



**UNODC**

United Nations Office on Drugs and Crime

# Issue Paper

**Organized crime involvement  
in trafficking in persons  
and smuggling of migrants**

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## Executive summary

UNODC, through the Institute for International Research on Criminal Policy (IRCP) of the Ghent University in Belgium, carried out a study on the links between organized crime, trafficking in persons and smuggling of migrants. For the purpose of this study, all three concepts were defined based on UN legal instruments. This approach was particularly important to determine what falls in and outside the scope of organized crime.

The objective of this exercise was to provide insight into what is known on the involvement of organized crime in trafficking in persons and smuggling of migrants cases. Developing appropriate criminal justice responses to combat trafficking in persons and smuggling of migrants as forms of organized crime requires a knowledge-based response.

The study will complement the outcome of the discussions of Member States during one of the plenary sessions of the Twelfth Crime Congress to be held 12-19 April 2010 in Salvador, Brazil.

A literature review revealed that in spite of increasing attention, there is still little reliable knowledge on any of the three concepts researched. Furthermore, the limited understanding is often prejudiced because of the weak empirical basis. In addition, strong diverging opinions can be identified.

It became clear from the review of the existing literature and from consultations with experts, that the key players on the criminal markets of trafficking in persons and smuggling of migrants can be organized in a large variety of ways. The global landscape of organized crime, whether it is in smuggling of migrants or trafficking in persons, drugs, weapons, etc. has changed. The overall common ground in this respect is that not only there exists an enormous diversity in the landscape of organized criminal involvement in both phenomena but that overall there is an enormous diversity as to the different actors active in these markets. The actors involved may be organized criminal groups, individual traffickers or smugglers, or even friends and family of migrants or trafficking victims.

Specifically on organized criminal involvement, most of the consulted experts corroborate the position found in literature that not only do we now have the mafia like hierarchically structured organized crime groups, but there is a dominance of more loosely connected networks of 'specialists', all playing their own particular part in the criminal operation. When all of these specialists cooperate to in the end succeed in certain large-scale criminal activity, they form one very loosely connected network of specialized criminals. This may ultimately translate into one successful criminal organization.

Contacts between nodes of the network can be compared to business-relations. It is even possible that one specialist has his own function in several networks. What is also possible is that several people or even all people in the network do all jobs together. This may be the case for smaller-scale networks, mostly consisting of members from the same nationality. These networks are structured like any other legitimate business, and every form, size, cooperation between networks, etc. is thinkable as long as this is the way to maximise profit. Another important point that needs to be raised when analysing the network structure of organized crime groups, which counts for both smuggling of migrants as for trafficking in persons, is that networks can easily cooperate, if this is deemed in their best financial interest.

The key factor that determines the structure of criminal involvement in both trafficking and smuggling is profit and the maximalisation there-of, as is the case for any other illicit



## EXECUTIVE SUMMARY

market. The involvement of criminal actors in the market of trafficking in persons or smuggling of migrants can occur in any thinkable scenario, as long as the scenario results in the highest possible profit for the criminal activity.

The strong influence of profit maximalisation and business models not only impacts on the involvement of organized crime in trafficking in persons or smuggling of migrants, but also impacts on the mobility of the actors involved towards other crime types. The mobility is both functional (i.e. based on what is needed to optimize involvement in existing crime types) and purely financial (i.e. based on what other criminal activities can be deployed considering the risks that are already being taken – e.g. combining drug trafficking with smuggling of migrants, because the practical organization of having a truck to cross the border has already been taken care of). Trafficking in persons and smuggling of migrants consist of chains of individual, ancillary offences meant to result or sustain the offence, and which are in close relationship with each other. Such crimes in vertical relationship are inter alia; corruption, counterfeiting of travelling documents and violation of immigration laws. This stance is corroborated in the existing literature; many texts indeed describe how organized crime groups are involved in several offences directly relating to, or committed in preparation of, the crimes of trafficking in persons or smuggling of migrants.

Also, organized criminal groups involved in these businesses are usually also involved in other types of serious organized crime activities, such as illegal firearms and/or drug trafficking. Furthermore, money received from these activities is to be laundered.

In general, it was found that exploration of the criminal context of crimes is generally woefully limited.

Furthermore, the relation between organized trafficking in persons and organized smuggling of migrants was explored. Two possible scenarios surfaced when researching the inter-linkages between organized crime groups involved in smuggling of migrants and those involved in trafficking in persons. First, it is possible that one organized crime group is involved in both criminal activities. Only if the organized crime group is involved in both processes separately, can they be labelled an organized crime group, involved in both trafficking in persons and smuggling of migrants. The second conceivable scenario is the possible cooperation that can exist between smuggling and trafficking networks. However, no documented evidence of such cases was found, which brings us to the conclusion that actual cooperation between smuggling and trafficking groups is not proven to exist.

The report will then turn to the significance of individual (i.e. un-organized) crime involvement. The role that, on the one hand, individual criminals and, on the other hand, people from a trafficking victim's or smuggled migrant's social network can play, was analysed. Particularly for trafficking in persons, the recruitment, transportation and exploitation phase can be orchestrated and sustained by one trafficker who can easily make a lot of money from one single victim or small group of victims. There is ample evidence of these kinds of trafficking operations. There is a substantive amount of case law involving individual traffickers, prosecuted and convicted for trafficking in persons for the purpose of sexual exploitation. It is however important to recognize that these case examples may miss some important details, especially with regard to organized criminal involvement. The wider context of these cases may not have been investigated or included in the case reports. A less extensive evidence base was found for individual smugglers.

The role that a social network can play is most significant and has a larger evidence base for smuggling of migrants than is the case for trafficking in persons. A person wanting to migrate can get in contact with people he knows or have been recommended to him by people he knows. These friends, relatives, acquaintances or indirect acquaintances can, for example, offer places to sleep throughout the journey, assistance in travelling between certain points, temporary housing on arrival in the destination country, etc. This is not to say that the people from the migrant's social network cannot be offered a small fee for their assistance, but material benefits will usually not be their main motivation. Experts reported this kind of facilitation to be a highly common form of illegal migration. This underlines that when it comes to illegal border-crossing, criminal involvement, and more specifically organized criminal involvement, is certainly not a condition *sine qua non*.

Based on the research findings, a set of four concluding recommendations were formulated. Firstly, the current criminal justice responses seem to be outdated. Once it has been established that an organized crime structure is to all probability behind a trafficking or smuggling operation, the current responses are inadequate. Secondly, when updating the criminal justice responses, distinction needs to be made between mafia-like hierarchical structures and network structures. A more profound recognition of the particularities of the dominant network structure of organized criminal groups is in order. This should also impact on the criminal justice response to these phenomena. The focus should be on the different functions in an organized crime network and disruptions of networks on a functional basis.

Thirdly, to further tailor the criminal justice responses, knowledge of the criminal context of trafficking in persons and smuggling of migrants needs to be refined. There is an important role reserved for local law enforcement in this respect. Smaller scale, ancillary crimes meant to result or sustain the offence are best detected on a local level.

Fourthly and finally, international cooperation needs to be intensified and (re)considered for the un-organized crime involvement in trafficking in persons and smuggling of migrants.



## **Abbreviations**

EU	European Union
EUROPOL	European Police Office
ILO	International Labour Organization
INTERPOL	International Criminal Police Organization
IOM	International Organization on Migration
IRCP	Institute of International Research on Criminal Policy
OCTA	Organized Crime Threat Assessment
SOCA	Serious Organised Crime Agency
SOM	Smuggling of Migrants
TIP	Trafficking in Persons
UN	The United Nations
UNICEF	The United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention on Transnational Organized Crime



## List of concepts

In what follows, a short overview is given of certain concepts that are recurring throughout this text, which may need some initial clarification.

**Un-organized criminal involvement:** With un-organized criminal involvement, is used to mean criminal involvement other than the involvement of organized criminal groups, as defined in the UN Convention in trafficking and smuggling

**Social network:** This concept is used in the sections on un-organized criminal involvement. The role that a social network of a migrant or trafficking victim can play is analysed. People in the social network of a migrant or a trafficking victim can be: friends, relatives, acquaintances or indirect acquaintances (meaning acquaintances of someone in the direct social network of the migrant or trafficking victim).

**Hierarchical / mafia-like organized crime groups:** Throughout the text, when the terms hierarchical(ly) organized crime groups or mafia-like organized crime group occur, we mean the following: an organized criminal group, structured in a pyramidal way along the lines of a rigid hierarchy. We also use the term mafia-like, because traditionally, Italian, Russian, etc. mafias operate along the lines of hierarchy. The groups are known to operate according to codes of honour, family and clan ties, vows of secrecy, Omerta, inter- and intra-group violence and murder, etc.

**(Loosely connected) criminal networks:** When explaining how organized crime groups can be organized according to a network structure, we mean that the organized crime groups consists of more loosely connected specialized criminals, all playing their own particular part in the criminal operation. When all of these specialists cooperate to in the end succeed in certain large-scale criminal activity, they form one very loosely connected network of specialized criminals. This may ultimately translate into one successful criminal organization. We use the term 'loosely connected' because of the fact that no real hierarchy and rigid bonds exist among the members of these groups. Also, they may be operating on a highly independent basis or they may *in extremis* not even know other members within the criminal network.

**Vertically related crimes / ancillary crimes / related crimes:** Trafficking in persons and smuggling of migrants consist of chains of individual, ancillary offences meant to result in or sustain the offence, and which are closely related to one another. Put differently, these terms are inter-used and shall mean offences, directly relating to, or committed in preparation of the crimes of trafficking in persons or smuggling of migrants. Such crimes in vertical relationships are *inter alia*: corruption, counterfeiting of travelling documents and violation of immigration laws. We use the term 'vertically related', because in a schematic view, all crimes could be vertically listed under the main offence of trafficking in persons or smuggling of migrants.

**Horizontally related crimes:** With this term we mean offences that are not directly related to or committed in preparation of trafficking in persons or smuggling of migrants, but still committed in relation to trafficking in persons or smuggling of migrants. More specifically we are talking about other forms of serious crime, for example drug smuggling, committed by the same organized crime group that is involved in trafficking in persons or smuggling of migrants. In other words, 'next to' being involved in trafficking of persons or smuggling of migrants, the group is also involved in other forms of serious organized crime.

## LIST OF CONCEPTS

**Individual traffickers / individual smugglers:** An individual trafficker or smuggler is obviously considered to be one criminal responsible for all different stages of the trafficking or smuggling process, from recruitment to transport, to exploitation in the case of trafficking. For the purpose of this study we will also consider two people working together to fall under this category, as the UN definition requires at least three people to be involved before they can be labelled as an organized crime group.

# **1 Introductory chapter**

## **1.1 Background to the study**

The Global Programme against Trafficking in Human Beings (GPAT), administered by the Anti-Human Trafficking and Migrant Smuggling Unit (AHTMSU), addresses one of UNODC's core technical assistance areas. The programme includes research and assessment of the scope of trafficking at a global level, the planning and implementation of country and regional level technical cooperation projects, including training activities, as well as the support of policy formulation.

The General Assembly, in its resolution 62/173, accepted with gratitude the offer of the Government of Brazil to host the Twelfth Crime Congress and requested the Secretary-General to initiate consultations with the Government and to report on them to the Commission at its seventeenth session. An informal open-ended working group was established at the intersessional meeting of the Commission held on 25 September 2007, to discuss preparations for the Twelfth Congress. The informal open-ended working group agreed that the theme for the Twelfth Congress, which will be held in Brazil in 2010, should be "Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world".

In its recommendations, the Intergovernmental Group of Experts highlighted the importance of selecting focused, substantive topics reflecting worldwide concerns. Within the 8 substantive items to be discussed at the Congress, the 4th one is "Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime". Developing appropriate criminal justice measures to combat trafficking in persons and smuggling of migrants as forms of organized crime requires a knowledge-based response.

In this context, UNODC supported a research by the Institute for International Research on Criminal Policy (IRCP) of the Ghent University in Belgium, on the links between transnational organized crime and trafficking in persons and smuggling of migrants to complement the discussions of Member States during the Crime Congress.

The objective of this exercise is to provide insight into what is known of the involvement of organized crime in trafficking in persons and smuggling of migrants cases. The goal of the study is not to provide a simple literature review of what has been written already, nor to provide the readers of the final report with estimates or a conclusion about the scale of involvement of organized crime in trafficking in persons and smuggling of migrants. What is offered is updated information on what is known of this involvement to date.

## **1.2 Legal Framework**

In order to fully grasp the line of argumentation in this report it is important to first try and bring the exact meaning of the concepts to the foreground. Therefore, this section aims at defining the three main concepts of this study, being transnational organized crime, trafficking in persons and smuggling of migrants.

The United Nations Convention against Transnational Organized Crime (UNTOC), adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by



## INTRODUCTION

Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The UN definitions of a transnational organized crime group, trafficking in persons and smuggling of migrants provide the framework for this study.

The convention defines a transnational organized criminal group as follows:

*"Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.*

Furthermore, an offence is "transnational" in nature if:

*(a) It is committed in more than one State;*

*(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;*

*(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*

*(d) It is committed in one State but has substantial effects in another State.*

The Convention is further supplemented by three Protocols, which target specific crimes: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Trafficking Protocol"); the Protocol against the Smuggling of Migrants by Land, Sea and Air ("Smuggling Protocol"); and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons.

The definition of trafficking in persons of the Protocol is as follows:

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

The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004. It deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that,

for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon.

The definition of smuggling of migrants of the Protocol is as follows:

*"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident"*

It is important to emphasise that the fact that these Protocols supplement the United Nations Convention on Organized Crime, does not mean that the entire scope of the Protocols is limited to trafficking in persons or smuggling of migrants that entails a transnational element or must involve an organized criminal group.

More specifically, article 34.2 of the Convention notes that the offences established in accordance with the Convention, among which trafficking in persons and smuggling of migrants, shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

In other words, involvement of an organized criminal group and the transnational element are not constitutive elements for criminalisation on a national level for trafficking in persons. As smuggling of migrants always entails a transnational element, this obviously only counts for involvement of an organized criminal group.

It is, however, important to note in this respect that no such provision exists for other capital elements of criminal justice responses to trafficking in persons and smuggling of migrants, besides criminalization on a domestic level. Even though the UN Convention provides a legal framework for international cooperation to combat these crimes, the transnational and organized elements are logically constitutive elements needed for cooperation in this respect. Also, article 4 of both the Trafficking and the Smuggling of Migrants Protocol note that *"the Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences."* In other words, unless otherwise stated, as is the case with criminalization, the transnational and organized elements do play their part. This given and its consequences for criminal justice responses will reoccur further on in this report.

It is important to underline the differences between trafficking in persons and smuggling of migrants, as both terms are often still confused. This happens mainly because of the similarities and partial overlap between both phenomena. Despite common elements, the differences between both criminal activities under discussion are crucial when developing appropriate national, regional and international responses.

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Figure 1. Comparing trafficking in persons with smuggling of migrants

	Smuggling of Migrants	Trafficking in Persons
Consent	Required	Becomes irrelevant
Exploitation	Not required	Required
Transnationality	Required	Not required

### **Consent**

The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers

### **Exploitation**

Smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.

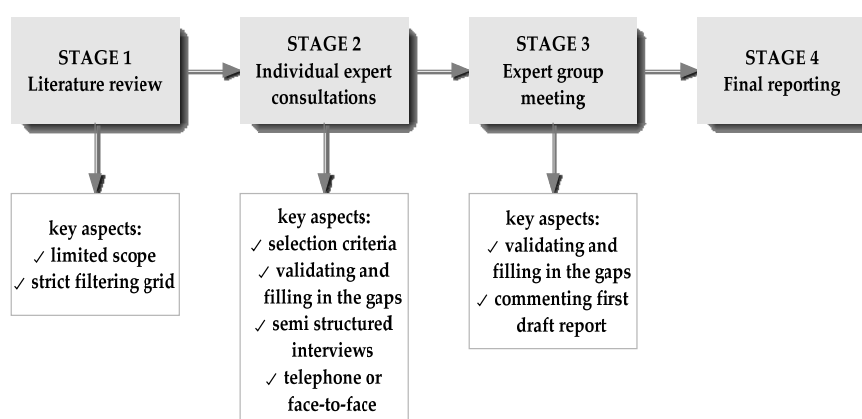
### **Transnationality**

Smuggling is always transnational, whereas trafficking need not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.

### 1.3 Methodology and strategic choices

At the onset of the study, the research team discussed the methodology with UNODC representatives and the work ahead. The figure inserted below provides a schematic overview of the methodology applied for this study, which is elaborated in the following paragraphs.

Figure 2. Schematic methodological overview



#### 1.3.1 Exploratory literature review

##### *Scope of the literature review*

Mirroring the three central research concepts, the literature review focused on organized crime, trafficking in persons and smuggling of migrants. The research team gathered relevant information combining the existing in-house knowledge of these phenomena, reviewing the information provided by UNODC, and extensively reviewing the selected literature and the information available on the internet. To make the relation between the three central research concepts more tangible, the literature review zoomed in on “the links between transnational organized crime and the smuggling of migrants and trafficking in persons”.

As decided in consultation with UNODC, the literature review was intended to support the researchers and underpin the preparation of expert consultations. The fast track literature review was conducted between 15 September and 30 September.

##### *Scanning literature: strict filtering criteria*

Conducting an efficient and effective literature in a short time span requires a fixed set of filtering criteria which would determine the relevance of an existing source for the purpose of conducting a desk review of the relevant existing literature. As in any piece of academic

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research, providing a breakdown and clear definitions of the concepts to be used throughout the report was of predominant importance. For the purpose of this study and because of the global recognition attributed to these legal instruments, the definitions of “transnational organized crime”, “smuggling of migrants” and “trafficking in persons” will be those as determined in the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto.

