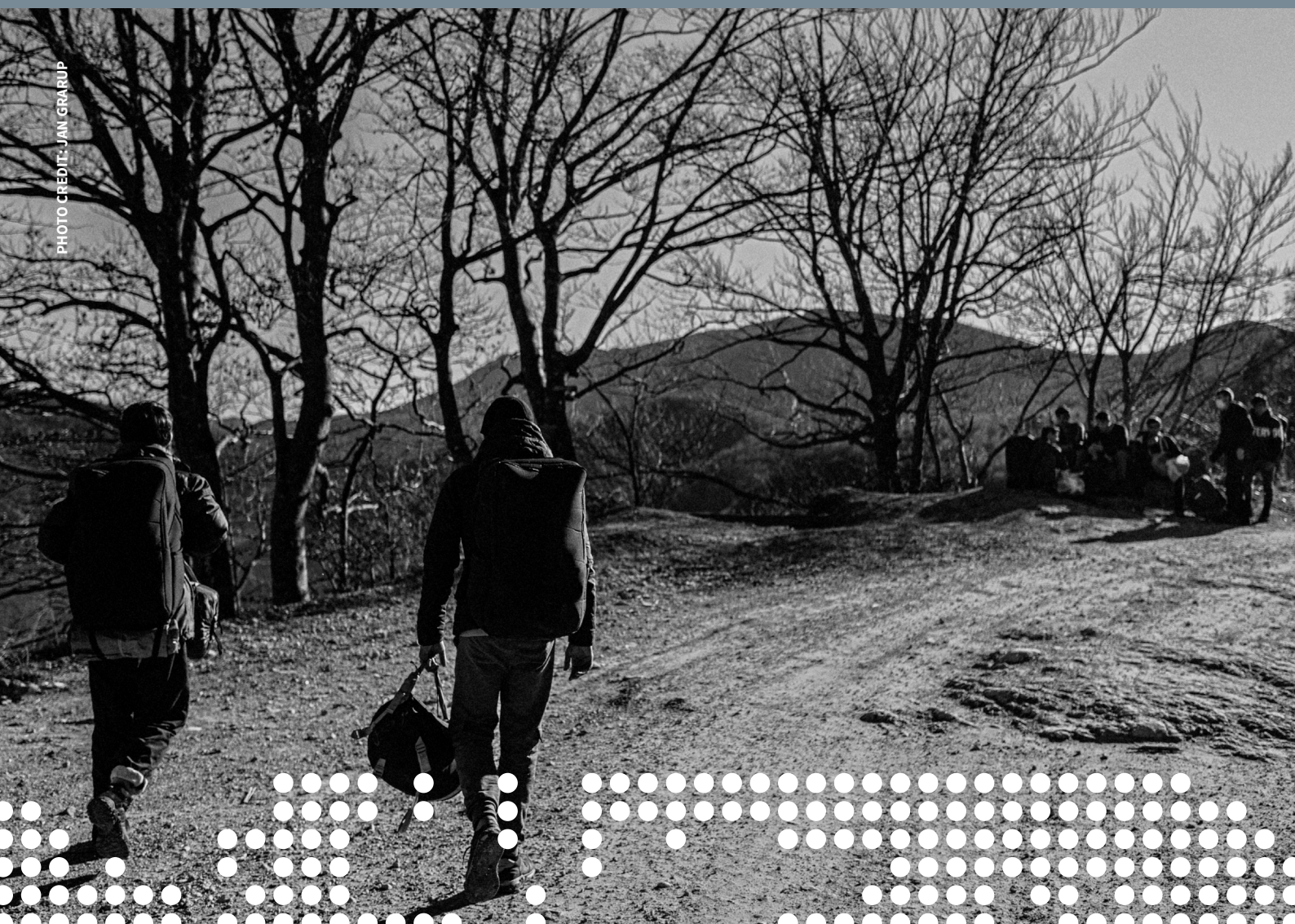


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COUNTERING HUMAN SMUGGLING: NO SILVER BULLET FOR SAFER MOBILITY

Evidence based recommendations towards a
protection-sensitive approach to actions
against human smuggling



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Evidence based recommendations towards a protection-sensitive approach to actions against human smuggling

The “fight against smuggling” is a key priority for the EU and its member states in their efforts towards achieving more orderly migration. The EU approach is based on increased and intensified cooperation with third countries. Targeted “counter migrant smuggling partnerships” with countries of origin and transit will focus on disrupting cross-border criminal smuggling networks and strengthening law enforcement and operational capacity of partner countries with the view to prevent irregular departures.¹ Countering human smuggling is often portrayed as the silver bullet to end movements through irregular pathways and presented as the key remedy for addressing human rights abuses along migratory routes.

