general public, that a decision not to pursue a particular reported case is based on objective criteria, and not on improper or corrupt motives.

Protecting the confidentiality of informants and other sources, preventing the leaking of sensitive information, and preventing individuals from concealing, tampering with or destroying evidence are all necessary in order to protect the integrity of investigations. Maintaining effective security requires an assessment of the full range of possible attempts to penetrate or disrupt anti-corruption investigators, both in general and in the context of specific investigations. Specific security protocols and procedures can be developed and implemented to protect the integrity of corruption investigations. In many instances, it can be useful to physically separate the internal units responsible for corruption investigations from other units (off-site investigations) and to provide them with their own protected information and communication systems in order to increase the investigators' ability to maintain the integrity of the investigation and minimize the ability of others to monitor their activities.

### **4.2.4. Use of agents, surveillance and infiltration**

Both UNCAC and UNTOC recognize the need for authorities to consider use of special investigative techniques in order to investigate cases of migrant smuggling and corruption (article 50 of the UNCAC; article 20 UNTOC).

The methods that are typically used in the investigation of corruption cases resemble the methods used in migrant smuggling investigations.<sup>92</sup> Because corruption often rests on collusion and conspiracy among the criminals involved in the smuggling operations, the investigation may require proactive methods, surveillance, wiretapping, the recruitment of agents, and infiltration.

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<sup>92</sup> UNODC (2011). *Module 10 - Covert Investigative Planning, Techniques and Tactics. In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants*. New York: United Nations.



Reverse sting operations and other covert investigation techniques are not only useful for the investigation of migrant smuggling;<sup>93</sup> they are also particularly useful in the uncovering of any accomplices migrant smugglers may have within public agencies or in key private sector businesses or organizations. The investigation plan should specifically address the need to uncover any evidence of corruption (and complicity) among the public officials involved in a situation.)

#### ***4.2.5. Financial investigations***

Corruption usually involves a financial gain. Financial investigation and prosecution methods that apply to the investigation of migrant smuggling also apply to incidents of corruption., financial investigations usually play an important role in the investigation of both migrant smuggling schemes and corruption. In some countries, corruption investigation units automatically include a financial analyst and investigator. Financial investigations are not only effective in advancing investigations and tracing criminal assets, they are also useful in helping investigators identify the networks of relationships involved in migrant smuggling and corruption. However, the effectiveness of financial investigations may be more limited in cash economies or in cases where the criminal transactions, including bribes, involve relatively small sums at any given time.

Both the UNCAC (article 31) and the UNTOC (article 12) contain provisions requiring States Parties to adopt various measures to facilitate the tracing, seizure, freezing and confiscation of corruption proceeds and property, equipment or other instrumentalities of corruption crimes. The two Conventions also address the issue of money laundering and require its criminalization. Article 23 of UNCAC requires States Parties to establish four offences relating to money laundering (in accordance with fundamental principles of domestic law) when they are committed intentionally: the conversion or transfer of proceeds of crime; the concealment or disguise of proceeds of crime; the acquisition, possession or use of proceeds of crime; and, the participation in, association with or conspiracy to commit, attempt to commit, aiding, abetting, facilitating and counselling the commission of any of the foregoing offences. With regard to the establishment of offences related to money laundering, the UNTOC in its article 6 echoes article 23 of UNCAC. Both instruments require States Parties to establish criminal offences related to money laundering for the widest range of ‘predicate offences’. The implications to national criminal law are that migrant smuggling offences and corruption related offences should be treated as predicate offences to the specific offence of money laundering.

Both the UNCAC and the UNTOC recognize that controlling money laundering is an important part of the fight against corruption and transnational organized crime (including migrant smuggling), as both phenomena entail the pursuit of illicit material gain. This is particularly relevant to the fight against migrant smuggling, since it is an offence that is essentially committed for financial profit.

#### ***4.2.6. Integration of migrant smuggling and corruption investigations***

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<sup>93</sup> Idem.

The methods and approaches used in the investigation of corruption are very similar to those generally used in the successful detection, investigation and prosecution of migrant smuggling. However, in cases potentially involving both corruption and migrant smuggling, the scope, time-frame, and focus of these two types of investigation may be different. Whenever relevant and possible, investigations of migrant smuggling should be coordinated with investigations of corruption allegations, including with the investigations conducted by “internal affairs” or “professional responsibility” investigation units.

### 4.3. Prosecution of Corruption Related to Migrant Smuggling

Prosecutorial agencies must give due consideration to the types and levels of corruption they are facing. It is of note that corruption may also affect the prosecutorial process and influence prosecution decisions.

