Migrant smuggling and human rights - notes from the field

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Gazette - Migrant smuggling and human rights: notes from the field

By Fiona David

Eastern Africa is one of the poorest, most conflict-riddled regions in the world and, within this region, migrant smuggling between countries is commonplace. The following article by Fiona David, a lawyer and researcher in smuggling and trafficking issues, seeks to provide some insights into the drivers and realities of migrant smuggling, and the human rights implications of this trade in human misery.

In Canada, as in my own country Australia, law enforcement is tasked with responding to the tail end of the migrant smuggling process, the most visible aspect of which is the unlawful boat arrivals. While politicians resort to simplistic calls to “stop the boats” or “strengthen border protection,” the reality is that migrant smuggling raises a host of complex criminal justice and human rights considerations.

Meet the migrants

I was recently in Djibouti, one of the poorest countries in the world, with a landscape that is described by the CIA World Factbook as “largely wasteland.” Djibouti has a long coastline in the Gulf of Aden. From some of the coastline, Yemen can be reached by small boat in less than two hours.

While in Djibouti, I met with a group of young people from neighbouring countries who had sought shelter there.

They included men who had escaped from the army in Eritrea, women who had sought shelter from Ethiopian conflict and men fleeing from Mogadishu in Somalia. All lived on the margins of society in Djibouti.

Each of them clutched a small folder with their most precious possessions: documents, sometimes dating back to the 1980s, from the United Nations High Commissioner for Refugees or the Red Cross.

Djibouti (pop. 700,000) is wedged between Eritrea, Ethiopia and Somalia. With neighbours like these, it is fortunate indeed that the Government of Djibouti has a refugee program. The government hosts approximately 12,000 people in its one refugee camp.

Yet despite Djibouti’s apparent generosity, the refugee system is failing. Several of the young men told me that they literally could not get the necessary appointment with the Djiboutian refugee agency to register as refugees.

The government has made an unwritten decision that young men from Somalia are a security risk.

It is the failure of this refugee system that drives many of these young men — with no home and no other hope — to get onto overcrowded boats and to try to build a new life elsewhere.

Until fairly recently, Ethiopians and Somalis most commonly sought the services of people smugglers
in the port town of Bossaso in northern Somalia.

However, in 2008, grenades were let off in an area that was heavily inhabited by migrants.

Reports vary as to why the bombings occurred, but 25 Ethiopian migrants were killed. Increasingly, migrants are choosing to use the relative safety of the Djibouti–Yemen route.

**Meet the smugglers**

While in some senses people smugglers provide a necessary safety valve for people who need to escape civil persecution, the reality is that people smugglers are not all Oskar Schindlers.

In Eastern Africa, recent research confirms that migrant smugglers are deeply implicated in perpetrating violence, including sexual assault of migrants, extortion, theft and racketeering against the migrants themselves.

For example, smugglers on the boats operating between Somalia and Yemen are known for their violent and abusive behaviour. Deaths on this route are common: people are known to have been thrown overboard for moving or causing trouble. As the Yemeni coast is heavily guarded by soldiers, passengers are often forced into the sea just off the coast and left to swim ashore without assistance. If they cannot swim, they drown (Human Rights Watch 2009).

Recent research also confirms that in many parts of Eastern Africa, border patrols and law enforcement are complicit in the smuggling process.

For example, large numbers of Ethiopians take the overland journey south to the relative affluence of South Africa. Along this journey, border officials in Tanzania are known to be violent and some of those smuggled through Tanzania report having been stripped of all their money and possessions, invasively searched and detained (Horwood 2009).

**The law enforcement challenge**

In addition to endemic corruption, lack of resources is the norm in this region. Recently, I spoke to the equivalent of the local mayor in a small coastal town that is a major departure point for smuggling by sea. He said that in any one day, 500 people will wait to meet up with smugglers in his dusty, barren town of 10,000 residents.

When they arrest smugglers and migrants, he has to feed and house them for up to a week before they can be transferred to the capital city 250 kilometers away. He said people smugglers who are arrested and transferred are known to return the same day.

The push factors that drive demand for the services of people smugglers are strong. The mayor said he has tried everything to deter the migrants from leaving on the smugglers’ boats, even going so far as to make prospective migrants bury the corpses of other migrants that have washed up on the beaches.

However, even this brutal action does not deter migrants from attempting to leave. The factors that push them out (civil unrest, famine, lack of basic necessities of life) and pull them overseas (the mere chance of a better life) are stronger than the fear of drowning.

**Towards solutions**

While far from perfect, the international community has hammered out a consensus agreement on how to respond to the smuggling of migrants as a crime type: the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the UN Smuggling of Migrants Protocol). The Protocol seeks to balance the need to address crime, while also protecting the rights of the smuggled migrants.
By signing onto the Protocol, governments agree that they will criminalize people smuggling (that is, the procurement of the illegal entry (or residence) of another for profit).

However, the Protocol also contains a number of other provisions. For example, countries that sign onto the Protocol agree to take the following steps:

- protect smuggled persons from death, torture or other cruel, inhumane or degrading treatment or punishment;
- protect smuggled migrants from violence;
- provide appropriate assistance to persons whose lives or safety are endangered by smugglers;
- promote and strengthen development programs aimed at combating the root causes of migrant smuggling, such as poverty and under-development.

The challenge is to turn these fine statements of principle into appropriate laws, policies and responses on the ground. For example, what does it mean to “protect smuggled migrants from death and violence?”

In the Eastern African context, numerous migrants literally die either of thirst in the desert or from drowning in small boats.

Confronted with a similar issue along the U.S.-Mexico border, the U.S. Government initiated the Border Safety Initiative. This has included the insertion of rescue beacons in deserted locations for migrants who become stranded and need emergency assistance, and training for officials in search and rescue (Guerette 2007).

**Conclusion**

Migrant smuggling is a complex issue. Responses have to strike a delicate balance between the need to allow people to seek refuge, while not allowing those responsible for the darker side of this trade to escape justice.

Having ratified the UN Smuggling Protocol, countries such as Canada and Australia have recognized that law-and-order responses are part of the solution, but equally important are the related elements of prevention, development assistance, international co-operation and practically focused efforts to protect the lives and safety of smuggled migrants.

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The views expressed herein are solely those of the author.

**References**


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