To ensure that as much relevant material as possible was included in the data analysis, the data was first “filtered for relevance” before engaging in an in-depth analysis, on the basis of rather quick read-throughs which determined if a text actually covered the different concepts of the study and was dealing with the links between them.

For example, sources containing information on trafficking in persons or smuggling as defined by the relevant Protocols but not containing information on the involvement of a transnational organized criminal group as defined by UNTOC have not been considered as highly relevant for this study. On the other hand, a source containing information on a transnational organized criminal group as defined by UNTOC but not containing solid proof of this group’s involvement in trafficking or smuggling, as defined by the Protocols, has equally not been considered as a source to be further analysed. An example of a source labelled as highly relevant for the research, would be a source containing information on an organized criminal group, proven to be involved in trafficking in persons and/or smuggling of migrants, in a transnational context.

As mentioned, over the last few years an increasing amount of attention has been paid to the phenomena of both (transnational) organized crime, trafficking in persons and smuggling of migrants and an enormous amount of data on these matters is now available. Questions arose quickly on the quality of this large collection of data.

Filtering for the first time the readily available pieces of information that answered to these definitions from the general bulk proved to be a challenging venture. On the basis of quick read-throughs, most pieces of literature seemed to provide useful information on one or more of the topics, and it seemed that the task of discovering the links between them would be undertaken on the basis of an extensive knowledge base provided by the literature. However, the sources were filtered for a second time on the basis of the criteria of the definitions of the concepts provided by UNTOC and its Protocols.

It was examined if in the texts, proof could be found that the topics met all requirements of the corresponding definitions in UNTOC and the Protocols. More pieces of literature were filtered out as a result.

The fact that filtering was done on a *prima facie* basis, means that it is not entirely precluded that some significant pieces of literature were not considered which could have contributed to the study. A list of the literature that was filtered out on the basis explained has been made available for this methodological reason.

Furthermore, because of the reasons explained above, when references to certain pieces of considered literature are made in the report, they serve as the most important examples of references supporting the corresponding points made in the text. The given references certainly do not constitute an exhaustive list of literature that can be used as references for the arguments made in the text.

To facilitate and shorten the second filtering process, the sources were coded in a grid containing the criteria of the UN definitions of all three concepts, which served as a “checklist for relevance” for the study. Next to facilitating the selection of sources that deserved further analysis, this grid also provided a view on significant gaps in relevant existing literature.

More specifically, and for the purpose of exploring all possible links between the concepts, the breakdown of the grid contains the categories and sub-categories as listed below.<sup>1</sup> These categories were subject to constant review during the literature, as more links or relevant factors appeared during the research process. Where a source contained information on one or more listed categories, the corresponding column was checked. On the basis of this grid, sources and specific information were easily traceable throughout the research process. Furthermore, it is highly recommendable that this kind of grid method be used as a method for future research projects in the area of organized crime, trafficking in persons and smuggling of migrants, especially considering the large amount of available literature.

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<sup>1</sup> The study in this stage went further than merely researching the ‘involvement’ of organized crime in trafficking in persons and smuggling of migrants. All possible links between the concepts were at this point taken into consideration and explored. It was decided at a later point in the study that the focus would be put on ‘involvement’.

Figure 3. Grid used for data filtering

1.	Reference
2.	Transnational organized crime
a.	Not further specified
b.	Organized criminal group
i.	General
ii.	Structured group
iii.	Three or more persons
iv.	Existing for a period of time
v.	Acting in concert with the aim of committing one or more serious offences
vi.	Purpose: obtain direct or indirect financial or other material benefits
c.	Transnational
i.	General
ii.	More than one state
iii.	One state, but substantial part of preparation takes place in another state
iv.	One state, but involves an organized criminal group that engages in a criminal group that engages in criminal activities in more than one state
v.	One state, but has substantial effects in another state
3.	Trafficking in persons
a.	General
b.	The recruitment, transportation, transfer, harbouring or receipt of persons
c.	By means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or other benefits to achieve the consent of the person,
d.	For the purpose of exploitation
i.	General
ii.	Prostitution or other forms of sexual exploitation
iii.	Forced labour or services
iv.	Slavery and servitude
v.	Removal of organs
4.	Smuggling of migrants

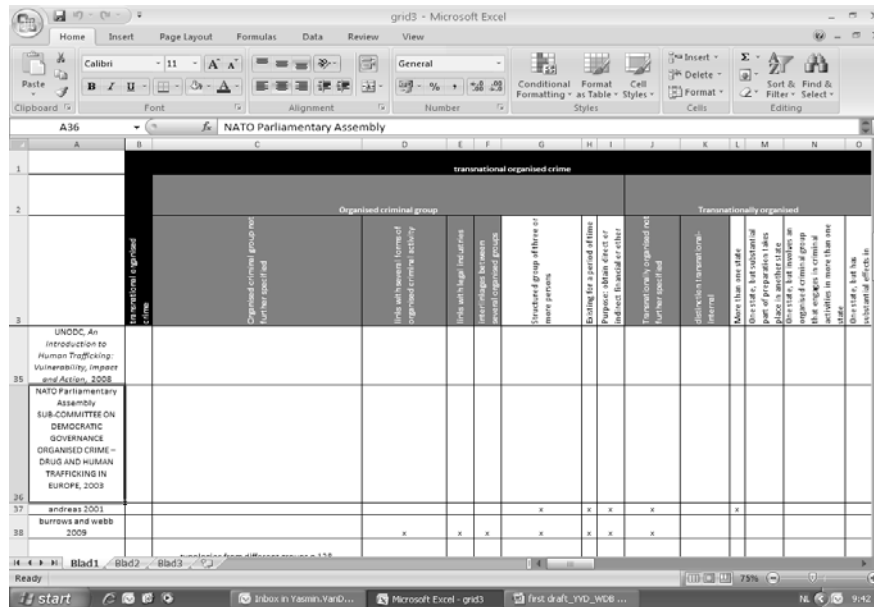
a.	General
b.	Procurement in order to gain financial or other material benefit
c.	Illegal entry of a person into a state party of which the person is not a national or permanent resident
<b>5.</b>	<b>Links</b>
a.	Contextual (i.e. links with transnational organized offences committed in the context of either trafficking in persons or smuggling of migrants)
i.	Forgery (i.e. counterfeiting) and trafficking of administrative documents
ii.	Participation in a criminal organization
iii.	Use of violence
iv.	Money laundering/tax evasion
v.	Rape
vi.	Kidnapping, illegal restraint and hostage-taking
vii.	Unlawful employment
viii.	Child pornography
ix.	Bribery/corruption of officials
x.	Marriage of convenience
xi.	Offences relating to working hours and rest time, other than road traffic offences
b.	Motivational links (financial or other material benefits)
c.	Structural links
d.	Characteristical links
e.	Methodological links
f.	geographical links
g.	Developmental links (for example the evolution from being a non-organized smuggler/trafficker to involvement in large-scale organized trafficking/smuggling)
<b>6.</b>	<b>Criminal justice responses</b>
a.	General
b.	Prevention
i.	General
ii.	Phenomenological knowledge
iii.	Awareness raising
iv.	Structural solutions
v.	Cooperation initiatives and exchange of expertise



## INTRODUCTION

vi.	Training of law enforcement agents
vii.	Public private cooperation initiatives
viii.	Preventive legislative measures
ix.	Assylum policies
x.	Technical measures (for example un-forgable passports)
xi.	Prostitution policy
xii.	Migration policies
xiii.	Foreign labour policies
xiv.	Border control initiatives
xv.	International preventive cooperation
xvi.	Preventive anti-profit measures
xvii.	Specific thematic initiatives (for example quality labels for travel agencies)
xviii.	Adressing demand
xix.	Scientific / academic researchh
c.	Repression
i.	General
ii.	Capacity building
iii.	Anti-profit measures
iv.	Integrating criminal justice systems strategies
v.	Law enforcement/prosecution/punishment
vi.	Specific thematic initiatives
d.	(Victim) support mechanisms
7.	<b>Additional comments</b>

Figure 4. Screenshot of the grid used for data filtering



On the basis of the review of relevant existing literature, the broadly researched links between transnational organized criminal groups and trafficking in persons / smuggling of migrants became clear. These listed links do not constitute the structure of the body of this final report, but were intended to support and justify the choices made in preparing the expert consultation rounds. Exploring, mapping and understanding all factors that may link organized crime with trafficking in persons and smuggling of migrants was however indispensable for understanding how, why and to what extent organized criminal groups are involved in these crimes. The particular links listed do not recur in the main report labelled as such, but the information surrounding these links is adopted in the report in as far as it provides valuable insights in the question of 'involvement'. This means that not all information analysed in the phase of reviewing the literature was transferred to the phase of the actual research on organized involvement and the writing of the report. All literature that was considered is adopted in the bibliography.

The conclusions of the literature review were presented to and approved by UNODC with some minor recommendations for adjustments, which were implemented directly.

### ***1.3.2 Individual expert consultations***

#### *Objective of the expert consultations*

The expert consultations served a twofold purpose. First the consultations aimed at validating the results of the literature review. Second, where gaps were detected and unclear issues surfaced during the data analysis, available experts were contacted to provide their views on questions that remained un-answered.

#### *Selection of experts*

Experts were selected on the basis of recommendations by UNODC, from within IRCP's own network of experts, or on the basis of recommendations by consulted experts themselves (snowball sampling). Experts contacted were specialists in the field of organized crime, trafficking in persons and/or smuggling of migrants. For example, experts from international organizations such as Interpol, Europol and FRONTEX were consulted, as well as specialized law enforcement agents from countries that are, for example, labelled as being high destination countries. Additionally, specialized academics were asked to share their knowledge.

It is important to note that it is difficult to get in contact with experts from countries that are known to be countries of origin of many trafficking victims and smuggled migrants, due to obvious language and distance issues.

Furthermore, the objective of the study was not to conduct empirical research. Therefore interviewing victims and offenders was not included in the methodology.

#### *Semi-structured interviews*

Upon the first contact with the experts, the background to the research and the main objectives were clarified. Experts were asked to participate and cooperate via semi structured interviews. The flexibility of a semi-structured interview that allows the introduction of new themes and develops new lines of thought, was preferred over the more formal and restrictive character of a structured interview. Furthermore, working with semi-structured interviews increases the validity of the responses, because the experts are encouraged to elaborate their views in greater detail. Statements can be more easily developed when the expert receives less direction from the researcher.

In consultation with the participating experts, a decision was made to either conduct a telephone interview or a face-to-face interview. Either way, the experts received an indicative list of questions which served as the basis for the interviews. This approach allowed the experts to prepare for the interview and minimized the loss of time due to misunderstandings as to the focus of the interview. The list of questions was reviewed half way through the interview period. The final version is annexed to this report.

When it was felt that the point of saturation, namely the moment at which answers and opinions of experts and previous conclusions made by the research team were continuously validated, expert consultations were finalized and the drafting of the final report was initiated.

### ***1.3.3 Validation of the results***

#### *Expert group meeting*

On 7 and 8 December 2009 UNODC organized an expert group meeting at UNODC's headquarters in Vienna to gather additional input and finalize the data collection and validation. Experts from different parts of the world and from different organizations were invited to share their experiences, opinions and comments on the first draft of the study. Representatives from Interpol, Eurojust, ICMPD, UNODC, SOCA, as well as law enforcement agents from the UK, France and Columbia attended. In spite of efforts made, no non-European experts were able to attend.

The meeting focused on the points in the first draft of the study that were not yet clear or needed additional validation. Attendees were asked for their comments on the findings so far, and for recommendations for the next steps of the study.

#### *Reporting schedule with UNODC*

Based on the final data analysis, the team drafted the report. Several drafts were submitted to UNODC for review, until the final report was submitted at the end of February 2010.

## **1.4 Structure of the report**

After having explained the background to this study and its methodology, the report first offers an analysis of the general lack of reliable information and data on the phenomena and the problems this generates. Subsequently the report briefly points out, as an introduction, what we do know on the involvement of organized criminal groups in trafficking in persons and smuggling of migrants. In other words we introduce what common ground does exist despite the general limited available information.

The main part of the report will first offer a detailed analysis of the findings of this study regarding the typologies of organized criminal structures, found to be involved in trafficking in persons and smuggling of migrants. The links these crimes have with other forms of crime, organized and un-organized are then assessed. Furthermore, the relationship between organized involvement in trafficking in persons on the one hand and smuggling of migrants on the other hand is explored. All of the above sections and the findings they offer are illustrated with fitting case examples.

Some findings on un-organized criminal involvement will then be set out and illustrated with some case examples.

Finally, the current criminal justice responses are investigated for incompatibilities with the findings of this study. Conclusions are drawn and recommendations for the future are formulated.

## **2 Organized crime involvement in trafficking in persons and smuggling of migrants**

### **2.1 Little or no knowledge of the phenomena**

The literature review revealed that in spite of increasing attention, there is still little reliable knowledge on any of the three phenomena researched (Bruckert 2002, Kangaspunta 2003; Goździak and Bump 2008, Goodey 2008). Furthermore, the limited understanding is often prejudiced because of the weak empirical basis. In addition, strong diverging opinions can be identified. Nevertheless, to a certain extent, common ground exists on the emergence of unorganized crime involvement, the traditional mafia like involvement and the increased influence of business and economical influences.

This introductory section will provide a general overview of the large findings of the literature review to underpin the main findings deduced thereof.

#### ***2.1.1 Partial research interest***

Organized crime, trafficking in persons and smuggling of migrants are all complex criminal phenomena. Therefore, the diversity and complexity thereof were taken into account for this study.

The grid developed by the research team supports the conclusion that trafficking in persons is more commonly researched when compared to smuggling of migrants. However, the study of trafficking in persons is often limited to a set of particular aspects. Without downplaying the importance of such research, it is important to acknowledge the over-emphasis that is still being put on trafficking of women for sexual exploitation at the cost of literature that focuses on labour exploitation, organ removal and trafficking of children for sexual exploitation (see also Goodey 2008).

In the literature about smuggling of migrants, besides some exceptions (Chin and Zhang 2004), in general little evidenced assertions are made about *modi operandi*, structures, characteristics, or members of criminal organizations that might be behind the smuggling process.

#### ***2.1.2 Lacking empirical support***

##### ***General insufficient empirical support***

Existing literature often entails claims about the organized crime involvement in trafficking in persons and smuggling of migrants, without providing sufficient supporting evidence. Organized crime is often 'assumed' to be involved in trafficking in persons and smuggling of migrants. Many texts fail to make reference to any documentation for these claims offered (see also Heckmann 2004). Often, there is no sign of a methodology that shows how particular questions were researched and how these conclusions could have logically been drawn (see also Goździak and Bump 2008). Only a few texts elaborate on these claims by means of some sort of proof or clear reference as to where these claims come from (Centre

for the Study of Intelligence 1999; Caldwell, Galster, Kanics, and Steinzor 1999; Içduygu and Toktas 2002; Burrows and Webb 2009; Picarelli 2009).

Some texts however, acknowledge this lack of evidence in their introduction and throughout the text continuously use careful wording , for example, referring to the involvement of organized crime in the phenomena (Shannon 1999).

As a result, because of these assumptions and the lack of convincingly documented statements is it difficult to balance this part of the literature with other texts that offer opposite conclusions. Some articles claim that the involvement of transnational organized criminal groups in trafficking in persons or smuggling of migrants is over-emphasised and exaggerated (Bruinsma and Meershoek 1999; Okolski 2002). Other texts offer longer and stronger analyses as to why they conclude that too much emphasis is being put on the organized element of trafficking in persons or smuggling of migrants nowadays, with clear views on why the scale of non-organized trafficking and smuggling should certainly not be underestimated (Finckenauer 2001a; Andreas 2001).

### *Few good examples*

Some texts however, are relatively well documented and provide interesting insights, examples and detailed descriptions of cases of transnational organized criminal groups, involved in trafficking in persons and/or smuggling of migrants (UNODC 2002, Finckenauer 2001b; UNODC 2006c; United Nations Global Initiative to Fight Human Trafficking 2008a and 2008b) or, from a different point of view, information about and examples of trafficking in persons and/or smuggling of migrants that contain a transnational organized crime- element (Chin, Zhang and Kelly 2001; Zhang 2007; Surtees 2008).

Even though organized criminality has proven to be very difficult to research considering its clandestine nature, certain new aspects of organized criminal groups have now been discovered and are becoming increasingly more documented. Concerning for example the structures of transnational organized criminal groups, UNODC undertook a pilot survey in 2002 of forty selected organized groups in sixteen countries and one region. Though the study was of selected groups at a specific time, the insight it offers into structural models of organized crime groups remains instructive today (Global Initiative to Fight Human Trafficking 2008b).

Further, specifically for trafficking in persons a "National rapporteur on trafficking in persons" is a valuable national source of information. The Dutch National Rapporteur on trafficking in human beings for example, publishes a yearly report that gives detailed information on the national situation which includes figures on victims, investigations and prosecutions. Specifically on trafficking in persons, in combination with the offence of involvement in an organized crime group, the 2008 report notes that "*Whereas the previous report identified a – gradual – decline in the (registration of) THB in combination with 'participation in a criminal organization' (Article 140 of the Criminal Code), to the point where it did not occur at all in 2005, that combination did occur again in 2006 on 29 occasions (in 14% of the cases). It would therefore appear that resources are not - or no longer - being devoted mainly to cases designed to deliver a 'short, sharp blow' to perpetrators and relating to suspects operating on their own, a possible explanation that was put forward as a point of*

*concern in the last report*" (Dutch National Rapporteur 2008: 30). These kinds of useful and particular analyses of organized involvement in cases of trafficking in persons in national reports are rare. Another example of a report that engages in specifically analyzing organized involvement in, again, trafficking of women is a 2005 UNICRI report on trafficking of women from Romania into Germany (68-74). Also, it should be mentioned that the institute of a national rapporteur is only established in a handful of countries and its tasks can vary per country.

