

Learning from COVID-19: Implications for the EU Response to Human Smuggling

by Lucia Bird

The COVID-19 pandemic set the backdrop to the EU's new framework for addressing irregular migration. Yet, this emergency mindset should not dictate that future responses to human smuggling remain focussed on border control, as they have done during the pandemic. We are at a pivotal moment in EU policy-making, following the release of the New Pact on Migration and Asylum¹ and preceding the publication of additional plans for legal migration and improved responses to human smuggling.

This is therefore a key time to take stock of how state responses to the pandemic have impacted human smuggling dynamics, in order to build sustainable and humane response frameworks going forward.

¹ European Commission, *New Pact on Migration and Asylum* (COM/2020/609), 23 September 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0609>.

Coronavirus-induced border closures: Smugglers needed

In response to COVID-19, countries around the world have closed their borders and invested in border control, deploying the military and purchasing additional hardware to prevent irregular border crossings and limit domestic movement.

These restrictions have made mixed migration journeys far more difficult, temporarily depressing both regular and irregular migration in many regions. Illustratively, Frontex reported that in March 2020 the "number of detections of illegal border crossings on Europe's main migratory routes fell by nearly half" from February, and by 85 per cent between March and April, reaching record lows.²

² Frontex, "Situation at EU External Borders in March: Detections Halved from Previous Month", in *Frontex News Releases*, 16 April 2020, <https://frontex.europa.eu/media-centre/news-release/situation-at-eu-external-borders->

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Paper prepared with partial support of the Open Society Foundations, in the framework of the project "A New European Consensus on Asylum & Migration". Views expressed are the author's alone.

Facing these restrictions, migrants and refugees who either wanted or needed to move were forced to do so irregularly, and face the heightened risks associated with clandestine movement. In some areas, border closures triggered a tangible growth in the smuggling industry: the March 2020 closure of the Benin–Niger border (which ECOWAS citizens can typically cross freely) gave rise to the material expansion of a previously small smuggling industry.³

Similarly, the closure of Uganda's borders led entrepreneurial taxi and motorbike drivers to offer smuggling services across the country's North-Eastern border with South Sudan.⁴

These cases of enhanced reliance on smugglers are indications of a global trend rather than isolated incidents. 4Mi data collected by the Mixed Migration Centre between April and September 2020 through surveys with refugees and migrants travelling across Africa, Asia and Latin America illustrates this trend: 47 per cent of respondents reported increasing difficulties crossing borders as a result of COVID-19, and 37 per cent indicated a greater need for smugglers.⁵

in-march-detections-halved-from-previous-month-mZriq; Frontex, "Situation at EU External Borders in April: Detections Lowest since 2009", in *Frontex News Releases*, 12 May 2020, <https://frontex.europa.eu/media-centre/news-release/situation-at-eu-external-borders-in-april-detections-lowest-since-2009-mJE5Uv>.

³ Ongoing monitoring by the GI-TOC in the region.

⁴ Telephone interview with Umba Peter, Swisspeace, 23 July 2020. Field research conducted by GI-TOC in February 2020 regarding the lack of previous human smuggling market.

⁵ Mixed Migration Centre, "Impact of COVID-19 on Migrant Smuggling", in *COVID-19 Global*

This underscores the long-recognised relationship between increasing obstacles to independent movement (typically in the form of heightened border restrictions), and growing demand for smugglers.

Migrant and refugee protection risks increase

The risks inherent in engaging smugglers and moving irregularly are enhanced in environments more hostile to migration: smugglers seeking to evade detection in higher-risk operating contexts have been repeatedly forced to take riskier routes or use more dangerous means of transport, such as sealed lorry containers or ever smaller boats, with catastrophic consequences for migrant safety.⁶

Thus, as countries focused on increased border closures and heightened restrictions on the movement of people, migrant risks increased significantly. The death of 64 Ethiopian men being smuggled into Mozambique from Malawi in a goods container lorry on 24 March, four days after the Mozambican government imposed strict anti-COVID border controls, was an early harbinger of such tragedies (and by no means the only one).⁷

Thematic Updates, No. 1 (1 September 2020), <http://www.mixedmigration.org/?p=6869>.

⁶ Tuesday Reitano and Lucia Bird, "Understanding Contemporary Human Smuggling as a Vector in Migration. A Field Guide for Migration Management and Humanitarian Practitioners", in *Global Initiative Research Reports*, May 2018, <https://globalinitiative.net/?p=25439>.

