

Towards a protection sensitive approach to actions against human smuggling

DRC DANISH
REFUGEE
COUNCIL



Six recommendations to the European Commission and European Parliament

Policy Recommendations

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With the proposed **Facilitation Directive**, the EU seeks to reinforce the EU legal framework on migrant smuggling. The 'fight against smuggling' has been and continues to be a key priority for the EU and its Member States in their efforts towards achieving more orderly migration.

Countering human smuggling is often portrayed as the silver bullet to end irregular movements and presented as the key remedy for addressing human rights abuses along migratory routes. However, the current anti-smuggling approach of the EU and the often related, increased criminalization of mobility, can be counterproductive and can lead to direct and indirect harmful consequences for the safety and rights of refugees and migrants. The focus on counter-smuggling also denies the reality that smuggling services often offer refugees and migrants their only viable path out of insecurity and/or poverty.

Designing effective policy responses to human smuggling requires an **evidence based, balanced and nuanced understanding** of the diverse profiles and roles involved, including the complicity of state officials who enable smugglers to operate with impunity and participate in abuses against refugees and migrants. The gross violations and abuses experienced by refugees and migrants on the move are **well documented** and the safety and rights of refugees and migrants must be at the center of actions addressing human smuggling.

Danish Refugee Council's and **Mixed Migration Centre's** six recommendations for attention and action by Members of the European Parliament related to the proposed **Facilitation Directive**:

1

UPHOLD RIGHTS. Assess, acknowledge and address harmful human rights effects of anti-smuggling measures and safeguard the principle of non-refoulement. As the European Commission has not conducted an impact assessment of the proposed legal framework in accordance with the Better Regulation Agenda to analyse the possible negative impact on people on the move and more broadly, DRC welcomes the planned substitute impact assessment and calls on the European Parliament to ensure that the assessment is informed by the perspectives of all relevant stakeholders. DRC further encourages that a revision of the EU legal framework is thoroughly anchored in the wealth of data and evidence that exists in the field of human smuggling of the protection implications for refugees and migrants. DRC notes that recital 10 states that the Directive should be applied in accordance with the 1951 Convention obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights. We reiterate that resorting to smuggling services to seek safety does not absolve States from these obligations.

2

END CRIMINALIZATION. End criminalization of people engaged in the facilitation of irregular movements and safeguard solidarity. DRC is concerned that the clarifications of what constitutes criminal offences related to facilitation of irregular migration [Art. 3] will lead to further criminalization and penalization of refugees and migrants and those that assist them. These includes e.g. landlords or transport-, and medical service providers that may well receive or accept a financial or material benefit [Art.3(1.a)], but also parents travelling with children under dangerous circumstances, or anyone taking an active role e.g., such as taking the steer of a boat in distress [Article 3(1)(b)]. The criminalization of such services limits the availability of assistance, services and support for refugees and migrants in precarious situations.

3

SAFEGUARD HUMANITARIAN ASSISTANCE. Insist that an explicit legally binding humanitarian exception is included in the directive. DRC acknowledges that the revision of the directive seeks, among other things, to address the challenge that has been raised by civil society organizations, including DRC, with regard to the risk of criminalization of humanitarian aid and assistance. We note that the exception for humanitarian aid is recognized, and welcome that specific reference is made to the fact that family members and "smuggled" migrants should not be criminalized. However, this only appears in the recitals and not in the legally binding part of the directive.

4

INCREASE ACCOUNTABILITY. Increase accountability for rights violations, including for state officials. DRC recognizes and welcomes the intention to increase accountability for rights violations. It is crucial to step up efforts against cases of human smuggling under aggravated circumstances and to hold perpetrators of human rights violations to account. Smugglers are often the number one perpetrators of violence against refugees and migrants, but state officials are cited as frequent perpetrators as well, and on some routes as the most frequent. Abuses perpetrated against refugees and migrants in the context of human smuggling often occur in an environment of impunity, facilitated by the involvement and collusion of state officials, as exemplified in this recent report. All actors involved in gross human rights violations must be held accountable as part of anti-smuggling policies.

5

EXPAND PATHWAYS. Enhance and diversify safe, regular and accessible pathways. Facilitated journeys and smuggling must be seen in the absence of safe, regular and accessible pathways for refugees and migrants, and increasingly restrictive measures to block and prevent departures. It is important to recognize that in some contexts the use of smugglers is the only possibility for people to reach safety, and limited access to safe and legal pathways for mobility drives the demand for smuggling services. While simply increasing the availability of legal pathways will not automatically end human smuggling, a better acknowledgement of the potential role legal pathways can play for "breaking the business model of smugglers" is needed. The response to displacement from Ukraine offers a unique case study: legal entry to the EU and rapid access to the legal status of 'temporary protection' has largely prevented migrant smuggling in the context of people fleeing the war in Ukraine. This example shows that safe pathways must be an integral part of policy measures on human smuggling, as people fleeing require viable alternatives. Efforts to address human smuggling must be accompanied by genuine progress on enhancing safe and complementary pathways for refugees and regular migration.

6

ALLOW FOR NUANCE. Base policy responses on evidence and a balanced and nuanced understanding of the dynamics of human smuggling. The discourse on smuggling has increasingly become oversimplified, portraying smugglers either as malicious criminals or benign service providers. However, this dichotomy fails to capture the reality: some smugglers engage in exploitative and violent practices, while others offer crucial services that may be the only viable means for refugees and migrants to reach safety. A simplistic narrative also obscures the diverse roles and profiles within smuggling networks, which can range from local negotiators, recruiters, and guides - who are sometimes refugees or migrants themselves - to more powerful decision-makers. Smuggling networks are often loosely organized rather than highly centralized. Restrictive border policies and existing anti-smuggling measures, rather than "breaking the business model of smugglers" often lead to potentially fewer but better-organized criminal networks; increased costs of smuggling services and therefore the profit of smugglers; and the use of more dangerous routes, thereby exacerbating the risks for people on the move. Simplistic narratives lead to inadequate responses. A more nuanced approach is essential - one that recognizes the spectrum of actors involved and the contextual factors driving smuggling, ensuring that policy responses do not harm the very individuals they are intended to protect.