### ***2.1.3 Limited availability of reliable quantitative data***

In some texts about one or more of the three phenomena studied, a lot of undocumented, broad estimates of the scale of involvement of transnational organized criminal groups in trafficking in persons or smuggling of migrants are offered (see also Bruckert 2002; Lackzo 2002; Kaizen and Nonnema 2007; Goodey 2008). In reviewing the literature, it also became clear that some of these so-called "guesstimates" (Goździak and Colett 2005) are in some documents significantly higher than in others. Experts validated the research team's suspicion that according to the source, it is highly likely that some figures and numbers may entail exaggerations for advocacy and fundraising purposes. On the other hand, documentation from governmental sources may offer under-estimates, to prove that the problems are being handled in an effective manner (see also Schloenhardt 2008).

It is however accepted in a lot of the considered literature that measurements of the exact scale of the phenomena and of the involvement of transnational organized criminal groups in them, can never be more than rough estimates because of the underground nature of the business (Salt 2000; Heckmann 2004; Goździak and Collett 2005; Nonnema and Kaizen 2007; Goodey 2008; Jandl, Vogel and Iglia 2008; Schloenhardt 2008).

The lack of sufficient documentation in the vast majority of sources links in with the general limited availability of reliable quantitative data on (transnational) organized crime, trafficking in persons and smuggling of migrants, on the reliable data for the links between them or on cross-national comparison thereof. This lack has a double origin. First the lack of common language between the actors in the field complicates data comparison. Second, the limited availability of adequately geographically spread information hampers meaningful international analysis.

#### *Lack of common language*

In spite of UN-level concepts of organized crime, trafficking in persons and smuggling of migrants, there is still a lack of common language. There are various elements that contribute to this lack.

First, international instruments – be it UN or others – do not replace national provisions. Therefore the commonly agreed definitions need to be reflected in national legislation. Working with agreed minimum definitions leaves States significant discretion how to nationally reflect the common minima. Some states introduced separate offences to reflect the commonly agreed concepts, others include the requirements in an existing national definition. Furthermore, states can also opt to criminalize organized crime via the introduction of



aggravating circumstances, as opposed to regarding it as a separate offence (Bever 2001; Borgers 2007; Calderoni 2008).

This complex process of national implementation is further influenced by competing provisions in different international instruments. There are different cooperation levels at which states try to tackle organized crime, trafficking in persons and smuggling of migrants. It should be stressed that State initiatives to reflect commonly agreed minimum standards on organized crime, trafficking in persons and smuggling of migrants into national legislation, are not only based on the UN instrumentation. State initiatives are also influenced by obligations arising from other instruments. Member states of the European Union for instance have to balance the criminalization obligations in the UN instruments, with obligations arising from Council of Europe instruments and obligations arising from EU instruments. Firstly, the concept of organized crime as elaborated in the UNTOC does not match perfectly with the concept of organized crime in the 2008 Framework Decision 2008/841/JHA on the fight against organized crime. The UN concept defines an organized criminal group as a structured group of three or more people, whereas the EU concept refers to a group of two or more people. The UN criminalization of participation in an organized criminal group includes participation to the non-criminal activities whereas this is not included in the EU concept (see also Vermeulen and De Bondt 2009). Secondly and similarly, the UN concept of trafficking in persons does not match perfectly with the EU concept of trafficking in human beings. Thirdly, the same is true for the concepts related to smuggling of migrants. As a consequence, national legislation on these phenomena is highly diverse, which complicates cross-national comparison.

Second, different actors in the fight against crime develop their own working definitions and data models. Police data models are well known to have more phenomenological indicators that do not necessarily reflect the constituent elements in the national criminal legislation (Killias and Rau 2000; Aebi, Killias and Tavares 2002; Aaroma et al. 2006; Rubin et al. 2008; Vermeulen and Patterson 2010). Furthermore, victim support organizations develop their own working definitions, based on their mandate and objectives<sup>2</sup>. Therefore it is difficult to integrate data from different sources, even though they would complement each other and undoubtedly provided a valuable insight into the crime phenomena in support of the criminal justice response. Besides the differences in the concepts, significant differences exist in reporting mechanisms and counting rules, which make national integration hard, let alone allow reliable cross-national comparisons (Aebi, Killias and Tavares 2002; Mennens et al. 2009; Robert 2009).

Consequently, considering the poor availability of reliable data on organized crime, trafficking in persons and smuggling of migrants as individual offences, it becomes clear that reliable data on organized crime involvement in trafficking in persons or organized crime involvement in smuggling of migrants is even more scant.

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<sup>2</sup> Victim support organizations tend to focus on, the number of victims, where police tends to focus on the number of events, regardless of the number of victims involved. Furthermore, court and prosecution data tends to focus on the number of offenders and the number of cases, and often group offences (cfr. Primary offence rules, joint cases) and victims.

### *Geographical imbalance*

Reliable cross-national data is important to be able to conduct meaningful in depth comparative analysis capable of supporting evidence-based policy making. Besides high level overviews, cross-national analysis on key aspects of the phenomena is necessary. This kind of analysis presupposes the availability of reliable data from specific countries. There is a specific interest in countries of origin and destination, but also in data from transit countries, and countries that appear in the operating routes.

However, in addition to the poor availability in general, there is a huge national imbalance in data availability. Considering the different political priorities and technical capacity between various countries, it comes as no surprise that valuable information on organized crime involvement in trafficking in persons or smuggling of migrants, relates to more “developed” countries. There is a huge difference in the amount of valuable information coming from Africa compared to Europe. The few sources that do offer data involving less developed countries are likely the come from an international organization. This obviously further complicates meaningful cross-country/cross-continent comparisons on which to draw meaningful conclusions on the global occurrence of organized crime in trafficking in persons and/or smuggling of migrants.

## **2.2 Common ground**

Goździak and Bump, in search of an evidence-based bibliography on trafficking in persons, explain how “*a 2005 analysis of trafficking research indicated that the field had not moved beyond estimating the scale of the problem; mapping routes and relationships between countries of origin, transit, and destinations; and reviewing legal frameworks and policy responses (Goździak and Collett 2005)*” (Goździak and Bump 2008). They concluded that the situation was not much different today and that there is still no reliable data on the number of trafficking cases and the characteristics of the victims and perpetrators.

However, as has already been argued by UNODC; “*Only by understanding the depth, breadth and scope of the problem can we address the second issue, namely, how to counter it. Policy can be effective if it is evidence-based, and so far the evidence has been scanty*” (UNODC 2009).

The little knowledge on the phenomena of organized crime, trafficking in persons and smuggling of migrants, and the diverse working methods to produce information and analyse available information, inevitable lead to little common ground in this field. However, two key notions can be singled out and be labelled as “common ground”.

### **2.2.1 Plurality in the typology of organized crime involvement**

It became clear from the review of the existing literature and from consultations with experts, that the key players on the criminal markets of trafficking in persons and smuggling of migrants can be grouped, structured and organized in a very large variety of ways (Heckmann 2004; HEUNI 2006; Europol 2009). The global landscape of organized crime, whether it is in smuggling or trafficking in persons, drugs, weapons, etc. has changed.

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*[...] In the 70s and in the 80s, what was meant with an organized crime group was pretty clear; groups like the Cosa Nostra, Ndrangeta, the Columbian cartels, the Asian triads, the Yakuza, etc. were the best known key players on the criminal markets, orchestrated by powerful and hierarchically structured crime groups. [...] With the fall of the iron curtain we were faced with an influx of new hierarchically structured organized crime syndicates that had previously been kept in the eastern sphere. [...] In the early 90s, large amounts of conflicts erupted between different groups, but the traditional, Mafia-like organized crime paradigm stood ground.” (Extract from expert interview)*

In the following years, as existing power structures were challenged, the organized crime landscape evolved into one of wide variation. Most experts consulted agree that not only do we now have the hierarchically structured organized crime groups, but what we see is the dominance of more loosely connected networks of “specialists”, all playing their own particular part in the criminal operation. These criminals are not specialists in that they are specialists in trafficking in persons, or smuggling of weapons, etc. They are specialists in forging or providing certificates for weapon traffic, they are specialists in delivering forged travel documents, they are specialists in transporting people over weakly guarded border points, they are specialists in deceiving young girls to blindly agree to travel abroad with them, they are specialists in having the right connections to corruptible officials, etc. When all of these specialists cooperate to, in the end, succeed in certain large-scale criminal activity, they form one very loosely connected network of specialized criminals which may ultimately translate into one successful criminal organization.

This conclusion about the new varied landscape certainly applies to trafficking in persons and smuggling of migrants. Many different structures and sorts of criminal involvement are playing their part in the business. However, a new trend that has occurred in the last decade is that the network structures are beginning to get the upper hand, according to some experts they are even the sole structure involved in these markets. One expert stated that indeed we are “*moving away from organizations that are vertically integrated to individuals that are horizontally integrated*”. He in this way eloquently put how the hierarchical group structures are now being replaced with network structures, consisting of criminals all representing a certain function in the criminal operation, without there being a true hierarchical ranking among them.

As will become clear from the analysis offered below, one key factor defines the way in which and the extent to which organized crime groups are involved in trafficking in persons and/or smuggling of migrants. This factor also defines how they are structured and what the context of trafficking in persons and smuggling of migrants might be. This key factor is profit, and the maximization thereof. As has briefly been touched upon above, the involvement of criminal actors in the market of trafficking in persons or smuggling of migrants can occur in any thinkable scenario, as long as the scenario results in the highest possible profit. This is an assertion that is being confirmed by experts consulted as being at the core of any analysis of organized criminal involvement of trafficking in persons and smuggling of migrants. It needs to be said that this equally counts for other criminal markets organized criminal groups are involved in, but the focus in this study was obviously on the role this factor plays in the markets of trafficking in persons and smuggling of migrants. Organized crime groups involved in trafficking in persons or smuggling of migrants can consist of any number of people, any sort of structure, any kind of combination of nationalities, etc. Everything revolves around

profit maximization. A group can be structured in any possible way, along the lines of making money in their particular settings. If a certain reformation of the group structure, additional group members, cooperation between different group, etc. is necessary to gain more profit, the corresponding decisions will be made. Organized criminal structures, involved in trafficking in persons or smuggling of migrants are organized like any other legal business along the supply, demand, and profit-maximising business-model (Andreani and Raviv 2004; Heckmann 2004; Surtees 2008). Therefore, in the sections on possible organized crime structures in this report, only the main and overarching possible scenarios will be analysed. Within these scenarios, endless variations are possible.

### ***2.2.2 Un-organized criminal involvement***

The study was intended to map the involvement of organized crime in trafficking in persons and smuggling of migrants. However, as the research went along it became clear that a role is to some extent reserved for actors operating outside organized criminal structures. Initially, when considering un-organized involvement in questions directed to experts and in the literature considered, the research team expected to find validation of the initially formed opinion that organized involvement played by far the most significant role in trafficking in persons and smuggling of migrants. However, evidence in the literature (for references, see 2.4.) and from expert testimonies came forward underlining the role that un-organized criminality can play. To provide the complete framework in which organized criminality's involvement in trafficking in persons and smuggling of migrants is operative, particular findings on trafficking in persons and smuggling of migrants that do not entail an organized element will be offered below. The overall common ground in this respect is that there is not an enormous diversity in the landscape of organized criminal involvement in both phenomena. Also, an enormous diversity as to the different actors active in these phenomena exists, whether it is an organized criminal group, an individual trafficker or smuggler, or even friends and family of migrants or of trafficking victims.

## **2.3 Typology of organized crime involvement**

### ***2.3.1 Hierarchical structures***

When we speak of organized crime, our first thoughts go to the Italian and Russian Mafia, the Japanese Yakuza, and other sometimes even glorified hierarchical gangs, operating along the lines of codes of honours, family and clan ties, the vow of secrecy, Omerta, inter- and intra-group violence and murder, etc. There is no doubt that these kinds of hierarchically structured groups surely existed and still do. The question at hand is however, whether these kinds of organized crime groups are currently involved in trafficking of persons and smuggling of migrants.

Because of the differences between trafficking in persons and smuggling of migrants, the research on the typology of the involvement of mafia-like hierarchical structures was conducted separately. Analysis revealed that it is hard to draw reliable conclusions on the typology of mafia-like involvement for either of them. Therefore, generalizations as to the comparability between involvement in trafficking in persons and involvement in smuggling of

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migrants cannot be made – separate enquiries are required First, the involvement and typology of mafia like hierarchical structures is elaborated upon. Thereafter, a similar analysis is conducted for smuggling of migrants.

### *Trafficking in persons*

The one-sided picture often presented of trafficking in persons and the involvement of mafia-like hierarchical structures, has been mentioned above. However, when thoroughly researching this particular topic and trying to find an answer on whether or not these kinds of organized crime groups are involved in trafficking in persons, irrefutable evidence was hard to find. Also, different sources of information were contradictory. While some experts and authors (Kaizen and Nonnema 2007; Surtees 2008) account that these kinds of group structures do not fit the story of organized trafficking in persons, some evidence to the contrary, although very limited, does exist. Definitive conclusions on the involvement of hierarchically organized, mafia-like organized crime groups in trafficking in persons are therefore hard to draw.

An example of well-evidenced involvement of a hierarchically organized, mafia-like organized crime group was found when interviewing one law enforcement expert, head of a joint investigation team between Romania and the UK, combating child-trafficking from Romania into the UK and other parts of Europe. This concise overview of “Operation Golf” presented below, is based on the transcripts from the expert interview with the UK-head of this joint operation.

Figure 5. Case example – Operation Golf

#### ***Operation Golf***

*Operation Golf began in the UK during 2005 when officers started examining a spectacular growth of petty crime in Central London, such as robbery, pick-pocketing and street crime. One major finding was that a lot of these crimes were being conducted by Roma children, as young as 6.*

*In the UK, no child can be prosecuted under 10. The police found that when caught, the Roma children over 10 pretended to be younger, and provided false documents and names.*

*When children were brought in, officers couldn't track down their parents to come and pick them up. With 60% of the children arrested, the person coming to represent them was not a family member. Excuses of parents not being able to speak English, parents being back in Romania for a funeral, etc. were often heard.*

*The UK started working with Romania to identify the problem. There was already an investigation ongoing there into over 1,000 children who were removed from one town alone in 2005-2006. Romanian officers had already mapped who were behind these removals. They however did not know where the children had gone. 1,017 “lost” children were put on a list in Romania, labelled as “children of whom Romania was concerned that they were trafficked”. Once the UK started examining this further, they found in 2007 that 200 of the children that were on this list had been*

*reported as criminal offenders in*

*the UK. Due to this discovery, London police then started investigating the possibility of them being trafficking victims.*

*The results of these investigations were astonishing. Desperate Roma parents apparently "gave away" their children, after being approached by criminals offering them to take their child abroad. They were told that the child would make a lot of money abroad and would be able to send this money back to them. Parents might have even been told that the child would be begging and stealing, but in Roma culture this does not necessarily cause major objections. However, the parents would have to pay the criminals to take their child with them. Obviously they could not do so, so they went into debt bondage with major interests. After a while, the criminals would return to the parents' house and state that the child is not earning enough.*

*They then would take more children and who were also placed abroad, not necessarily together with their siblings. More loans would be agreed upon. The criminals would again return with the same message, until the entire family, including the parents would be placed abroad and turned into a "slave family", unable to pay off their debts to the criminals. All children would be separated, forced to beg and steal and hand over all their money. The elders would be forced to go out begging, stealing, and take care of many children whose parents were either still in Romania or had been taken elsewhere. In addition, the organized criminals would facilitate fraudulent claims for UK social benefits taking the proceeds to add to their wealth.*

*Police found that the criminals behind these lucrative operations consisted of members of Roma clans, some of them independent organized groups. These clans are highly hierarchically organized, family and clan-based and with the heads of family running things from their gigantic houses back in Romania.*

*Sometimes the clans work together, again if it is profitable and necessary, and the groups are expanding in members and territory because business is going so well.*

*On the 1<sup>st</sup> of September 2008, a JIT between Romania and the UK was formed, together with Eurojust and Europol to fight these clans and save the children from exploitation.*

### *Smuggling of Migrants*

The distinct characteristics of smuggling of migrants may cause a different typology of involvement of mafia-like hierarchical structures. The predominant characteristic that distinguishes between trafficking in persons and smuggling of migrants is the voluntary element. Migrants are seeking to illegally cross borders themselves. If the migrants seek the assistance of a smuggler, they do so because they are convinced that they cannot make it across borders without the help of someone who can maximise their chance of successfully making it across borders. These smugglers are sometimes even perceived as local heroes because they help people achieve their dreams of a better life abroad. Migrant smugglers are reported not to perceive themselves as criminals, and to consider what they do as just any other way of life. This view is reported to often be shared by the communities they operate in (on Chinese human smugglers: Zhang and Chin 2004 or on smuggling Somali children out of the country: IRIN 2003).

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However, different kinds of stories are now surfacing that do not paint such a positive picture. Many academic studies (Içduygy and Toktas 2002; Bales and Lize 2005; Surtees 2008), reports from international organizations (IOM 2000; UNODC 2006c), and accounts of experts in the field (for example border agents), mention how migrants can be assisted by *mala fide* smugglers, for whom the only motivator to involve themselves in 'facilitating' illegal migrants' travels is profit. There is no philanthropic aspect to their involvement in the business whatsoever and migrants' lives can be at risk because of the disregard and disrespect these criminals have for the migrants themselves. They usually get the migrants to pay the complete fee in advance, and it does not matter to them who makes it to the destination and in what way. Violence and threats are used to keep order during the travels and stories of long travels in the most inhumane circumstances are commonplace. The best illustration of this statement can be found in the death of the 58 Chinese migrants, suffocated to death in 2000 in the back of a cargo truck found in Dover, UK. Only 2 of 60 migrants found in the vehicle, survived.

The actual question at hand is if mafia-like, hierarchical organized crime groups are involved in migrant smuggling. Some consulted experts believe that the hierarchical organized crime groups of the 90's involved in smuggling drugs, weapons, stolen cars, etc. have now also turned to smuggling migrants because of the possible profits that can be made from it. To these groups, it does not matter what they load on trucks, ships or aircrafts, as long as it is profitable.