⁷ "COVID-19: Mozambique Closes Schools, Tightens Border Controls", in *APA News*, 20 March 2020, <http://apanews.net/en/news/>

By November 2020, Mozambique's borders had partially reopened, however cross-border movement remained far more restricted than pre-pandemic. This partial reopening mirrors that of countries around the world, pointing towards lingering enhanced border control and movement restrictions, and consequently medium-term impacts on migration dynamics and the smuggling industry.

The higher risks faced by smugglers operating in a more hostile environment, coupled with heightened demand, is reflected in the increased price of many smuggling journeys: in Mali, prices for transit to Algeria doubled between February and September 2020, while 4Mi data reveal that over 50 per cent of respondents reported an increase in the price paid for smuggling services.⁸

Higher prices are likely to engender an increase in "pay as you go" or "travel now pay later" payment structures. These payment modalities, where the migrants or refugees work along the way to fund each leg of the journey or repay smuggling debts, increase individual vulnerability, including to exploitation in contexts which constitute trafficking.⁹

[covid-19-mozambique-closes-schools-tightens-border-controls](#).

⁸ Mixed Migration Centre, "Impact of COVID-19 on Migrant Smuggling", cit.

⁹ Arezo Malakooti, "The Intersection of Irregular Migration and Trafficking in West Africa and the Sahel. Understanding the Patterns of Vulnerability", in *Global Initiative Publications*, February 2020, <https://globalinitiative.net/?p=33348>.

COVID-19 has also engendered a spike in anti-migrant sentiment worldwide, accelerating a previous trend driven in part by the growing power of populist parties.¹⁰ This threatens a long-term erosion of migrant and refugee rights, already under fire as international frameworks cracked under the strain of record forced displacement levels – reaching 79.5 million according to UNHCR by the end of 2019.

Emergency counter-COVID measures taken by a number of states to block the entry of migrants and refugees, including well-documented maritime pushbacks in Europe and Asia, are widely recognised to breach humanitarian principles and in some cases international law.¹¹ The economic stress of the pandemic is set to exacerbate drivers of migration, with irregular emigration already increasing from some countries, including from Algeria and Tunisia towards Europe.

EU policy implications

EU governments and media play a pivotal role in setting the tone of migration discourse. To date, and particularly since the "migrant crisis" in 2015, EU policy has principally focussed

¹⁰ Eric Reidy, "The COVID-19 Excuse? How Migration Policies Are Hardening around the Globe", in *The New Humanitarian*, 17 April 2020, <https://www.thenewhumanitarian.org/node/261352>.

¹¹ European Council on Refugees and Exiles, "Med: 150 Stranded at Sea as Malta and Italy Declare Ports 'Unsafe'", in *ECRE Weekly Bulletin*, 10 April 2020, <https://www.ecre.org/?p=10313>; Irwin Loy, "In the News: Rohingya Boat Rescued after Weeks at Sea", in *The New Humanitarian*, 16 April 2020, <https://www.thenewhumanitarian.org/node/261350>.

on reducing irregular migration, while demonstrating parallel reluctance to expand legal migration channels (although the increase in first residence permits issued for employment in 2019 and 2020 is a welcome step).¹²

In the wake of COVID-19, resisting the impulse to further limit legal avenues for migration, and thereby move the starting point for policies away from preventing irregular entry and towards recognising the importance of migration for European economies, including in meeting the needs of the labour market, will be key.

The EU Commission's communication on the "New Pact on Migration and Asylum" – which emphasised the economic benefits of migration to the EU – was broadly in line with this approach.

However, this more positive migration rhetoric is coupled with policy proposals seeking to restrict mobility across countries of origin and transit, and while promising a more "humane" approach to migration, the Pact remains strongly centred on border control and returns. The Pact also opted to divorce irregular migration from a roadmap for legal migration, which will be addressed in future plans.¹³

¹² Eurostat, *Residence Permits - Statistics on First Permits Issued During the Year*, data extracted in November 2020, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Residence_permits_-_statistics_on_first_permits_issued_during_the_year&oldid=456573.

¹³ European Commission, *Speech by Vice-President Schinas on the New Pact on Migration and Asylum*, Brussels, 23 September 2020, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1736.