The prosecution of corrupt individuals involved in migrant smuggling operations may proceed independently of other related prosecution activities, but it can also proceed on the basis that corrupt officials were a party to the migrant smuggling offence or accomplices to it. The prosecution of corrupt officials may involve evidence gathered in relation to many unrelated migrant smuggling cases and involve witnesses who were themselves involved in the smuggling of migrants.

The prosecution in corruption cases may itself be exposed to various political and other undue pressures. The use of specialized prosecutors or of prosecutors attached to a specialized corruption prevention body may be necessary. In some instances, special precautions will be required, including the protection of witnesses and informants, the use of expert witnesses, restrictions on the evidence disclosure process, or measures to protect the physical evidence against tampering.

It should also be noted that various disciplinary measures or administrative sanctions can be taken against staff members, and act as effective deterrents, including: dismissal from service; a fine or reprimand; formal or written warnings; temporary suspension; stoppage or deferment of promotion; reduction in rank; posting to an undesirable position; or, retirement in the public interest<sup>94</sup> The successful use of disciplinary procedures or ‘disruption’ tactics, particularly when used in less serious cases or where it may be difficult to achieve a conviction, can often achieve counter-corruption results more efficiently and with fewer resources than simply seeking criminal convictions.

#### 4.3.1. Integrity of prosecutorial decisions

When prosecutorial independence and discretion is part of the system in a particular jurisdiction, such independence should include freedom from political or other inappropriate interference. Prosecutorial discretion must be exercised on the basis of professional motives alone.

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<sup>94</sup> See also: Prenzler, T. and C. Ronken (2001), “Police Integrity Testing in Australia”, *Criminology and Criminal Justice*, (August): 319-342.

An important safeguard for ensuring the proper exercise of prosecutorial discretion is the requirement that prosecutors record the reasons for terminating prosecutions or not prosecuting cases that have been referred to them by the investigative authorities.

When non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be: transparent; consistent with lawful authority; and, subject to established guidelines to safeguard prosecutorial independence, and the appearance thereof.

#### ***4.3.2. Effective prosecution of obstruction of justice***

Attempts to derail the prosecution process or to obstruct justice are to be expected in cases involving any form of conspiracy between officials and criminal organizations. Attempts to intimidate witnesses, to corrupt jury members or members of the judiciary may be expected. In the long term, efforts to prosecute organized crime and corruption will not yield results unless all attempts to obstruct justice are taken seriously and prosecuted vigorously.

The successful prosecution of corruption, particularly when it is related to organized crime activities, usually requires that effective measures are taken to protect witnesses and collaborators in the service of justice (as required by the UNCAC). These include legislative and practical measures to ensure that witnesses may testify freely and without intimidation, including the criminalization of acts of intimidation or reprisals, the use of alternative methods of providing evidence, physical protection, relocation programmes, permitting limitations on the disclosure of information concerning the identity or whereabouts of witnesses, and in exceptional circumstances, protecting the anonymity of a person providing evidence.

Article 23 of UNTOC and article 25 of UNCAC almost have the same wording and require the establishment of the following two criminal offences:

*(a) Use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage either to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to offences covered by each convention;*

*(b) Use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to offences covered by each convention, and, with regard to the UNTOC, its protocols.*

Thus, both Conventions require States to address the question of obstruction of justice by creating an offence for situations where efforts are made to influence potential witnesses and others in a position to provide the authorities with relevant evidence. The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence. The use of force, threats and inducements to provide false testimony can occur at any time before the commencement of the trial, whether a formal “proceeding” is in progress or not and in the course of a trial.

#### 4.4. International Cooperation

Experience shows that the best results in responding to and preventing migrant smuggling (and other transnational crimes) are obtained when law enforcement and prosecution agencies are able to work together effectively, both locally and across borders.<sup>95</sup> Thus, international cooperation is often essential to the successful investigation and prosecution of migrant smuggling. The same is also true of the investigation and prosecution of corrupt individuals involved in migrant smuggling. Without laws that criminalize similar conduct, in similar terms and with comparable severity, criminal justice agencies find it difficult to cooperate internationally. Without agreements facilitating investigations across borders, the exchange of evidence and information, the extradition of criminals, the protection of witnesses, and the enforcement of court judgments, law enforcement efforts can easily be derailed by procedural or political intricacies.<sup>96</sup>

In cases of migrant smuggling that include corruption, the UNCAC and the UNTOC are both relevant with regard to mutual legal assistance and extradition. The provisions of the UNCAC in that regard are, in many ways, similar to corresponding UNTOC provisions. Both instruments require States Parties to provide one another with the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings regarding the offences established in accordance with the respective Convention. The UNCAC, however, extends mutual legal assistance obligations to cases of asset recovery and to cases that lack dual criminality, in which States Parties may be required to render assistance through non-coercive actions, as long as such is in accordance with their legal systems and the offence is not just of a trivial nature.<sup>97</sup> Both Conventions contain provisions to facilitate extradition.