According to some experts consulted, organized criminal groups involved in smuggling should be metaphorically perceived of as owners of an underground tunnel. Through this tunnel, different types of smuggling activities can be conducted, including illegal migrant crossing. It does not matter to them what goes through the tunnel. No differentiation between the methods to send 'commodities' through it are made. The relationship between organized smuggling and other forms of organized crime is one that will be further explored in a following chapter.

However, focussing on the question of hierarchically structured, mafia-like organized criminal groups and their involvement in smuggling of migrants, there is a recurring opinion among experts and authors (Içduygy and Toktas 2002; Heckmann 2004); the large majority of organized criminal groups involved in smuggling of migrants today is not proven to be very hierarchically structured (anymore). However, as was the case for trafficking in persons, some opinions and documentation to the contrary exists. This again makes it difficult to definitively conclude upon the involvement of mafia-like hierarchical groups in smuggling of migrants. An example of documented involvement of a hierarchically structured organized crime group, involved in smuggling of migrants, can be found in the following description of the Fuk Ching, as recounted by UNODC in their 2002 report of a pilot study of a number of organized criminal groups.

Figure 6. Case example – The Fuk Ching

**The Fuk Ching**

*The Fuk Ching has a sophisticated hierarchical structure and is primarily involved in smuggling migrants, trafficking in persons and kidnapping. The group is based on strong ethnic ties and, apart from the core areas mentioned above, engages in a wide range of activities. Violence is an essential component of the group's operations, both to ensure internal discipline but also in relation to activities such as extortion. The group is reputed to have some political influence in China, has made relatively significant investments in the economy of the US and cooperates with a number of other criminal groups. In the US the group is predominantly involved in extortion. Victims are largely business owners in New York's Chinatown. The group also smuggles Chinese migrants from Fujian Province to the US and engages in drug trafficking and kidnapping for ransom. In addition, the Fuk Ching is involved in armed robberies, money laundering, organized prostitution and environmental crimes. The Fuk Ching in New York comprises 35 members, all of whom are male. Another 20 members are currently in prison. Most of the members are of Chinese origin. In the mid- 1980s young men from Fujian province in China, many of whom had criminal records, founded Fuk Ching in New York. New members are still recruited among Fujianese teenagers. Similar to other Chinese criminal groups, street gangs such as the Fuk Ching are affiliated to an organization or tong (in this case the Fukien American Association), which provides a venue to operate from, criminal opportunities (for example by protecting gambling operations) and, where necessary, money and guns. Behaviour within the group is governed by strict rules, such as respect for seniors, not using drugs, following orders without question and not betraying the gang. Violators of these rules are punished, sometimes severely, by physical assault or even death. Violence within the group and against other criminal groups is common, although the available evidence suggests that such incidents are often more likely to be random street level violence than targeted attacks. Disputes over territory and market access with other criminal groups are typically resolved using 'kong so', a process of peaceful negotiation. If this fails, resolution is sought through violence. Although gang members are involved in legitimate business activities in New York's Chinatown they have no significant role in the broader economy. At a local level some gang members own or operate restaurants, retail stores or car services, while at more senior levels members own wholesale supply firms, factories and banks. The gang is closely connected to criminal groups in China and Hong Kong. Although the Fuk Ching is regarded to have political connections in China's Fujian Province, there is little evidence that such activities are a significant feature of the gang's activities in the US.<sup>3</sup>*

**2.3.2 The involvement of criminal networks**

There is a firm consensus among experts and most of the recent pieces of literature consulted that today most organized crime groups involved in trafficking in persons consist of

<sup>3</sup> UNODC (2002), Result of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries, Vienna, United Nations Office on Drugs and Crime, p 99



loosely connected people, together forming a trafficking or smuggling network (Council of Europe 2005, Kaizen and Nonnema 2007; Surtees 2008, Picarelli 2009). From the literature reviewed and the expert testimonies analysed, the following general findings can be reported both for trafficking in persons and smuggling of migrants.

*Each node in a network consists of a specific function of the operation and is usually completed by a specialist who is not involved in anything else than this particular function. (Extract from expert interview)*

*The people involved in this trafficking network do not necessarily even know each other; it is more likely that only the directly connected people have contact with each other without knowing who else is part of the "team". [...] All the people involved go about their own business and get their own share of profit from their own activity. (Extract from expert interview)*

Contacts between nodes of the network can be compared to business relations. It is even possible that one specialist has his own function in several networks. What is also possible is that several people or even all people in the network do all jobs together. This may be the case for smaller scale networks, mostly consisting of members with the same nationality. These networks are structured like any other legitimate business, and every form, size, cooperation between networks, etc. is conceivable as long as it seeks to maximise profit.

According to the UN definitions, these networks are organized crime groups. This is the case even if they do not know each other and even if they are separated by continents, as is often the case in large criminal networks.

### *Functions in the trafficking in persons network*

To offer a clear view on how these networks operate and how connections between different specialists can ultimately lead to successful trafficking in persons or smuggling of migrants operations, an overview of the possible different functions in these networks is offered. This kind of overview makes it easy to understand the entirety of trafficking and smuggling cases, which is something that is often missed when trafficking and smuggling cases are being processed through the criminal justice system.<sup>4</sup>

It is important to stress, as became clear from information retrieved from experts and which was also validated on the experts group meeting, that it is not necessarily the case that just one person per node carries out the corresponding activity. Sometimes, small groups carry out one function. These small groups are mostly very locally based and are very tightly structured. They can even be hierarchically organized. What is also possible is that a small amount of interconnected functions are carried out by one tightly organized, even hierarchically structured group.

Furthermore, each of the functions mentioned below can be completed by certain specialists, no matter who they are as long as they have the skills. Should one node of the network be 'detected', for example if a brothel owner is arrested and jailed, there will always

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<sup>4</sup> This point will be further elaborated in what follows

be another brothel or bar to send the next load of girls to. If a document forger is caught, another criminal with the same skills can easily take his place (Kaizen and Nonnema 2007) . In short, the essence of these networks is not the people involved in it as they can be easily replaced, but rather the different activities that ultimately constitute one trafficking operation.

It is important to note that the overview offered below is a general overview, of which many variations are possible in different networks (see also Surtees 2008). This particular overview is given as it is a summation of the possible overviews that are used in most pieces of literature on the criminal networkstructure of organized crime groups involved in trafficking in persons (Monzini 2001; ILO-IPEC 2005; Picarelli 2009). When experts were presented this general overview and asked for validation of the conclusion that these are the main functions in these networks, all consented.

Figure 7.Functions in the trafficking in persons-network

<b>Functions in the trafficking in persons-network</b>	
<b>Recruitment</b>	<p>The recruitment of trafficking victims can be undertaken by a wide range of people. It can be independent people, scouting for possible victims without having any connection to them. Examples of this form of recruitment are fake model agencies, so-called travel agents, bureaus that offer false job promises as nannies, labourers, au-pairs, etc. Recruiters can also be people from the victims' own community. People that they know or that they "know of" because they have good reputations as being able to provide work abroad, for example. These could equally be people who own businesses in the victims' hometowns.</p> <p>This makes it easier for them to deceive their victims into believing that they can get them jobs in other businesses that are connected to their own elsewhere.</p> <p>Furthermore, as explored above, people from the person's own social network can be involved in a trafficking network and abuse their established relationship to deceive their friends, relatives or acquaintances and to pass them on to the next node in the network.</p>
<b>Document forging / obtaining necessary documents</b>	<p>This node of the network constitutes people that provide the necessary documents to facilitate journeys.</p> <p>They either have the right connections to corruptible migration officials or they have the skills to forge documents themselves. It is important to note that this is certainly not necessarily always a node in a trafficking network, as trafficking victims may have entered the destination country legally. The best example of this is trafficking in persons throughout member states of the EU.</p>
<b>Corruption / bribery</b>	<p>This node of the network constitutes public officials who are bribed into facilitating illegal traffic. They can be border guards who allow illegal passing, embassy personnel that grant visas, police officers who let the</p>

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<b>Functions in the trafficking in persons-network</b>	
	network operate and close their eyes to what is happening before them, all in exchange for a sum of money.
<b>Transport</b>	<p>The people responsible for transportation in the network are those who bring the victims from and to certain points before and after crossing borders. They are also those who might transport victims between places of exploitation. This can, for example, be a driver who takes a group of victims to the airport where they will board an airplane that takes them to the transit or destination countries. It can also be a driver who takes victims from the airport at arrival to the place where they will ultimately be exploited.</p> <p>This kind of function does not require a great specialism and therefore a fixed profile of a certain criminal involving himself in this function does not exist.</p> <p>This task can be fulfilled by anyone, certainly also by other members of the network who may already fulfil another task. For example, a guide as described in the following paragraph is often also the person responsible for the transport of trafficking victims.</p>
<b>Guiding/Illegal border crossing</b>	<p>Guides accompany the victims across borders, be it on foot, by boat or by any other means of transportation. They are specialists in finding weakly controlled border-points, or may know the right border guard who will allow the group to pass, of course for the right amount of bribe money. This means that the function of guiding and the function of obtaining needed documents are often intertwined, as can be the case for several different functions in a network.</p> <p>This particular task is only necessary when legal entry into the destination country is not possible.</p>
<b>Harbouring</b>	<p>Trafficking victims need a place to stay during their journey and during the time they are exploited. Mala fide landlords can for example rent out apartments to brothel owners or labour exploiters for them to be able to lock up their victims when they are not at work, thus keeping them hidden under the radar.</p>
<b>Enforcing</b>	<p>Trafficking victims need to be controlled and scared into complying with their exploitative situations. This is a role of, for example, bodyguards who watch victims' every move and stay with them in the apartments they might be kept. This may be the person who punishes the victims if they are disobedient, by means of violence.</p> <p>This can also be the person who threatens or blackmails victims' relatives, all in order to gain further control over a victim.</p>
<b>Exploitation</b>	<p>This is the person or the persons that ultimately exploit the victims. This can be a brothel owner, a plantation owner, a child molester who bought the child, a doctor who steals victim's organs, etc.</p> <p>Victims can be traded and transferred between exploiters, with possible network-relations between different exploiters.</p>
<b>Money laundering</b>	<p>Profits that these networks make need to find entry into the legal sphere. Illegal proceedings need to be laundered. This is an essential part of the whole trafficking operation. In a more general sense, Surtees (2008; 47) notes on the relation with the legitimate market; "traffickers mobilize a</p>

<b>Functions in the trafficking in persons-network</b>	
	network based on effective collaboration and joint ventures with other criminal groups and with people in conventional positions, such as government employees, commercial lawyers, accountants, financial services experts and public notaries, all of whom may or may not be aware of the criminal nature of their activities” (See also Council of Europe 2005; Sokulli-Akinci n.d.).

The following case illustrates how different functions in a network come together as one successful trafficking operation.

Figure 8. Case example – Latin American sex trafficking network

**Latin American sex trafficking network**

*In 2006, investigators in Montgomery County, a suburban Maryland County located and arrested, just northwest of Washington DC, members of a Latin American trafficking network that supplied women for sexual slavery in the Washington DC suburb, and catered only to Latin American customers.*

*The network started with international traffickers responsible for bringing victims into the US. The international traffickers were based in Queens, New York and Union City, New Jersey. From these sites, the traffickers supplied the women to brothels in cities that ranged from Boston, Massachusetts to Richmond, Virginia. The brothel owners would "hire" the women from the traffickers for a week. In Maryland, a representative of the brothel organizations would drive to Queens and Union City every Sunday to exchange the women of the previous week with a new group acquired from the traffickers. Brothel owners and the traffickers split the proceeds evenly, while the trafficked women kept none of the money.<sup>5</sup>*

It is important to emphasise that in this case, a lot of important intermediary nodes may have been left out. The question where these women stayed while not working, who the persons responsible for the border crossing and/or the travel documents were, etc. remain unanswered in this case report. It is highly likely that the network described here consisted of more people. This reflects the lack of consideration of the entirety of the case, a common occurrence in many case reports on trafficking in persons.

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<sup>5</sup> Case taken from interviews Dr. John Picarelli conducted with the investigators in question, and the accounts of these interviews he notes in Picarelli, J. (2009), "Organized Crime & Human Trafficking in the US & Western Europe", in Friesendorf, C. (ed), *Strategies Against Human Trafficking The Role of the Security Sector*, p 123-145, Geneva/Vienna, Centre for the Democratic Control of Armed Forces [DCAF] and Austrian National Defence Academy

Finally, it is also important to note, that even though hierarchy does not prevail in the criminal network structure, some sort of "management structure" has been reported to exist. Accounts exist of one or more persons being the 'masterminds' behind the network. They oversee the operation and bring all nodes into contact with each other, without necessarily being hierarchically placed higher than any other person in the network. 'Managing' the network is a function like any other function in the operation. An example of this kind of structuring can be found in the details of the successful operation Koolvis.

Figure 9. Case example – Operation Koolvis

**Operation Koolvis (2006-2009)**

*In May 2006, a Dutch lawyer reported her suspicion of her Nigerian client being a victim of human trafficking, to the Dutch "Expertisecentrum Mensenhandel Mensensmokkel"; the Dutch expert centre for human trafficking and smuggling.*

*Consequently, an inventory of cases was made at the Schiphol Airport which showed that between October 2005 and May 2006 there had been a huge influx of Nigerian women. Also, it was then noticed that since October 2005, a lot of Nigerian women had disappeared from shelters for victims of trafficking across the Netherlands. Over 30 incidents, with more or less the same background of the first report of the Dutch lawyer, were found. This finding meant the start of the Pekari-project, meant for intelligence gathering on incidents of trafficking in persons involving Nigerians. This project later developed into the Koolvis-investigation and operation. From the Pekari project it seemed that the Nigerian criminal organizations were using the Netherlands as a transit country for trafficking in persons. The destination country was mostly Italy or Spain, where Nigerian women were forced into prostitution.*

*During the Koolvis operation, several institutions worked together to track down and dismantle the organizations behind this trade in Nigerian women. Dutch authorities, Dutch law enforcement agencies and other Dutch institutions worked together with Europol and Interpol, as with law enforcement authorities from the countries the organizations were also found to operate in; Nigeria, Belgium, the UK, the US, Spain, Germany, France, and Italy. During the project, there were 3 main focuses: first, attention was paid on how to prevent the influx of Nigerian women, for example by using the preboarding control method, which stops potential victims at the airports in the origin country, in casu Nigeria.*

*For preventing disappearances from shelters for victims of trafficking in persons, methods were deployed in these shelters that worked directly on trying to convince Nigerian women not to leave and to show resistance when approached by the people they were supposed to follow. On the basis of a list of indicators, as many potential victims as possible were stopped from leaving Nigeria, and as many as possible of the victims that had disappeared in the Netherlands were tracked down. These 3 areas of focus and international cooperation have exposed the entire criminal organization that was behind these trafficking operations. 140 victims were identified, which led to a large-scale internationally orchestrated action in October 2007 and January 2008. These operations resulted in the arrest of several suspects, among whom Nigerian madams who ordered the victims, people who harboured the victims, etc. The 4 main suspects were a Nigerian travel agent who, among other things, provided for fake documents, and 3 "leaders" who were found in the UK, Ireland and the US. Since the victims refused to file complaints because of fear for the voodoo-retributions, the police and being sent home, a Nigerian priest and a former*

*trafficking victim were used to build up trust relations with the victims and convince them to cooperate. Nigeria, Italy and the Netherlands are currently prosecuting members of the criminal organizations. Since October 2007, the influx of Nigerian women at Schiphol airport has as good as ceased. However, considering the flexibility of criminal organizations, this certainly does not mean that Nigerian trafficking in persons has ceased. One interesting trend to note in this respect, is the increased influx of Nigerian women in Switzerland since September 2008.<sup>6</sup>*

### *Functions in the smuggling of migrants-network*

As will become clear from the following paragraphs, the concept of a criminal network, detailed in the previous sections on trafficking in persons, is more or less the same for smuggling networks. There appears to be a consensus among authors and experts on the fact that, if smuggling of migrants is orchestrated by an organized crime group, it is now most likely to occur through criminal networks ( UNODC 2006c).

Research into network-structured smuggling of migrants offer varying conclusions according to the particular case as to the number of "criminals" involved in a network, and the sort of relations between them. Networks can vary from small structures of no more than four people, to gigantic transnational networks of over thirty people for example (see for example the news releases of Europol announcing successful anti-smuggling operations). The nodes are usually connected through social relations and more than is the case for human traffickers, the smuggling networks are likely to be based on family, friends and acquaintance-relationships (see for example on Chinese human smugglers: Chin and Zhang 2004).

As is the case for the trafficking in persons network, experts agree that there is no real hierarchy in these networks. Nobody is in control of anything else than of his own activity. The division of labour is based on the members' specialities and hierarchical leadership is not needed. As experts noted, smuggling networks appear to be multi-layered, with the inner core consisting of a few close associates. These core associates each have their own social network in which they search for specialists for certain tasks in the network. These people then in turn might have their own further contacts.

The remarks that were made in the section about criminal networks involved in trafficking in persons about several persons carrying out one activity equally count for smuggling of migrants networks. This assertion was equally confirmed by experts consulted.

The assertions made about the structure of smuggling of migrants networks, are corroborated by the details of successful law enforcement interventions documented on the Europol website.

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<sup>6</sup> Taken and translated from the 7<sup>th</sup> Report of the Dutch National Rapporteur on Human Trafficking, 2009.