This implicitly supports previous EU rhetoric presenting the relationship between the two phenomena as sequential: irregular migration, and thus the smuggling industry, must first be stopped in order to enable space for legal migration.¹⁴

Disrupting the operations of smugglers therefore becomes a key precedent to the creation of legal migration routes. This creates an impasse, which in part led to the recognised gridlock in EU migration policy.

Moving forward, it would be better to avoid this artificial separation, instead constructing approaches recognising the symbiotic relationship between regular migration on the one hand, and irregular migration and human smuggling on the other.

Similarly, the Pact's emphasis on partnerships with transit countries to boost their counter-smuggling responses is not new. To date, support for counter-smuggling approaches focused on "help[ing] strengthen third countries' police and criminal justice responses to smuggling".¹⁵

Yet, in practice, such responses have been repeatedly recognised as leading to a number of unintended consequences,

¹⁴ Lucia Bird, "Human Smuggling in Africa. The Creation of a New Criminalised Economy?" in *ENACT Publications*, 27 July 2020, <https://enactafrica.org/research/continental-reports/human-smuggling-in-africa-the-creation-of-a-new-criminalised-economy>.

¹⁵ European Commission, *EU Action Plan against Migrant Smuggling (2015-2020)*, (COM/2015/285), 27 May 2015, p. 9, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0285>.

including that of smugglers taking riskier routes to evade detection (as detailed above). Cumulatively, these have grievous impacts on the human rights of migrants and refugees, damaging EU credibility in the process. Furthermore, such responses recurrently fall wide of their stated aim – disrupting smuggling businesses – and in some cases are instead making smuggling more central to irregular migration, thereby strengthening the industry itself.¹⁶

The nature of appropriate counter-smuggling responses in third countries is also in question. While some organised crime networks certainly draw significant profits from involvement in human smuggling operations, a growing body of research points to an understanding of much of the smuggling industry being characterised by loosely affiliated groups and actors, flat hierarchies and low levels of organisation.¹⁷ For these players, a criminal justice response may be inappropriate, and instead exacerbate already marginalised and vulnerable situations.

To the extent that criminal justice approaches continue to be pursued, legal frameworks and law enforcement approaches should reflect this understanding of the smuggling industry, avoiding mandatory minimum sentences, and reserving high penalties and interdiction focus for aggravated offences where

smugglers subject migrants and refugees to inhumane treatment.¹⁸

The EU Commission committed to present a new action plan against migrant smuggling in the first quarter of 2021. This plan should be built on the more nuanced understanding of human smuggling markets gained since its predecessor, and interlink not only with the Pact, but also with pending action plans on legal migration.¹⁹

Failure to learn from the impact of COVID-19 responses on migration and smuggling dynamics would condemn response frameworks to stagnation, remaining mired in human rights concerns and of questionable efficacy, and dictate a bleak outlook for over 58 million irregular migrants and refugees in the world.²⁰

Communications around the Pact presented it as a “fresh start” – it is indeed a pivotal time to reopen the debate, examine afresh the impact of past responses to human smuggling and irregular migration, and take the opportunity to improve EU policies. Now is the time to incorporate the

¹⁶ Lucia Bird, “Human Smuggling in Africa”, cit.

¹⁷ Tuesday Reitano and Lucia Bird, “Understanding Contemporary Human Smuggling as a Vector in Migration”, cit.

¹⁸ Lucia Bird, “Criminalisation of Human Smuggling in Africa. Looking at the Law”, in *ENACT Policy Briefs*, 22 July 2020, <https://enactafrica.org/research/policy-briefs/criminalisation-of-human-smuggling-in-africa-looking-at-the-law>.

¹⁹ European Commission, *New Pact on Migration and Asylum: Questions and Answers*, 23 September 2020, https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_1707.

²⁰ Elisa Mosler Vidal and Jasper Dag Tjaden, *Global Migration Indicators 2018*, Berlin, Global Migration Data Analysis Centre (GMDAC), June 2019, p. 30, <https://publications.iom.int/node/1977>.

protections for migrants and refugees enshrined in the Global Compacts for Migration and Refugees into policy and practice.²¹

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²¹ UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration* (A/RES/73/195), 19 December 2018, <https://undocs.org/A/RES/73/195>; *Global Compact on Refugees* (A/73/12 Part II), 2 August 2018, [https://undocs.org/en/A/73/12\(PartII\)](https://undocs.org/en/A/73/12(PartII)), adopted by the General Assembly on 17 December 2018, <https://undocs.org/A/RES/73/151>.

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