Many States recognize that strong international relationships are central to the delivery of their border management objectives, making legitimate movement across borders easier and irregular movement as difficult as possible. In recent years, much progress has been made in developing and adopting interoperable or compatible technology to manage the sharing of information, especially in the realm of identity. Global technical standards in the collection of traveller data have emerged, as well as pre-clearance arrangements and juxtaposed control systems. In some instances, collaboration in border management even extends to the sharing of facilities and exchanging of law enforcement liaison officers, joint initiatives to tackle organized crime and key police routes for irregular migration, as well as arrangements for repatriation of irregular migrants or foreign prisoners.<sup>98</sup> In spite of all this progress, there remain multiple problems with respect to international cooperation in the investigation of migrant smuggling, particularly when corruption of public officials is involved.

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<sup>95</sup> Dandurand, Y. (2007). Strategies and Practical Measures to Strengthen the Capacity of Prosecution Services in Dealing with Transnational Crime, Terrorism and Corruption. *Crime, Law and Social Change*, 47: 225-246.

<sup>96</sup> Dandurand, Y., Colombo, G., and N. Passas (2007). Measures and Mechanisms to Strengthen International Cooperation among Prosecution Services. *Crime, Law and Social Change*, 47: 261-289.

<sup>97</sup> See: UNODC (2012). *Manual on Mutual Legal Assistance and Extradition*, New York: United Nations. [http://www.unodc.org/documents/organized-crime/Publications/Mutual\\_Legal\\_Assistance\\_Ebook\\_E.pdf](http://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf).

<sup>98</sup> See: Mercer, T. (2012). "Border Security: Responding to modern-day challenges", *Migration Policy and Practice* 2 (3): 9-13. Another example of successful cooperation measures is the INTERPOL database on lost and stolen passports which can help prevent the use of these documents for migrant smuggling.

Dealing with migrant smuggling and corruption presents difficult challenges for all countries, but particularly for countries with a weak or corrupt criminal justice system. Such States simply do not have the capacity to confront some of the powerful criminal organizations that take advantage of such a situation and have frequently infiltrated justice and security institutions.

Numerous practical, legal, and political factors hamper international cooperation in criminal investigations and prosecutions of migrant smuggling and corruption. The most common ones include differences in culture, language, legal culture and traditions, or political orientation. To these one can add sovereignty protection issues, the absence of enabling legislation, the absence of channels of communication for the exchange of information and intelligence, divergence in approaches and priorities, and corruption of public officials.<sup>99</sup>

The dynamic nature of transnational crime requires countries to constantly refine their cooperation strategies. They need to take into account how criminal elements are acting to defeat detection and prosecution. It is also important to note the fundamental asymmetry that exists between the attitudes and motives of countries of origin and countries of transit or destination with respect to the control of migrant smuggling.<sup>100</sup> Countries of origin are limited in what they can do to prevent migrant smuggling. In countries where a large portion of the population aspires to migrate to another country (mostly to improve their own economic situation), government measures to repress irregular immigration and the smuggling of migrants are rarely popular. However, reciprocity is what sustains cooperative institutional relationships across borders, even if they are rarely driven by the same priorities or motivation on both sides. One country may be giving priority to responding to migrant smuggling and human trafficking, when the other is more interested in recovering proceeds of crime or prosecuting drug traffickers or arms dealers. The expected reciprocity is never defined narrowly in terms of one type of crime and cooperation treaties typically cover a range of offences and law enforcement priorities. In addition, as was mentioned previously, corruption in law enforcement, prosecution and judicial institutions is itself a major obstacle to effective international cooperation and mutual legal assistance. International law enforcement cooperation and information sharing is itself based on reciprocal relationships of trust amongst various officials and agencies. It can quickly be jeopardized by a few corrupt individuals. Corruption affects these relationships and makes it difficult to engage in effective international cooperation to control migrant smuggling and the corruption which often accompany it.<sup>101</sup>

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<sup>99</sup> Dandurand, Y. (2012). “International Cooperation”, in Winterdyk, J. et al. (eds.), *Human Trafficking – Exploring the International Nature, Concerns and Complexities*. Boca Raton: CRC Press, pp. 207-232.