Figure 10. Case example – Operation Ticket to Ride

**Operation Ticket to Ride (2009)**

*Forty-six persons, suspected of being part of a smuggling of migrants-network, were arrested today throughout Europe in an operation supported by Europol and Eurojust involving several countries. Arrests took place in Belgium, France, Germany, Greece, Italy and Switzerland as a result of investigations and after a number of house searches.*

*All suspects are said to be involved in the clandestine smuggling of a large number of illegal immigrants into and within the European Union. Consequently, a number of illegal immigrants have also been arrested in various Member States.*

*The police and judicial operations, code-named 'Operation Ticket to Ride', targeted a network, primarily consisting of Iraqi and former Iraqi nationals, which facilitated the illegal immigration of citizens from Iraq and from other countries, such as Afghanistan, into and within Europe. Europol experts prepared various intelligence reports, facilitated the exchange of information, and co-ordinated the police operations. Europol also hosted several operational meetings in the course of the operation. The main suspects and new criminal links were discovered by Europol in close co-operation with national experts after in-depth analysis.*

*At the request of the Italian investigating magistrates, Eurojust was involved in assisting the co-ordination of the investigations and the exchange of information between the Member States involved. Eurojust dealt with the issuing of European Arrest Warrants and also hosted a coordination meeting.*

*The joint operation was initiated in Rome, where an international coordination centre was set up by the Italian State Police. Experts and liaison officers from the various EU Member States were also present.*

*During the operation, Europol was represented by two experts.*

*The network was responsible for recruiting the illegal immigrants, mainly in Iraq, before transporting them to various EU Member States.*

*Each of the persons smuggled is believed to have paid between 4,000 and 8,000 US dollars to reach Italy, depending on the means of transportation.*

*It is believed that this network is responsible for smuggling more than 5,000 persons between December 2006 and June 2009. The money was normally paid via wire transfer.*

*The illegal immigrants usually travelled in cramped conditions in trucks, camper vans, coaches or boats from Iraq to Europe via Turkey. Some of the illegal immigrants also used forged or counterfeited travel documents.<sup>7</sup>*

The possible roles in smuggling networks are listed below, on the basis of the limited amount of literature that specifically considers this (Chin and Zhang 2004), which was also

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<sup>7</sup> [www.europol.eu](http://www.europol.eu)

confirmed by some experts consulted. It is again important to stress that many variations exist and that the analysis made below is of a general nature.

Figure 11. Functions in the smuggling of migrants-network

<b>Functions in the smuggling of migrants-network</b>	
<b>Recruitment</b>	The recruiters are often relatives, friends, acquaintances or people recommended by the migrant's own social network. There is no evidence pointing towards online luring, mala fide figures "scouting" for potential migrants in unfamiliar territories, or any other typical methods deployed by trafficking in persons groups.
<b>Transportation</b>	The people responsible for transportation in the network are those who bring the migrants from and to certain points before and after crossing borders. This can, for example, be a driver who takes a group of migrants to the ship that will take them across the border. It can also be a driver who takes the migrants from the place where the ship has docked to a safe-house in the destination country, etc
<b>Document forging/obtaining necessary documents</b>	This node consists of people who provide the necessary documents to facilitate a migrant's journey. They either have the right connections to corruptible officials or they have the skills to forge documents themselves.
<b>Bribery/Corruption</b>	This node of the network constitutes of public officials who are bribed to facilitate illegal migration. They can be border guards who allow illegal passing, embassy personnel who grants visas, police officers who let the network operate and close their eyes for a sum of money, etc.
<b>Guiding/Illegal border crossing</b>	Guides accompany the migrants across the border, be it on foot, on a rowing boat or any other means of transportation. These guides can possibly use violence on the migrants themselves, or have an "enforcer" with them on board to keep order among the migrants, if necessary by means of violence
<b>Debt Collection</b>	Some networks entail a violent element after the migration-process is over. This may constitute of locking up migrants or taking them hostage until their smuggling fees are paid. These "enforcers" can also get the fees by threatening relatives who were left behind in the origin country of the migrant, to pay off the migrant's debt.
<b>Money Laundering</b>	Profits that these networks make need to find entry into the legal sphere. Illegal proceedings need to be laundered and this is an essential part of the whole smuggling operation.

Another important point that needs to be raised when analysing the network structure of organized crime groups, which counts for both smuggling of migrants as for trafficking in persons, is that networks can easily cooperate, if this is deemed in their best financial interest.



An example of this assertion can be found in the details of the successful operation "Green Sea".

Figure 12. Case example – Operation Green Sea

#### **Operation Greensea**

*On 31 January 2008 twelve people were arrested on suspicion of facilitating illegal immigration into the United Kingdom. Police believes these were linked to two of the largest smuggling of migrants rings in London in the past year to 18 months. In a series of dawn raids, detectives from the Metropolitan Police's Special Intelligence Section (SIS) raided twelve addresses across London to simultaneously dismantle and disrupt the networks.*

*The Metropolitan Police's investigation, codenamed Operation Greensea, began in 2006 working closely with European partners. During the raids one of the networks disrupted consisted of Turkish nationals suspected of being involved in large-scale smuggling of migrants and class A drug importation (Heroin) and money laundering.*

*The other network disrupted consisted of Chinese nationals believed to be directly involved with the Turkish network and suspected to be involved in smuggling of migrants and money laundering.*

*Both the networks were believed to have syndicate associates in Belgium and France, who have been arrested by a variety of partner European law enforcement agencies in Brussels, Ghent, Paris and Dunkirk. In both the networks, those being smuggled into the UK were mainly Chinese nationals who are believed to have paid up to £21,000 each to be brought to the UK, usually travelling in extremely cramped conditions in lorries, boats and trains from China across Asia and Europe to the UK in a journey that could take up to 18 months.*

*With London as their intended destination, the journey often involved a number of people being hidden in lorries and cars across the Channel.*

*Once the illegal immigrants had been smuggled into the UK they would often disappear into established communities avoiding detection by authorities.*

*At the address in Peckham 23 Chinese illegal immigrants who had been smuggled into the UK were living in cramped conditions. Officers from the Border and Immigration Agency have detained identified illegal immigrants.*

*Although the Special Intelligence Section (SIS) led Operation Greensea, it involved close working with European law enforcement agencies including Belgian Police (smuggling of migrants unit), French Police (drugs and smuggling of migrants units), Europol and Eurojust. It also involved working closely with UK partner agencies such as, Border and Immigration Agency and the Serious and Organised Crime Agency (SOCA) and Kent Police.<sup>8</sup>*

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<sup>8</sup> [http://cms.met.police.uk/news/arrests\\_and\\_charges/human\\_smuggling\\_arrests](http://cms.met.police.uk/news/arrests_and_charges/human_smuggling_arrests)

Experts who were involved in this operation reported this case to be a perfect example of how networks are purely organized along the lines of profit-maximisation. The Chinese network was not specialized in smuggling its Chinese clientele from Belgian, French or Dutch territory to the UK. They deemed it to be more profitable to outsource the final stage of the smuggling process to a more specialized Turkish group, than to risk this themselves. These kinds of cooperations are believed to occur a lot, but mostly on an occasional basis. If this kind of cooperation would occur on a more solid and frequent basis, the two networks should be perceived of as one large network working towards the same goal of smuggling migrants. As has already been pointed out, it is not nationality or quantity that makes an organized criminal group, but activity and end-result thereof.

*Comparison and conclusion on the involvement of organized crime groups in trafficking in persons and smuggling of migrants*

From the above analysis it is clear that no major differences exist between the findings on organized criminal involvement in trafficking in persons on the one hand and smuggling of migrants on the other hand. Both in trafficking and in smuggling, the actors are structured along the lines of profit maximization and the business model. If for a certain operation, it is most profitable to work together with certain people in certain countries, than that is the way the business is going to be organized. It counts for both trafficking and smuggling that larger scale operations are most likely to be organized in a network structure and that examples of strictly hierarchically organized groups can today be said to be scarce.

The business and profit-structured backbone of the whole landscape of the market of trafficking in persons and smuggling of migrants cannot be emphasised enough. This backbone is the overarching glue that links all topics analysed in this report together. Organized crime groups will form according to the end-goal of profit-maximization, they will engage in any sort of activity with their eyes on profit-maximization, will select their operation territory according to what is most profitable, cooperate among each other just as long as it is profitable, and so on. All this counts for both trafficking in persons and smuggling of migrants.

Both in trafficking and in smuggling, organized involvement is now known to be at least significant. However, proof thereof is scanty, and there is no way of knowing the exact ratio of organized / non-organized smuggling and trafficking. First, there is the factor of not knowing the entire trafficking and smuggling scale. Second, as has been detailed above, in statistics, convictions and even in investigations, the factor 'organized' is either not considered at all, either it plays a subordinate role. This assertion counts for trafficking, and it counts even more for smuggling.

Both for trafficking and smuggling operations, little to nothing is known about how certain criminals get involved in organized criminal groups, what the process is of becoming involved into such a group, and other so-called developmental and criminal-prolific issues. It is however safe to say that just about anyone with the right skills and/or motivation can become part of a trafficking or smuggling structure, as long as their activity and profile fits into the profit-maximizing business-model of the market.

### ***2.3.3 Mobility between crime types***

The strong influence of profit maximization and business models not only impacts on the involvement of organized crime in trafficking in persons or smuggling of migrants, but also impacts on the mobility of the actors involved towards other crime types (Martens, n.d.; Europol 2009).

The mobility is both functional (i.e. based on what is needed to optimize involvement in existing crime types) and purely financial (i.e. based on what other criminal activities can be deployed considering the risks that are already being taken).

In this section the relations that may exist between organized trafficking in persons and organized smuggling of migrants will be explored, also we will analyse what relations exist with other types of crime.

#### ***Vertically and horizontally related crimes***

The question at hand is if organized crime groups involved in trafficking in persons and/or smuggling of migrants are also involved in any other crimes. One very interesting and helpful document of ICMPD (1999), entitled *The Relationship between Organized Crime and Trafficking in Aliens*, specifically considers two types of "links" between organized crime and trafficking in persons or smuggling of migrants.

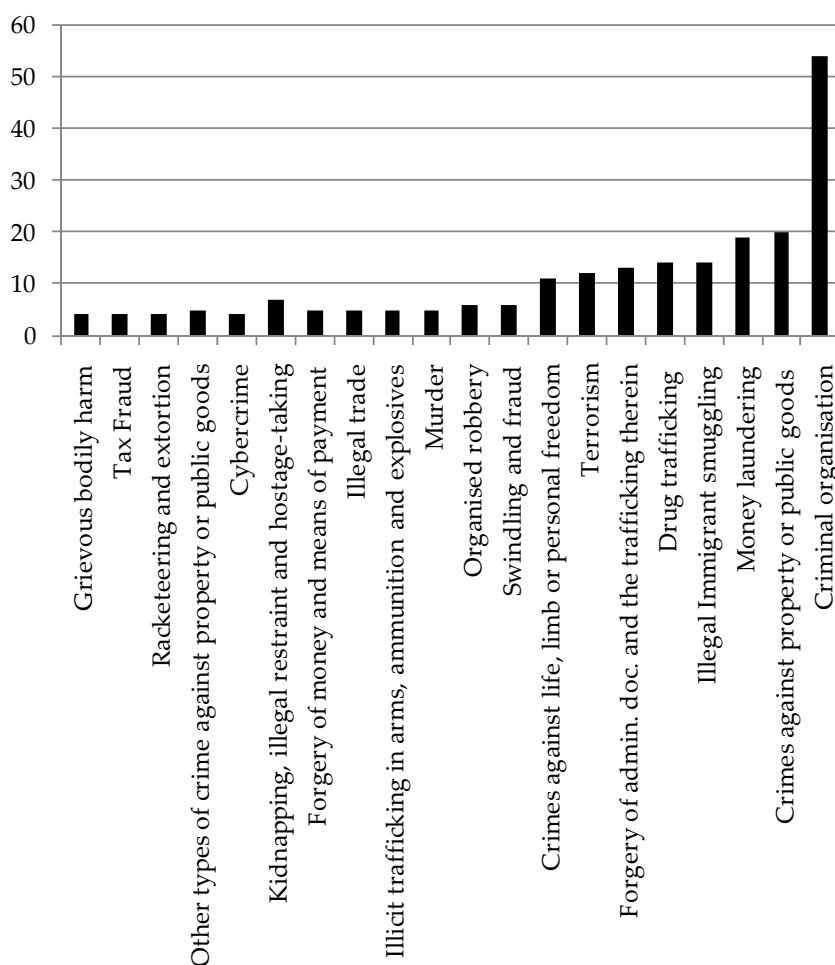
First, ICMPD distinguishes "vertical links". They claim that trafficking in persons and smuggling of migrants consist of chains of individual, vertical offences, which are in close relationship with each other. Such crimes in vertical relationship are, so they claim, inter alia; corruption, counterfeiting of travelling documents and violation of immigration laws. This stance is corroborated in the existing literature and many texts indeed describe how organized crime groups are involved in several offences directly relating to, or committed in preparation of the crimes of trafficking in persons or smuggling of migrants. Especially the crimes of document fraud and bribery of officials were mentioned in several pieces of literature as being related to, and even as being necessary, for the success of organized crime in trafficking in persons and smuggling of migrants ( UNODC 2002; Stoecker and Shelley 2005).

The importance of the 'context' becomes additionally meaningful when considering the predominance of the network structure of organized criminal groups involved in trafficking in persons and smuggling of migrants. Functions in the network such as bribery, document forging, enforcing, can be seen as the context of trafficking in persons and smuggling of migrants, or as ancillary crimes meant to result or sustain trafficking in persons.

A best practice in the recognition of the criminal context can be found with Eurojust. Eurojust systematically registers 'related crimes' when trafficking in persons cases are being registered with them. When analysing the trafficking in persons cases registered by Eurojust between January 2004 and November 2009, they found that of the 302 registered cases, 72 cases were registered as being in association with other crimes. The following graph offers an overview of what these "other" crimes are and how often they occur in the context of trafficking in persons. Eurojust considers this amount of cases that was registered as being in association with other crimes to be very small, but it should be noted that 302 trafficking in persons cases is only a very small fraction of reality. This graph therefore serves a mere

exemplary purpose and is intended to re-emphasise the occurrence and importance of “other types of related crimes” when analysing trafficking in persons. Attention should also be paid to the spectacular dominance of the crime of membership of a criminal organization, in the context of trafficking in persons, in this graph. This means that in a significant amount of cases registered by Eurojust, a criminal organization was proven to be involved.

Main types of crime involved in trafficking in persons according to Eurojust analysis



## ORGANIZED CRIME INVOLVEMENT

It is however equally important to know if trafficking in persons / smuggling of migrants groups are also involved in other serious crimes, not necessarily being directly related to trafficking in persons or smuggling of migrants.

In the same text as the one mentioned above, ICMPD asserts that there are "horizontal links" between organized crime and trafficking in persons and smuggling of migrants. They claim that organized criminal groups involved in these businesses are usually also involved in other types of serious organized crime activities, such as illegal gun and/or drug trafficking. Furthermore, money received from these activities is laundered.<sup>9</sup> The research team found a considerable amount of back-up for this assertion in the existing literature (Martens, n.d.,; Transcrime 2003; Surtees 2005; WSH 2004; Surtees 2008). Especially in the UNODC (2002) report of the *Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries*, it is striking how many organized criminal groups, involved in specifically trafficking in persons, are also involved in other organized criminal activities such as drug or weapon traffic. As for organized criminal groups involved in smuggling of migrants, the conclusion seems to be that they are mostly uniquely involved in their smuggling of migrants business.

As explained, the network structures consist of specialized functions and roles within the network, meaning that per node there is a role to be fulfilled and the different nodes do not necessarily interfere with each other's functions. Therefore it is highly unlikely that all the people involved in one trafficking in persons network will, all together and in the exact same formation, be equally involved in smuggling of for example drugs across borders. The role of the recruiter in the trafficking in persons network becomes superfluous in the smuggling of drugs-network. Also, the roles of the exploiters, cannot be fulfilled when dealing with anything else than people. However, this may be more likely to occur in smuggling of migrants networks. The main activity of smuggling groups is illegal transfer across borders, without a sophisticated recruitment phase or exploitation phase. The metaphorical perception as offered by a consulted expert, of smugglers as owners of an underground tunnel, not caring what commodities go through their tunnel, has already been mentioned above. Whether it is drugs, people, weapons or anything else that they illegally run through the network, as long as it pays off it does not matter what the illegal goods are. This is a valuable assertion validated by several experts, even though not backed up by the literature considered, and it fits well in this exploration of the criminal context of organized smuggling of migrants. This is especially true when it comes to large-scale, multi-national smuggling networks that have developed highly sophisticated methods to avoid detection and constantly renew routes, and do not largely depend on social relations and good reputation to sustain their smuggling of migrants clientele.

It is highly unlikely that one entire trafficking network will be involved in another activity. It is however perfectly possible that certain people representing certain nodes of a trafficking network, expand their activity to other businesses and are interconnected with other kinds of networks. For example, a truck driver transporting trafficking victims could easily also be involved in a network that is involved in smuggling drugs. He could even be active in both networks at the same time, transporting drugs and people from one point to the next in the same truck. This interconnection between networks does not necessarily have to be restricted

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<sup>9</sup> "Money laundering" is considered by the research team as belonging in both the vertical as the horizontal links column, since money laundering is an important final part of the trafficking / smuggling process but it is also a form of organized crime in itself.

to one node of the network. Two or more interconnected nodes of trafficking in persons networks might very well be interconnected nodes involved in a network that engages in another type of criminal activity. No specific evidence of this assertion could be found, it is a logical hypothesis stemming from the evidence in the literature and from expert consultations that trafficking networks, are often involved in other horizontally related organized crime activities. It also follows from the above analysis of the different functions in a network, based on specialities and skills.

It is assumed that actual irrefutable evidence, in the form of, for example, case law, of these assumptions will be hard to find, as exploration of the criminal context of crimes is generally very limited. If the truck driver in the example mentioned above is intercepted with a load full of trafficking victims, he will most likely be labelled a human trafficker without the investigation going any further. Law enforcement agents have admitted that during investigations and prosecutions, choices are indeed made on the basis of limitations in resources and time. Convictions of single offenders such as the truck driver from the hypothetical example would be considered a successful final outcome of the case, even if it would be clear that others involved are in no way intercepted. A more thorough evaluation of this point will be brought forward in the criminal justice response and recommendations-section of this chapter.

It is again important to stress the role that profit maximization plays. If a network or certain people in a network see an opportunity to maximize their profit, they will take it. One hypothetical example might be traffickers who have the monopoly over a certain route, realising what other goods they can send through it with a low additional risk of getting caught, and subsequently get involved in smuggling drugs.

Another example that was mentioned by one expert and which was thoroughly discussed on the experts group meeting can be found in the combination of people trafficking and the use of drug mules. Accounts occur of trafficking victims, being forced to travel across borders carrying a substantial amount of drugs on them. When they are caught, they are charged for drug offences without anyone ever finding out the full story. This is, again, where the importance of criminal context surfaces. Also, this is an indication of the need for more profound cooperation between specialized law enforcement agencies. If trafficking units and drug units do not inform each other of certain cases that could be related, valuable information and sometimes even the core of the story easily gets lost. Evidence of this combination and of the fact that trafficking in persons often brings with it a number of other crimes, can be found in the details of the following joint operation between Europol and the Italian Carabinieri (see also Transcrime 2003; Andreani and Raviv 2004; Surtees 2005).

Figure 13. Case example – Operation Black Leaves

**Operation Black Leaves (2009)**

*The Italian Carabinieri supported by Europol have executed an arrest warrant issued by the judiciary authority of Ancona (Italy), upon the request of the local Anti-mafia District Attorney Office, against 30 suspects.*

*The "Operation Black Leaves" focused mainly on Nigerian nationals, indicted for conspiracy to commit Trafficking in Human Beings, induction to slavery, favouring and exploitation of prostitution and other crimes. Another arrest warrant was issued by the judicial authority of Rome against four other individuals indicted for conspiracy to commit illicit abortion.*

*The arrests have been carried out in the Italian regions of Marche, Lazio, Emilia Romagna and Lombardy. Additionally arrests were made and suspects identified in France, Germany, Greece, the Netherlands, the Republic of San Marino and Spain thanks to Europol and the International Police Cooperation Office in Rome.*

*In April another arrest warrant, issued by the judiciary authority of Ancona upon the request of the local Anti-mafia District Attorney Office, was executed against 15 suspects indicted for conspiracy to commit international drug trafficking. From Madrid in Spain the drugs were trafficked to the Italian regions of Piemonte and Marche by utilising human "drug mules". The "mules" were usually women who were also forced into prostitution in the coastal area of the Marche region. After dismantling the drug trafficking network, the investigations focussed on Trafficking in Human Beings, highlighting the activities of three interlinked Nigerian organized criminal groups. The groups were located in the coastal area of the Marche region where they were active in the sexual exploitation of women trafficked from Nigeria. The criminal cells were led by 'madams' who forced the victims to hand over all their earnings to pay off the debt incurred for the journey to Italy. The victims also had to pay for food and accommodation.*

*The victims were subject to continued intimidation and violence, aimed at guaranteeing a daily income and to ensure their compliance. The use of Juju rites in the recruitment phase in Nigeria was also used by traffickers as a mean of coercion. Statements provided by some victims who were rescued by the Carabinieri highlighted how the recruitment phase and how the selection of the women was conducted with use of photo albums.*

*Some women knew that they would have to work as prostitutes others have been promised other kind of jobs. The debt incurred by the victims was between 40.000 and 60.000 euro. Payment was secured by juju rites.*

*After providing the victims with counterfeit documents, some were trafficked to Netherlands and France by air where other traffickers from the same organized crime group accompanied them to Italy via land and delivered them to the "madams" for the final exploitation phase. In other cases the victims were moved to Turkey or to Greece and then taken to Italy. Another route used by the traffickers was the land route to Morocco or Libya and from there by sea to Spain and Italy.*

*The investigation not only revealed physical abuse of the victims, including forced abortion, but also extended to their families in Nigeria. Two organized crime group members in Rome worked with two Italian doctors to organize the forced abortions. A heavily pregnant victim was saved by the Carabinieri and her baby was delivered safely.*

*The investigation identified numerous money transfers through money transmitter channels which*

*are believed to be the proceeds of crime. Particularly trafficking for sexual exploitation and drug trafficking which are then invested in the same criminal enterprises.*

*Operation Black Leaves falls under the framework of a wider Carabinieri initiative aimed at tackling Nigerian organized crime.<sup>10</sup>*

### *Being involved in both trafficking and smuggling of persons*

The broadening of activities of trafficking in persons or smuggling of migrants-criminal groups is not necessarily limited to drugs or weapon smuggling. In this section the relation between organized trafficking in persons and organized smuggling of migrants will be explored. Many accounts are documented of how migrants, in search of a better life, take up offers of smugglers only to end up being exploited at arrival in the destination country (Bales and Lize 2005; Kaizen and Nonnema 2007). The transition from the status of a smuggled migrant to a trafficking victim is a widespread subject in pieces of literature on trafficking in persons (Surtees 2008). It is however generally unexplored in the literature if and how organized criminal groups can be involved in both trafficking in persons and smuggling of migrants. Also, no significant amount of literature is available on the possible cooperation between smuggling and trafficking groups.

On the basis of the detected gaps in the literature review on this point and the subsequent attention paid to this in the expert consultations, the research team distinguished two possible scenarios to be portrayed when speaking of the inter-linkages between organized crime groups involved in smuggling of migrants and those involved in trafficking in persons.

First, it is possible that one organized crime group is involved in both criminal activities. What is being put forward in some pieces of literature as a 'migrant turned trafficking victim scenario', is that some *mala fide* smuggling groups occasionally or systematically deceive their migrant clientele into believing that they will merely assist them in illegal border-crossing. However, at arrival migrants are not free to start their new lives. They are forced into sexual or other forms of labour exploitation. However, if a network is uniquely involved in the process of deceiving migrants into believing that they will be smuggled across borders and to in reality exploit them in the destination country, the organized crime group was never involved in smuggling of migrants. This is an organized criminal group involved in trafficking in persons. This is the essence of the difference in definitions between smuggling of migrants and trafficking of persons. Only if the organized crime group is involved in both processes separately, can they be labeled an organized crime group involved in both trafficking in persons and smuggling of migrants. An example of such a group can be found in the details of the following case example.

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<sup>10</sup> <http://www.europol.europa.eu/index.asp?page=news&news=pr090624.htm>, published 24 June 2009



Figure 14. Case example – Chinese and Vietnamese victims

**Chinese and Vietnamese victims**

*A seven-member gang smuggling Vietnamese citizens was arrested in November 2009 by members of the Hungarian National Bureau of Investigation (NNI). Investigators of five countries as well as Europol and Interpol took part in the action. The Vietnamese smugglers were caught using false documents. The organization transported Vietnamese people through several European countries, and they were helped across the borders of member states by escorts.*

*After the completion of this operation in November 2009, the following information was released on the modus operandi of a Vietnamese group, labelled a smuggling of migrants group by the authorities involved:*

*The arrested Vietnamese "people smugglers" asked for 7,000 to 10,000 euro's for transporting migrants to Great Britain. The illegal immigrants would only paid half of the fee and tried to pay for the remaining sum by working in a marijuana plantation. According to an expert law-enforcement agent), a very large number of Chinese have been worked to death in recent years. Their exploitation is taking place in illegal sewing shops as well as at marijuana plantations. Forced begging, prostitution, and other black labour is also common. Many work for days for a euro, from which the criminal organizations deduct a fee for lodgings.*

*Migrants have to work for years before the organization lets them go. This is a method that is known to be the modus operandi of many Chinese and Vietnamese criminal groups.*

*Detailed information on Vietnamese people "smugglers" reveals that in many cases, the smuggled migrants who can pay off their debt to the smugglers are free to go at arrival. Others who cannot are forced to work, at huge interest rates, until they have worked off their debt. This kind of modus operandi makes these Vietnamese criminal organizations involved in both smuggling of migrants and trafficking in persons for labour exploitation.*

The second possible scenario, established on the basis of expert consultations and the limited amount of existing documentation on this point, is the possible cooperation that can exist between smuggling and trafficking networks.

Some cases were portrayed of groups of migrants, at arrival being handed over by smugglers to members of a different trafficking group and thus becoming trafficking victims. However, basing this example on the established network structure dominance of organized crime groups involved in trafficking in persons / smuggling of migrants; would this kind of transaction not constitute a mere transition from one node of a criminal network to another? If the end goal of the process is to exploit the people involved, according to the definition of trafficking in persons, this is one large trafficking-process. It is not a smuggling process resulting in a subsequent trafficking process.

As we have already established, the crimes of smuggling and trafficking in people are not about the criminal group members but about the roles they fulfil. The only scenario, in which such a distinction between a trafficking and a smuggling network could be made in the network-theory, is the following: if the last person in the smuggling network would constitute

the first node of a trafficking network, without anyone else in the smuggling network knowing about this. Hypothetically, the last person in the smuggling network, for example the guide who took the migrants overseas in a rowing boat, could according to the agreements in the smuggling network be supposed to leave them behind at arrival. This is where the smuggling operation ends and where the smuggling network has fulfilled its final activity. However, if this guide decides to seek further connection to people in the trafficking business, he may 'sell' the migrants to end up as being exploited. This way, the guide is at the same time the last node of the smuggling network and the first node of the trafficking network. No documented evidence of such cases was found. This brings us to the conclusion that actual cooperation between smuggling and trafficking groups is not proven to be existing. As is the case with many of the assertions on organized criminality for which no evidence could be found during the course of this study, this does not mean that it is not occurring, but merely that no proof is readily available.

## **2.4 Un-organized criminal involvement**

The grid developed by the research team allows general conclusions to be drawn on the diverging opinions on the predominance of organized crime involvement in trafficking in persons and smuggling of migrants. More emphasis is being put on the involvement of organized crime in texts on trafficking than in texts on smuggling. Many authors claim that if, at all, transnational organized criminal groups are involved in the smuggling of migrants, they are not mafia-like crime groups but more loosely connected networks of people (Chin and Zhang 2004; Sarrica 2005; Surtees 2008; Picarelli 2009). Some authors however claim that in some countries, smugglers as such do not exist because of the existence of highly informal networks during their travel. They rather use the assistance from their social network than of professional smugglers (Van Wijk 2008).

As pointed out above, it became quickly apparent from this study that nowadays, there exists an enormous diversity in the key players of trafficking in persons and smuggling of migrants (Council of Europe 2005). This appears to apply to all forms of organized crime, so equally to smuggling as to trafficking.

In this respect, it is important to point out the importance of un-organized involvement in both trafficking in persons and smuggling of migrants (see also for example Vayrynen 2003; Surtees 2008). The following three analyses will illustrate this assertion. First, individual criminal involvement in both phenomena will be assessed. Then, it will be analysed what role social networks can play. Some case studies will be added to illustrate the points made.

### **2.4.1 Lower success rate**

First, the chance at success for individual actors to effectively complete a small-scale trafficking or smuggling operation will be assessed. In the following analysis, an individual trafficker or smuggler is obviously considered to be one criminal responsible for all different stages of the trafficking or smuggling process, from recruitment to transport to exploitation in the case of trafficking. We will for the purpose of this study also consider two people working

together to fall under this category, as the UN definition requires at least three people to be involved before they can be labelled an organized crime group.

*"It is highly unlikely, that one individual would succeed in large-scale, transnational and long-lasting trafficking and smuggling operations, involving a large amount of victims or migrants. [...] All phases in such large operations require cooperation between a certain amount of actors and a chain of activities, sometimes to be completed simultaneously. [...] More than one person has to be involved to make such an operation successful and to be able to sustain it".* (Extract from expert interview, validated by other experts)

#### **2.4.2 Appearances of individual involvement in smuggling of migrants**

As for individual smugglers, unfortunately not such an extensive evidence base was found as is the case for individual traffickers. The prototype example of individual smugglers, escorting small groups of Mexican migrants by foot across the US-Mexican border, is the most typical of smuggling of migrants-stories better known as the *coyote*-method.<sup>11</sup>

##### **"Coyote" method**

According to some experts, cases of smugglers, operating purely on an individual basis can only involve a small amount of migrants, unsophisticated routes and methods and not more than one or two border crossings (see also Bales and Lize 2005). The following case example may serve as an illustration.

Figure 15. Case example – Pateros

##### **"Pateros"**

*This type of smuggler can frequently be found loitering around international bridges in addition to the bus stations of Mexican border cities. Migrants who are unaware of the realities of the journey they have undertaken are often victimized by these smugglers, who take their money in advance, lead them across the river, and abandon them to their fate once they are on the Texas side. This fate usually includes quick apprehension by the Border Patrol and often includes assault and worse by bandits who lurk in the darkness near the river on the U.S. side. A frequent complaint is that the assailants in these cases include the smugglers themselves (Spener, 2001:135-136).*

<sup>11</sup> It has however been established that the definition of a "coyote" is not necessarily "a smuggler who operates alone". More proof of involvement of organized "coyote-groups" in smuggling of migrants has been found than of coyotes working alone.

It is however clear from the expert opinions registered, that is a lot more likely that smugglers cooperate with others who complete even the simplest of tasks in the smuggling-process. A 'smuggler' is not merely the person who crosses borders with migrants. It is also the person who organizes the trip, organizes places to stay underway, brings the migrants into contact with the right persons, etc.

In the case of the US-Mexican border for example, border control initiatives have been put into place, migration policies have been tightened, etc. This is not to say that individuals can in no possible way be successful in small-scale smuggling. It is however clear that the larger the amount of smuggled migrants, the bigger the distance between origin and destination country and the stricter the border policies, the more difficult it will be for an individual to succeed in a smuggling operation.

Detection rates for migrant smugglers are very low, so when it comes to irrefutable evidence on individual involvement in smuggling of migrants, no valuable conclusions could at this point be drawn.

### *Social network*

The role that a social network can play is more significant and has a larger evidence base for smuggling of migrants than for trafficking in persons. There are accounts in the literature, especially from African sources, of smuggling cases which involved a family member, friend or acquaintance of the victim or his or her family (Herman 2006; Van Wijk 2008). It is important to note that not all facilitation of illegal entry of migrants is undertaken with profit as a main motivator. It is clear from the literature that sometimes, migrants who have successfully entered a foreign country, be it legally or illegally, and have build up a life for themselves may be motivated to help others within his social network migrate. This means that this kind of illegal migration falls outside the scope of 'smuggling of migrants', but it is however important to note this aspect to underline that not all illegal migration is orchestrated and facilitated by organized criminal groups.

A person wanting to migrate can get in contact with people he knows or have been recommended to him. These friends, relatives, acquaintances or indirect acquaintances can for example offer sleeping places throughout the journey, assistance in travelling between certain points, temporary housing at arrival in the destination country, etc. This is not to say that the people from the migrant's social network cannot be offered a small fee for their assistance, but material benefits will usually not be their main motivator. Experts reported this kind of 'facilitation' to be one of the most common forms of illegal migration. This underlines that when it comes to illegal border-crossing, organized criminal involvement is certainly not a *condition sine qua non*.

Figure 16. Case example – Failed visa application

***Failed visa application***

*"[...] One respondent wanted to travel to the Netherlands together with his best friend. After a failed visa application at the Portuguese embassy he sought the help of the father of his friend. The father was an influential civil servant with good contacts at the Portuguese embassy and he arranged visas for both his son and Sergio.*

*According to Sergio he had given the father his passport and had returned it the same day with a visa. [...] As a last example of someone who has used informal personal contacts to fix a visa for free, I present the migration process of a respondent I call Liza. She had a brother living in Portugal, but he was not an appropriate candidate to invite her and act as a guarantor since he was a poor student without work.*

*But according to Liza: "I knew someone who worked at the Angolan embassy in Portugal. He contacted the Portuguese embassy in Angola and said that he knew me and that I would come over to visit him for holiday purposes and would sleep in his house."*

*Based on this informal personal guarantee she received a visa and up to this day – almost 10 years later – she still lives in Portugal. Again, according to Liza both she and her contact at the Angolan embassy never encountered any problems.<sup>12</sup>*

### ***2.4.3 Appearance of individual involvement in trafficking in persons***

For trafficking in persons, the recruitment, transportation and exploitation phase can be orchestrated and sustained by one trafficker. He can easily make a lot of money from his or her sole victim or small group of victims. There is ample evidence of these kinds of trafficking operations (Bales and Lize 2005). As is the case for most of the evidence on trafficking in persons, this evidence is on trafficking in persons for the purpose of sexual exploitation. There is a substantive amount of case law involving individual traffickers, prosecuted and convicted for trafficking in persons for the purpose of sexual exploitation. It is however important to recognize that these case examples may miss some important details, especially in the light of organized criminal involvement. The wider context of these cases may not have been investigated or included in the case reports.

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<sup>12</sup> Examples taken from the 2008 study by J. Van Wijk, who researched how Angolans usually migrated to Europe. He found that most Angolans had made it to Europe purely through assistance of their own social network. Van Wijk, J. (2008), "Luanda-Holanda: Irregular Migration from Angola to the Netherlands", International Migration – journal compilation, p 12.

For example, in the case example below, it is not mentioned that the convicted trafficker was proven to have gotten the women passports to travel to Australia himself, how the trafficker was put into contact with the women, or if they were in any way assisted to arrive at their destination. It may be so that more people were involved, even people who played only a minor part in the whole operation.

Figure 17. Case example – Individual trafficker (?)