<sup>100</sup> Idem.

<sup>101</sup> See also: UNODC (2010). *Trafficking in Person and Smuggling of Migrants – Guidelines of International Cooperation*. UNODC Regional Programme Office for South-Eastern Europe.

## 5. Conclusion

A number of good practices can be identified with the potential to significantly reduce the risk of corruption within the agencies responsible for border protection, immigration control and the fight against migrant smuggling. Some of these good practices apply to prevention and control of corruption in the private sector as well. These practices, together with a determined effort to cooperate internationally in the prevention and control of migrant smuggling, can produce results and significantly reduce the smuggling of migrants and related corruption problems. Based on the current understanding of these good practices, the following suggestions are offered:

The effective response to migrant smuggling requires the implementation of specific institutional measures to prevent and control corruption within every agency involved in immigration control, border protection, consular services, and the investigation, prosecution and adjudication of migrant smuggling cases. This includes adequate criminalization measures to combat both migrant smuggling and corruption. Specifically:

- It is important to systematically identify the specific risks of corruption (vulnerabilities) confronting the various law enforcement, immigration control and border protection agencies and to develop effective and comprehensive risk mitigation strategies.
- It is important to identify the sectors and systems that are most vulnerable to corruption within each agency concerned. This can serve as a basis for the development of strategic and coordinated counter-corruption programmes approaches in the agencies concerned with migrant smuggling (at home and abroad).
- Each agency concerned should develop and implement its own corruption risk mitigation strategy. A key element of a corruption prevention strategy in all public institutions is a commitment to transparency and accountability, as well as a commitment to a zero-tolerance policy with respect to corruption.
- Many of the most effective corruption prevention measures available to public agencies are based on sound human resources management policies and procedures, including specific measures to identify and support individuals at risk as well as individuals in posts or positions that make them more vulnerable to corruption. These policies and procedures should be reviewed and strengthened to prevent corruption.
- In developing a corruption prevention strategy in relation to migrant smuggling, it is important to involve key private sector agencies and organizations. It is equally important to identify and address some of the risks of corruption that exist in key private sector industries or organizations that may facilitate migrant smuggling.
- Once implemented, corruption risk mitigation strategies must be monitored and tested regularly, and improved and strengthened as necessary.

- There is a continuing need for awareness-raising and integrity-based training programmes for all public officials working in law enforcement, border protection, immigration control, as well as consular services..
- There is a need for greater and more direct cooperation between investigators and other professionals concerned with anti-corruption measures and the fight against migrant smuggling.
- Early detection of corruption is vital in order to stop it from spreading through the organization and to minimise the damage it causes. In that respect, supervisors and managers are often in a position to detect possible corrupt conduct through effective supervision. Various integrity tests can also be used either randomly or on targeted employees or units. Detection can be greatly facilitated by an effective internal organizational reporting system, sound and accessible complaint and grievance processes and a comprehensive internal audit and work review programme.
- It is important to emphasize effective investigation and prosecution of corruption as it relates to the response to migrant smuggling. Financial investigations are a major part of the investigation of alleged incidents of corruption. To this end, the agencies involved in preventing migrant smuggling should have a strong internal capacity to conduct investigations, including financial investigations.
- Proactive measures must be taken with every agency concerned with migrant smuggling in order to detect corruption. This includes facilitating internal and external reporting of alleged incidents of corruption, tightening supervisory methods, identifying potential indicators of corruption, and integrity testing.
- Proactive measures must be taken to prevent corruption as it relates to production, issuing and use of fraudulent identity and travel documents for the purpose of migrant smuggling.
- Inter-agency task forces and international investigation task forces should be established. They have been proven to produce good results in the investigation of corruption related to migrant smuggling.
- Proactive measures are necessary to protect the integrity of investigations and prosecutions relating to corruption within the various public agencies concerned with immigration control, border protection, and law enforcement and prosecution.
- External oversight agencies and anti-corruption commissions and bodies should be encouraged to pay more attention to the prevention of corruption related to migrant smuggling.
- International cooperation in the control of migrant smuggling and corruption continues to present some difficult challenges. These challenges can be addressed within the framework provided by UNTOC and the Smuggling of Migrants Protocol as well as the UNCAC.
- There is still insufficient data on the role and changing patterns of corruption in relation to migrant smuggling. A comprehensive study of the experience of countries in that respect and in all regions of the world may help correct this

situation and serve as a basis for more effective international cooperation in that regard.

- Technical assistance and capacity building continue to be important to enhance the capacity of States to address the challenges posed by migrant smuggling and the corruption that facilitates it.

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# UNODC

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