**Individual trafficker (?)**

*K. D. was a Gold Coast man who became the first person in Australia to be convicted for trafficking charges under the Criminal Code. K.D. was a hairdresser who started a prostitution racket after his hair salon was destroyed by flooding and fire. The necessary repairs left him in serious debt, including money he owed to pay off loan sharks that had lent him money.*

*The prosecution argued that to pay off this debt, between November 28, 2005 and April 17, 2006 he was directly involved in the deceptive recruitment of at least two Thai women, Ms K A and Ms S H, and was possibly preparing to bring more women from Thailand to Australia. Emails sent between the women and K.D. suggested that the women had previously worked in the sex industry in Thailand and were aware of the fact that they would be working as sex workers in Australia, but were deceived about the conditions of their stay and employment.*

*In a victim statement, Ms H testified that K.D. promised her that she would be able to earn up to AUD 600 per day when in fact she only ever received AUD 20. She testified that K.D. pressured her to work and threatened that she would be arrested if she was to leave. Ms A also confirmed that she had received deceptive emails from K.D. in which he suggested she would be able to earn up to AUD 250 per day by working for him. He convinced her to come to Australia for 90 days on the basis that she would only be working 4–5 days a week. Once in the country, however, she had to work almost every day. All the money that she earned had to be given to K.D. who pressed her about her debt to him and also used minor physical violence against her. One of the women also stated that she was made to engage in group sex against her will. K.D. was charged on July 19, 2006 with two counts of trafficking in persons (deceptive recruitment), four counts of presenting false information to an immigration officer, and one count of dealing in the proceeds of crime. He pleaded guilty to all charges at the Southport District Court on October 20, 2008.*

*During his sentencing hearing in November 2008 he unsuccessfully attempted to withdraw his guilty plea and was sentenced on December 23, 2008 to five years imprisonment with a non-parole period of 22 months.<sup>13</sup>*

<sup>13</sup>This case example was taken from case reports provided on the website of the Human Trafficking Working Group of the University of Queensland TC Beirne School of Law. This project provides a comprehensive analysis of the phenomenon of trafficking in persons, especially women and children, and their exploitation in the sex industry and other forms of forced labour in Australia. It identifies and analyses reported and suspected cases of human trafficking and sexual exploitation of foreign workers, see <http://www.law.uq.edu.au/documents/humantraffic/case-reports/dobie.pdf>

*Social network*

In trafficking groups, the people active in the recruitment-phase of the operation, are often from the same community as the victims and often have existing trust-relations with them. The willingness of a victim to join the trafficker and travel with him or her, blindly falling prey to exploitation at arrival, is in these cases usually based on trust. This can be due to a family relation or friendship, or due to the good reputation of the acquaintance to for example provide good jobs overseas.

Particular involvement of social relations in the recruitment-phase has been validated by the available sources (for example Bales and Lize 2005; Surtees 2008). In the case of sex trafficking for example, traffickers are reported to recruited victims with highly specific and personalised promises; a woman, recruited by 'friends' who offered to assist her in entering a drug rehabilitation programme; a Romanian woman was 'assisted' in going abroad by her friend's brother, who told her of a fertility clinic that she hoped would save her failing marriage; and a Bulgarian woman was offered work abroad by her neighbour precisely when she needed money to pay for her daughter's emergency eye operation (Surtees 2005). Two detailed case examples of involvement of a trafficking victim's friends, family or acquaintances without a clear organized crime involvement-element, are offered below.

Figure 18. Case example – Aunt turned trafficker

**Aunt turned trafficker<sup>14</sup>**

*"The young Zambian lady was in college doing her first year. She has an aunt in Italy with whom she would communicate. Her aunt lured her with a picture of good life in Italy stating that she was well off and had a good job. The aunt talked to the girl's mother and was given consent to come and collect the girl after promising her parents that she would take her to a very good university. Upon arrival in Italy, the girl had peace for only three days or so. Then her aunt asked her whether she knew what she does for her living to which the girl said no. The girl reminded the aunt that she promised to take her to a university. Instead, the aunt introduced the young girl to prostitution. The girl was given fancy clothes for prostitution and was told by her aunt that if she doesn't do it then she would starve. When the men started visiting her she resisted. The aunt started beating her and threatening her that she would die. The girl had to run to the embassy where they bought an air ticket for her and she came back."*

Figure 19. Case example – Boyfriend turned trafficker

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<sup>14</sup> Expert testimonies taken from a 2008 ILO report of trafficking and forced labour in Zambia ( International Labour Organization (2008), *Investigating Forced Labour and Trafficking: Do they exist in Zambia?* Geneva, International Labour Organization)

**Boyfriend turned trafficker**

*A Hungarian human trafficker who raped and beat his girlfriend and forced her to work as a prostitute has been jailed in the UK for sex trafficking offences in November 2009. During a trial at Blackfriars Crown Court the jury heard how B. L., 27, had been in a relationship with the 35-year-old mother-of-one for a year when the pair fell into financial difficulties. In 2006, in a bid to make some money, B.L. travelled with his girlfriend to Austria and the Netherlands where he put her to work as a prostitute. During a period of more than two years - from November 2006 until April 2008 - he regularly beat and raped her and took all of her earnings. B.L. eventually brought his girlfriend to the UK where he forced her to work as a prostitute on the streets of London. He was arrested in April last year after she made an allegation of assault against her boyfriend to the police. Following an investigation by the UK's Metropolitan Police Service's (MPS) Human Trafficking Team, B.L. was charged with two counts of rape and two counts of trafficking for sexual exploitation. B.L. was indicted on seven counts. On 4 November 2009 the jury found him guilty of five counts, including human trafficking for the purpose of sexual exploitation, and he was sentenced to 16 years in prison.<sup>15</sup>*

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<sup>15</sup> [http://cms.met.police.uk/news/convictions/human\\_trafficker\\_jailed](http://cms.met.police.uk/news/convictions/human_trafficker_jailed)



*Loverboys*

In recent years, special attention has been paid to the so-called "loverboy-method". This method consists of a young man making a young girl fall in love with him, to make sure she is easy to be lured or forced into prostitution for his benefit. Looking only to the wording of Art. 3 (a) of the Trafficking Protocol, a loverboy is a human trafficker. In this setting, he is an individual trafficker. The loverboy-method is also employed by organized crime groups involved in trafficking in persons. In this scenario, loverboys fulfil the first function of the trafficking process, namely the recruitment-function. Their job is to make girls fall in love with them, to then hand them over to other people in the group and to eventually end up as being exploited. The Netherlands have seen a huge amount of loverboy-cases surface over the last years, which the following example illustrates (see also Goodey 2008).

Figure 20. Case example – loverboys

**Loverboys**

*In Zwolle, a city in the east of The Netherlands the local government has identified a group of 117 girls (half of them minors) who became the victims of 'loverboys' or who are at risk. Twelve 'loverboys' were arrested in 2002 in this city. Most of the victims are Dutch girls and girls of Moroccan, Turkish, Dutch Antilles, and Surinam origin. One expert mentioned she heard from a news reporter that Moroccan 'loverboys' are now starting to recruit girls in their home country and bring them to The Netherlands with false passports on the pretence of family reunification. In the legal prostitution scene, only victims of 'loverboys' older than 17 years have been identified. Some of the care organizations mention that 'loverboys' wait to let their 'girlfriend' work in the legal sector (window, club) after she becomes 18, and keep her under close surveillance.<sup>16</sup>*

<sup>16</sup> Noten, T. and van den Borne, A. (2004), Trafficking in children for sexual purposes Update Country report, The Netherlands, <http://www.ecpat.nl/images/13/383.pdf>

### *Domestic servitude*

Trafficking in persons for the purpose of exploitation in the form of domestic servitude deserves special focus in the light of individual criminal involvement in trafficking. This is the most difficult form of trafficking in persons to detect. As this kind of exploitation occurs behind closed doors and fully into domestic settings, this form of trafficking is the least best understood. Reports in the literature and examples from experts make it acceptable to conclude that it does occur that one person individually recruits a domestic servant under false pretences of a well-paid job. This false job offer could for example concern a job as a maid, in reality concerning exploitation of the servant in the employer's home, with low chances of detection by authorities. Such cases do not entail an element of organized criminal involvement. For example, there is great demand in some wealthier countries of Asia and the Persian Gulf for domestic servants who sometimes fall victim to conditions of involuntary servitude.

Figure 21. Case example – Domestic servitude

#### **Domestic servitude**

*Divia is a 26 year-old migrant domestic worker from India. She and her employer arrived in the UK from Kuwait in May 2000. This employer was a relative of her previous employer in Kuwait. She was forced to sleep on a stone floor in the store room. She was given so little food her sight started to fail and she was continually shouted at and insulted. After six months, Divia ran away from her employer, leaving her passport behind, not knowing that her visa was about to expire. In fact, Divia was never informed about her visa, since the employer applied for it for her and she never had an interview at a UK mission abroad. Divia believes her employer purposefully 'forgot' to renew her visa. When she first ran away, Divia went to the police for help. But they could not understand her because her English was not very good and sent her away. Her embassy just told her to get a new passport. But they did not try to find out what her visa situation was. Divia did not learn of her irregular immigration status until 2005. Since she ran away from her employer, she has been working for free in people's house, sometimes for a week, sometimes for a month, in exchange for accommodation and food. She has worked for so many people she has lost count. She says some were nice and some were not. She has been beaten, exploited and sexually abused in jobs but cannot take any action against these employers due to her undocumented immigration status. When she cannot find anyone to stay with, Divia sleeps on benches or in parks.<sup>17</sup>*

<sup>17</sup> Kalayaan (2008), *The New Bonded Labour? The impact of proposed changes to the UK immigration system on migrant domestic workers*

Children are particularly vulnerable to trafficking for domestic servitude which occurs in private homes and is often unregulated by public authorities (see also IRIN 2003). The following cases that do not have a proven organized criminal involvement-element, illustrate this.

Figure 22. Case example – Domestic servitude (2)

**Domestic servitude**

*In Port-au-Prince, Haiti, Evans Antoine wakes at 7 a.m. and dusts himself off from his night on the floor. While other children in his middle-class neighborhood overlooking the Haitian capital head to school, the 15-year-old puts on toeless sneakers and gets to work washing dishes, scrubbing floors and running errands at the market. He also works in the yard and sometimes wields a scythe in the family's fields.*

*There is little reward for his toil, except for food and a roof over his head. And often, the quality of his work isn't good enough; his caretakers sometimes hit him with a switch or slap him on the back of the scalp. Once they tied his hands and put a bag over his head before beating him with a stick. This has been his life for the past three years.*

*Antoine is just one of many so-called "restaveks", a Haitian term derived from the French for "stay with." He is among 300,000 children, 10 percent of Haitians under 18, who serve as domestics for other families, a tradition in Haiti dating back to the country's independence more than 200 years ago.*

*Haiti is the poorest country in the Western hemisphere. A little over half of primary school-age children are enrolled in school, according to UNICEF, and less than 2 percent finish secondary school.*

*Children become restaveks in a variety of ways. Some, like Antoine, are orphaned and taken in by family friends. Others are runaways pulled off the street. Most are given up by parents from depressed rural areas who can't afford to care for them and hope that another family will do better and send them to school.*

*Antoine's case is an example of what so often goes wrong. His adoptive family promised to pay his tuition, but when it came time to do so, his adoptive father reacted harshly. "He said I was lying and he beat me," he said. Promises by host families to feed, educate and take care of the children are just too alluring to poor parents, Constante said. In some cases, the new family meets those promises, but in most cases, she says, "the difference between the promise and reality is seen on the first day they arrive."*

Figure 23. Case example – Operation BIA

**Operation BIA (2009)**

*INTERPOL's first ever police operation targeting child trafficking in West Africa has resulted in the rescue of more than 50 child workers and the arrest of eight people in connection with the illegal recruitment of children.*

*Nearly 300 Ivorian law enforcement officers participated in the two-day operation (18-19 June) during which eight teams (six mobile and two fixed) simultaneously targeted a selection of plantations believed to be using illegal child labour. In addition, vehicles travelling on the main roads leading from Ghana were systematically checked for potential child victims.*

*Codenamed 'BIA' after the river which separates Ghana from Côte d'Ivoire, the operation resulted in the rescue of 54 children of seven different nationalities, clearly demonstrating the extent of transnational child trafficking in the region.*

*The children had been bought by plantation owners needing cheap labour to harvest the cocoa and palm plantations. They were discovered working under extreme conditions, forced to carry massive loads seriously jeopardizing their health. Aged between 11 and 16, children told investigators they would regularly work 12 hours a day and receive no salary or education. Girls were usually purchased as house maids and would work a seven-day week all year round, often in addition to their duties in the plantations.*

*Specially trained investigators in child exploitation and trafficking interviewed the victims with the responses providing investigators with a clearer picture of the extent of child labour in the region and potential regional networks. None of the children were aware that child labour is illegal.*

*Designed to tackle the increasing trend in child trafficking and exploitation in this South Eastern part of Côte d'Ivoire, the operation was planned by INTERPOL's Regional Bureau in Abidjan in conjunction with Ghanaian and Cote d'Ivoire police authorities. Specific plantations were targeted, based on local intelligence gathered in advance of the operation. Operation BIA was conducted under the banner of INTERPOL's program of Operational Assistance, Services and Infrastructure Support (OASIS) to African Police Forces, funded by Germany, which is aimed at developing operational policing capacities in Africa. Support was also provided by the German governmental organization GTZ which provides sustainable solutions for political, economic, ecological and social development in a globalized world.*

*With Ghana and Côte d'Ivoire producing around three quarters of the world's cocoa, it is believed that hundreds of thousands of children are working illegally in the plantations across these two countries alone. The trafficking of children is often camouflaged by the cultural practice of placing young children with families of wealthier relatives to receive an education or learn a trade. In reality, they are often sold and their rights to education, health and protection denied. To continue tackling this trend, a second BIA operation is scheduled for later this year in Ghana.*



### **3 Concluding recommendations**

Based on the research findings, a set of four concluding recommendations can be formulated. First, the current criminal justice responses seem to be out dated. An update is strongly recommended. Second, when updating the criminal justice responses, distinction needs to be made between mafia-like hierarchical structures and network structures. Third, to further tailor the criminal justice responses, knowledge on the criminal context of trafficking in persons and smuggling of migrants needs to be refined. Fourth and final, the international cooperation needs to be intensified and (re)considered for the emerging un-organized crime involvement in trafficking in persons and smuggling of migrants.

#### **3.1 Update the criminal justice responses**

The current criminal justice responses appear to fail in responding to the current reality of organized involvement in trafficking in persons and smuggling of migrants. Once it has been established that an organized crime structure is to all probability behind a trafficking or a smuggling operation, the current responses there-to are inadequate. First, it has already been noted that on many occasions, strategic choices are made in the decision-making process of prosecutions and investigations. Decisions to further investigate certain cases for their entirety, are reported to often be based on a time, resource and 'chance of success' basis. Such cost and benefit-weighting can never be acceptable when harm has been done and/or is at risk of further being imposed on people.

Additionally, some of the regular evidence-gathering techniques are in these cases not suitable and bound to be unsuccessful. Witness and victim testimonies are the best example of this assertion (Europol 2009). Trafficking victims are usually not eager or even unwilling to contribute to investigations. Law enforcement agents for example accounted the major obstacles they are facing in this respect, trying to counter the trafficking of Nigerian women to Europe for the purpose of sexual exploitation (see also Kaizen and Nonnema 2007). Once arrangements for victims' journeys abroad are completed, traffickers take their victims to shrines of voodoo priests for oath taking. There, victims are made to swear that they will never reveal the identities of their traffickers to anyone if arrested whether in the course of the journey or in the destination countries. Even when traffickers are arrested, victims often fail to appear in court to testify against them for fear for their lives if they violate their oaths.

As follows from the predominance of the network structure of organized crime groups involved in trafficking in persons or smuggling of migrants, and the often very loose connections between the criminals involved, it can also simply be that the victims do not know who the people behind the whole operation are. Even if they are willing to cooperate, they might not have any valuable information to share.

This certainly counts for smuggling of migrants. An expert from a border control agency noted that even with information from smuggled migrants who are willing to cooperate after being caught at the border and willing to participate in "debriefing-procedures" with border authorities, it is not for sure that smugglers will be tracked down.

This could have much to do with the modus operandi of certain very careful and specialized organizations. As one law enforcement agent noted from experience, smuggled migrants may be cooperative in giving all the information they can about the people that assisted them, but this information often proves to be ultimately useless. For example, in one

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case, smugglers were reported to have worn masks when they met their clients. Moreover, the "guides" who walked the migrants across the border did not talk during the action; they only waived to the migrants at the border and then accompanied them to the other side. The smuggled migrants indicated that after crossing the border, they had to call a cell phone, whose number they were given previously. No verbal communication took place this time either. A few minutes later, a transport car or bus arrived that took the smuggled migrants to the final destination of the journey.

In these cases the migrants have no valuable information to share even if they want to. The only valuable information they might give is the number they were asked to dial. In the case of smuggling of migrants, it needs to be said that on top of all other investigative difficulties, migrants are rarely eager to cooperate as they usually do not consider the people that assisted them across borders as criminals.

Investigations concentrating on victims' or migrants' testimonies may not be the appropriate course of action. Fitting investigation methods therefore urgently need to be reconsidered.

### **3.2 Dinstinguish between mafia like hierarchical structures and network structures**

A more profound recognition of the particularities of the dominant network structure of organized criminal groups is in order. This should also impact on the criminal justice response to these phenomena. A typical way of trying to eradicate organized crime following a mafia-like hierarchical structure is to focus on the main responsible(s). However, this approach is not suited to tackle network-structures. In these structures, the focus should be on 'functions' in an organized crime network and disruptions of networks on a functional basis.

For example, criminal justice could be directed against a particular form of a possible 'recruitment'- node of trafficking for sexual exploitation. A hypothetical example could be *mala fide* online modelling agencies luring girls into sexual exploitation. A fitting criminal justice response could be obliging online modelling recruitment websites to obtain a quality label after thorough quality checks before they can be operational (Vermeulen 2007). This can mean a significant challenge to a trafficking network, recruiting their victims in this manner. If an existing network is faced with such regulations, recruitment in this particular way could not be continued. This would mean an actual significant disruption of the network.

A touch of realism is however in order when recommending this approach; this particular network will be seriously disrupted without the possibility of a recruitment-node by online model agencies. However, chances are high that the remaining specialists of the remaining nodes of the network will easily be able to get involved in a different kind of network. It is a possible scenario that in the disrupted network, the person having forged documents will easily gain access to another network that may employ the loverboy-method to recruit girls. Only by attacking all possible functions in trafficking networks, would there ever be any real chance at successfully tackling trafficking in persons by criminal networks. However, if more and more networks are disrupted in a manner as explored in the given scenario, it will be more difficult every time for the remaining specialists to find their place in other networks. Making trafficking in persons and smuggling of migrants as difficult as realistically possible, is certainly a worthy a goal.

One important factor to always keep in mind when analysing approaches to tackling organized crime, is that one of the main characteristics of it is that organized crime groups are specialists in adapting to new circumstances. When a certain new response is being given by authorities to certain methods of mayhem, the methods concerned are easily left behind to transform into new ones. Therefore, as soon as a modus operandi of organized trafficking in persons is discovered, a new one will probably already be in place. Therefore, offering conclusions and information on the modus operandi of organized criminal groups involved in trafficking in persons and smuggling of migrants, will probably always be inevitably outdated.

### 3.3 Refine knowledge on the criminal context of trafficking in persons and smuggling of migrants

A more profound focus should be put on the criminal context of trafficking in persons and smuggling of migrants. In the context of the criminal network-structure, this means that more focus should be put on the different functions or nodes of the network. Experts agree by saying that for example when migrant smugglers operate with false documents when migrants are smuggled by air, the type of these documents should be further investigated. *"After 30 or 40 documents, we can tell that they were most probably forged in Hungary, with the same method and on the same machine"*, said a Hungarian law enforcement agent.<sup>18</sup> In this example, seeking a pattern in forged documents used, may lead to the detection of a smuggling network.

There is an important role reserved for "local" law enforcement and their consideration of the criminal context in this respect. Smaller scale, ancillary crimes meant to result or sustain the offence are best to be detected on a local level. The example of exploring the wider context when discovering a forged entry document has already been mentioned; airport authorities or border authorities in general should have the means and expertise to discover that the same technique has been used for several forged entry documents, links between them and the involvement of a larger-scale organization behind it may be found. If border authorities stop at the factor 'illegal immigrant', and the context in which the immigrant has been able to make it to that particular border is not further explored, the factor 'organized smuggling of migrants' might be lost. This is exactly what is happening today and which explains the incredibly low detection and conviction rates for smugglers<sup>19</sup>. Illegal migrants are discovered, labelled as such and either sent back immediately or imprisoned as criminals, awaiting their deportation. No significant efforts are made to try and get a hold of the possible smugglers behind the journey of the migrants.

Other examples are; taking the investigation beyond merely prosecuting a brothel owner after the discovery of women without passports in strip clubs or after finding illegal workers in a factory or on a plant; searching for the backgrounds to reports of increased violence between certain well-known criminals by local law enforcement, etc. If investigations at a local level stop at these findings, and the context in which these crimes or events occur is not

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<sup>18</sup> Taken from a BBC report of an article on the Hungarian privately-owned conservative newspaper Magyar Nemzet website (<http://www.mno.hu/>), publishing an interview with a Hungarian smuggling of migrants-expert, published on 7 November 2009.

<sup>19</sup> See for example the comparison between apprehension rates of migrants and apprehension rates of smugglers in Germany in Heckmann (2004; 1109) .



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further explored, the overview of all details of the possible organized trafficking in persons or smuggling of migrants case can be lost. If local law enforcement, detecting smaller scale crime related to these forms of serious organized crime are unable to take certain investigations to the next level, even by simply passing it on to more specialized law enforcement units, or international police cooperation structures, the large majority of trafficking or smuggling cases will continue to go undetected.

The difficulty with this recommendation is that its implementation would not be easy. Discovering the wider context of trafficking in persons or smuggling of migrants, or differently put, recognizing the context in which smaller scale crime is committed requires specialized training for local law enforcement. Also, a much more profound understanding and awareness of what constitutes trafficking in persons, smuggling of migrants and organized crime, would be needed.

This would require specialized training, additional means and time. The following point in this section on "indicators" of organized involvement in trafficking in persons and smuggling of migrants, further elaborates on the "recognition" of organized involvement in both phenomena.

Also, it would require the will and interest of authorities and policy makers to not be satisfied with for example mere individual convictions while a broader context is obviously to be detected, or with merely sending detected illegal migrants back, or even wrongfully charging trafficking victims as criminals for irregular work. The work conducted and templates used by Eurojust should be regarded as best practices.

Some meaningful work has already been undertaken for the development of a list of indicators for the better recognition of victims of human trafficking (the UNODC Toolkit to Combat Trafficking in Persons 2006). Such standard indicators do not exist to detect organized criminality which may be at the origin of certain offences related to trafficking in persons or smuggling of migrants. Virtually no literature has been found that offers good information on how law enforcement agents deal with "discovered" trafficking victims or smuggled migrants and how they deal with the possibility of involvement of an organized group, in organizing or facilitating their arrival in the destination country.

For example, when a group of migrants of four different nationalities are intercepted, law enforcement agents should acknowledge that there is a high chance that these people were brought together and that their journey was facilitated by an organized criminal group. "Nationality" in this case is an indicator of organized involvement. When for example 50 migrants from a South-American origin are found in a container on a ship that just docked in Europe, it is highly likely that they had help to arrive at this far away destination and that more than three people were behind this operation. 'Distance between origin and destination country' could in this case also be considered an indicator of organized involvement. Only few studies offer a perspective on indicators of organized crime involvement in the phenomena (see for example Europol (in Salt 2000), Kangaspunta 2003, Picarelli 2009).

Indicators of organized crime could be, according to the few pieces of literature that included such a list: the fact that people of different nationalities are part of the same group of trafficked victims; that trips over a long distance require a firm organization; that substantial amounts of money are involved; that itineraries change quickly; that legal services are available very quickly; and that there is a strong reaction to counter-offensives by law

enforcement agencies (Kangaspunta 2003). Some researchers point to a close connection between organized crime and for example trafficking for sexual exploitation, stating that the magnitude and geographic scope of the sex industry are so phenomenal that organized crime has to be involved at various levels (Shannon 1999). These assumptions are however not evidence-based.

It is therefore crucial to undertake thorough research. One approach could be to analyze the details of known trafficking and smuggling cases, orchestrated by organized crime, of the last years, to derive a list of possible indicators of organized crime involvement in trafficking in persons or smuggling of migrants.

The problem with such research is the now well-emphasised lack of empirical evidence to be able to result in such a list. Secondly, the biggest issue seems to be: what comes after establishing the "knowledge" of organized involvement in a trafficking operation? What follows is an illustration of this issue;

Figure 24. Case example – Indicators of organized involvement, and then what?

#### **Indicators of organized involvement, and then what?**

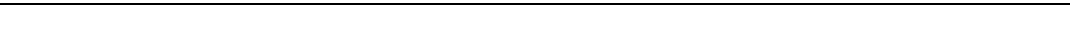
*A few years back, Finnish border authorities stopped a bus full of Georgian citizens at the Finnish border. The bus had a couple of men on board, the rest of the travellers were young and middle-aged Georgian women. The women did not have much money on them, nor did they have any travel documents on them. The bus driver, who had all the women's documents, explained that he was leading a tourist group and that was why he carried around all their travel documents; for their convenience. However, when the "tourists" were questioned, not one of them could answer the question as to where they were travelling to; they simply did not know where they were going. Because this was the only legal thing for the border guards to do at that point, they sent the bus back to where it came from.*

*A number of indicators that showed that something suspicious was going on, can be found in this case example.*

*The women did not know where they were going, they did not have their passports or much money on them, and the "travel agents" had lied about the goal of the trip. However, even after finding all this out, the bus was simply sent back and the case was closed.*

*However, after border authorities discovered that this exact same story recurred several times, an investigation was started. It was discovered that within a timeframe of a couple of years, 49 similar observations had been made, with buses coming from Georgia, using the same route and the same cover story. It was also discovered that many of these buses had returned with nobody on board. As for the passengers, it was found out that most women were dropped off and picked up later to carry out some short-term jobs. Some passengers were found to be "market-people", going across borders to purchase merchandise and to later sell it on the Georgian market. Who the profits of these short-term jobs and activities went to, remained unclear.*

*The fact that none of these people actually knew where they were going, means that someone must have known in their place. If this "someone" was an organized group who exploited the people on board of these busses, was never proven.*



This kind of case example shows how problematic it is to build further on the knowledge that organized crime groups or structures are indeed involved in certain detected operations. Even if the most detailed and complete list of indicators were to be developed on the basis of a thorough study, this would not necessarily mean that the solution to the problem could be identified. Finding out on the basis of indicators that there is a sort of organization behind certain operations, certainly does not mean that other details are easy to be found. For example, this does not mean that it will be easy to find out who the members of the organization are, where they can be found, how they operate, etc. It is however a valuable recommendation for the future, that an attempt of developing such a list of indicators should be undertaken. This will of course require a better evidence base and extensive data-collection, a previous recommendation that is hereby once more proven to be of value. Better recognition of fields of organized involvement behind certain cases, is of vital importance.

### **3.4 Step up international cooperation, even for the emerging un-organized crime involvement**

The presence of un-organized involvement in trafficking in persons and smuggling of migrants has significant consequences for the roll-out of the international instrumentation.

As explained when introducing the legal framework, the UNTOC is supplemented by three protocols, among which the trafficking protocol and the smuggling protocol are of relevance to the study. Both these protocols explicitly clarify in their article 4 that their scope is limited to those offences that are transnational in nature and involve an organized criminal group, unless otherwise stated in national legislation. This means that for some criminal justice responses as dealt with in the Convention and the Protocols and where no provision to the contrary is given in national legislation, the un-organized crime involvement in trafficking in persons and smuggling of migrants, slips through the net.

In practice this means that, firstly, requests for confiscation of proceeds of crime, property, equipment or other instrumentalities, no longer need to be complied with to the greatest extent possible if the offence does not involve an organized criminal group. State parties do not have to take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities in those cases.

Secondly, with regard to these un-organized forms of trafficking in persons and smuggling of migrants, State Parties are not obliged to establish jurisdiction. This is so neither where the offence is committed in the territory of that State Party or where the offence is committed in board of a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

Thirdly, the *aut dedere aut judicare* principle no longer applies when the offences do not involve organized criminal groups. When a State Party in whose territory an alleged offender is found, does not extradite that person solely on the ground that he or she is one of its nationals, that State Party shall no longer have the obligation to comply with the request of that State Party seeking the extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution.

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Fourthly and finally, the obligation to afford each other the widest possible measure of mutual legal assistance in investigations, prosecutions and judicial proceedings no longer applies in cases that do not involve organised criminal groups. The incentive to consider the setting up of joint investigation teams equally loses its power.

Considering the significant presence of un-organized involvement in both trafficking in persons and smuggling of migrants international cooperation should be intensified for those forms too, regardless of their un-organized character.



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## 5 Annexes

### 5.1 Bibliography of filtered out text on the basis of direct availability, relevance and definitional filters<sup>20</sup>

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## 5.2 Interview script<sup>21</sup>

### a. General

1. Short intro on how your work/expertise/experiences relates to organized crime groups and their involvement in TIPSOM?
2. Would you agree that still not so much is really known about the involvement of organized crime in trafficking in persons/smuggling of migrants? Would you agree that there is still a lack of evidence-based knowledge on the matter? (leaving aside estimates, guessing and plausible assumptions)?
3. Who would you consider being the best source for information for this research (law enforcement, academics, NGO's,...)? Do you agree that specialized law enforcement agents who deal with cases directly, can offer the most valuable input? Do you agree that opinions can differ greatly according to the sort of respondent? (for example NGO: subjective/exaggeration and policy makers: too positive a view "we can handle it")?
4. Which definition of TOC/TIP/SOM do you use in your everyday work? Do you think the UNTOC definitions are being implemented enough? have you ever experienced any difficulties due to different meanings of different concepts in your work?
5. Do you feel that differences in (criminal) law can pose a major obstacle in the fight against TOC/TIP/SOM? for example: telephone tap allowed in one country involved but not in the other, ... . Do you think that possible principles of mutual recognition are being respected enough? Do you think that more/more extensive principles of mutual recognition could be helpful in the fight against TOC's involvement in TIPSOM?
6. In your country, is "involvement in an organized criminal group" an offense in itself? do you agree that the fact that this is not considered as an offence in several countries, has a negative influence on investigations into organized criminal groups and finding all people behind TIPSOM-operations? Do you agree that many investigations/prosecutions stop at finding and jailing the people who seem "most directly" involved in the operation? Do you think that more funding, training and specialisation for law enforcement and prosecutors might solve this problem?
7. How is your agency involved in investigations/prosecutions? How do you contribute? do you merely have an "advisory"/intelligence function? in what way are you actively involved? How easy is cooperation with national law enforcement? Do you feel that (local) law enforcement is eager to involve your agency in their cases? Is there much openness between all actors involved on a transnational level?
8. The aim of the report will be to offer "new" information, new cases and trends, etc. so my report will be filled with particular examples and cases of trafficking and smuggling. Do you know of other new trends, particular cases, etc. that are worth mentioning in the report and are worth being discussed on the Crime Congress?

### b. organized criminal groups

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<sup>21</sup> This interview script is a final version, which means that it mostly aimed at validating previously drawn conclusions on the basis of earlier interviews

1. Over the years, it has been established that there is an enormous "diversity" of criminals being involved in trafficking of people and smuggling of migrants. Do you agree that is very difficult nowadays to come up with a "typology" of groups and people behind these crimes, because there are so many different actors playing a role in the market?
2. Do you think that there are noteworthy differences between the people and groups behind smuggling and trafficking?
3. Do you think that the definition of "organized crime" in the UN convention on Transnational Organized Crime is useful? Would you agree that this definition creates a sort of "stereotypical criminal group" of more than 3 people closely working together and controlling the operation from beginning to end? Do you agree that this definition may offer a distorted view on what an organized crime group today really is?
4. Do you think that today, it is still possible for 1 or 2 people to completely and successfully complete a trafficking/smuggling operation without any form of input or help from others? Agree that in the case of trafficking this might be most so for very small scale exploitation vb domestic servitude? Have you ever encountered proven involvement of family and friends in trafficking/smuggling of victims/migrants?
5. Would you agree that typical, mafia-like groups that control the whole operation are seldom involved in TIPSOM? (refer to operation Golf as an exception, hierarchical, family based clan involved in trafficking Roma children to for example make them commit crimes, leaders operating from Romania living in giant crime money funded-houses, other examples?)
6. Would you agree that most/a lot of today's "organized crime groups involved in trafficking/smuggling of people" consist of networks of loosely connected people, all having their own function in the network and not interfering with other people's function? do not even necessarily know each other directly? more connections on the basis of social networks and "knowing of" each other?
7. in these networks, how are contact initiated, how are payments made, who "manages" or "oversees" operations? is there any sort of leadership or management?
8. is comparing the illicit people trade to any other form of business/trade logical and realistic?
9. do you think that today's criminal justice responses are adequate as a response to this particular form of organized crime? do you agree that criminal justice responses do not reflect on the reality of the general business-model of TIPSOM?
10. what are the links with other forms of crime? do you agree that "contextual crimes" could serve better as indicators of TIP"SOM, for example discovery of large-scale visa fraud leading up to the discovery of a smuggling network.
11. what are the links with other forms of "organized crime"? for example networks involved in both smuggling of migrants and drugs? do you agree that these links are very tight, and that "specialized" law enforcement agencies do not/cannot sufficiently work together to see and understand these links to track down criminals? for example: drug mules, in reality victims of trafficking for the purpose of drug trafficking=exploitation. Drug agencies should not stop at "catching drug mules" but work closer with trafficking agencies to discover possible connections with more severe criminal involvement in both drug and people trafficking.



12. do you think that smugglers and traffickers in any way cooperate? are there networks involved in both smuggling and trafficking? certain nodes of certain networks specialized in acts that contribute to both trafficking and smuggling and therefore some people are involved in both, without this meaning that entire networks are involved in both? In the literature, growing cooperation between smugglers and traffickers is mentioned, namely smugglers handing over their migrants at arrival to traffickers for them to exploit. Would you say this is a new and significant trend? Would you agree that it used to be so that traffickers simply pretended to be smugglers and exploited their smuggled migrants at arrival? That is was merely a trafficking operation, operating under the false name of a smuggling operation?

### **c. investigations and prosecutions**

1. How would a law enforcement agent recognize the involvement of organized crime behind trafficking/smuggling? Do you believe that there are certain "indicators for organized involvement"? For example, one found case describes how a large group of migrants from Venezuela was smuggled to Germany, but that there was no involvement of organized crime. Do you think that "distance between origin and destination country" for example, should be considered an indicator of organized involvement?

2. Can you provide the research team with examples of recent successful anti-trafficking/smuggling operations, that "discovered" and successfully proved organized involvement in trafficking/smuggling? how where these operations initiated? what was the outcome, prosecution& conviction-wise?

3.what are the best investigation techniques for finding organized involvement/all people involved in a found TIPSOM-operation?

4. what, from your experience, are the main reasons for the low conviction rates for TIP and the even lower conviction rates for SOM.

5. do you think that in general, in investigations and prosecutions into TIPSOM, enough attention is being paid to the "organized" element?

6. how are proceeds laundered? is investigating money flows the best/a good way to find connections?

7. would you agree that because organized crime networks, adapt to changing situations so fast and because investigations/proof/victim testimonies are so hard to get+ supply and demand is endless, human trafficking/smuggling cannot be stopped, all we can do is "get as many as possible". or is that too pessimistic a view?

8. Do you have any additional comments, ideas, thoughts that could contribute to the research?