Evidence, research, and operational insights from the past years’ implementation of the EU approach to human smuggling, however, point to a more complex reality.² This complexity includes the importance of recognizing and distinguishing between the diversity of actors engaged in the facilitation of irregular movements; adequately considering and addressing the unintended protection implications of anti-smuggling measures and demonstrated harmful human rights effects; and understanding and taking into account the role of facilitated journeys and smuggling within the reality of unavailable safe, regular and accessible pathways for refugees and migrants.

The Danish Refugee Council (DRC) and the Mixed Migration Centre (MMC) are uniquely placed to provide recommendations towards a more protection-sensitive approach to actions against human smuggling grounded in evidence and based on operational reality. DRC is in direct contact with communities along key migratory routes implementing humanitarian and development programs, while MMC carries out research and analysis drawing on comprehensive primary data collected directly from refugees and migrants on the move as well as from smugglers themselves through the vast 4Mi network.³

1 Com(2020) 609 final communication from the commission to the european parliament, the council, the european economic and social committee and the committee of the regions on a new pact on migration and asylum.

2 E.g. Melkonian, K. (Eds) 2021: Beyond networks, militias: Rethinking EU counter-smuggling policy and response, available at: <https://www.euromesco.net/publication/beyond-networks-militias-and-tribes-rethinking-eu-counter-smuggling-policy-and-response/>; Carrera, Sergio et al (2019): Policing Humanitarianism: EU Policies Against Human Smuggling and their Impact on Civil Society; Frouws, B. & Horwood, C. (2018) Both Angels and Demons? The role and nature of migrant smugglers, Mixed Migration Centre, available at: <https://mixedmigration.org/articles/both-angels-and-demons-the-role-and-nature-of-migrant-smugglers/>; Mixed Migration Centre (2018), Players of many parts: The evolving role of smugglers in West Africa’s migration economy. Dakar: Mixed Migration Centre, available at <https://mixedmigration.org/resource/players-of-many-parts/>; Clingendael (2018): Multilateral Damage. The impact of EU migration policies on central Saharan routes, available at: <https://www.clingendael.org/pub/2018/multilateral-damage/>

3 See also Mixed Migration Centre (2021) Smuggling and mixed migration: Insights and key messages drawn from a decade of MMC research and 4Mi data collection, available at <https://mixedmigration.org/resource/smuggling-and-mixed-migration/>

DRC and MMC urge the EU and Member States to consider the following five key recommendations elaborated below in their actions against human smuggling:

1. Place protection, dignity, safety and rights of refugees and migrants at the core of anti-smuggling policies and practices and address the harmful effects of anti-smuggling measures;
2. Ensure accountability for all actors involved in human rights violations in the context of human smuggling, including state officials;
3. Translate commitments to enhance safe, regular and accessible pathways into action;
4. Apply a nuanced narrative and policy approach to account for the different profiles of people engaged in facilitating irregular movements;
5. Explore and document the unintended protection implications of anti-smuggling measures and base policy responses on evidence.

Place protection, dignity, safety and rights of refugees and migrants at the core of anti-smuggling policies and practices and address the harmful effects of anti-smuggling measures

- **Acknowledge and address unintended protection implications and direct harmful human rights effects of anti-smuggling measures.** Growing evidence points to anti-smuggling measures and hardening of borders contributing to increased vulnerabilities of those on the move, including violations of the right to freedom of movement and right to seek and enjoy asylum.⁴ Policies and practices focused on containment or extra-territorialisation can lead to situations of involuntary immobility and can unintentionally fuel the demand for smuggling or incentivise smugglers to use more precarious routes, increasing the exposure of people on the move.⁵ Protection, dignity, safety and rights of refugees and migrants must be at the core of policies addressing smuggling activities.
- **Improve assistance to people on the move, including survivors of abuse.** Efforts aimed at countering smuggling must be adequately complemented with measures to improve responsive and remedial protection, assistance and support to refugee and migrant survivors of abuses in the context of human smuggling, and their reintegration/rehabilitation.
- **Recognize the role of NGOs and local communities to increase protection and access to services for refugees and migrants along migratory routes.** People on the move are often hesitant to seek assistance for fear of interception, detention and deportation, and the highly mobile group is difficult to reach with assistance and information provision. NGOs engage directly with communities along migratory routes and build trust over time to provide access to services and for information on regular migration possibilities, protection risks, as well as potential asylum and inclusion/integration possibilities in the country of transit. NGOs working within the sector should be systematically consulted and heard in relevant coordination fora at national and regional levels.

⁴ See e.g., Clingendael 2018, Multilateral damage. The impact of EU migration policies on central Saharan routes, available at: <https://www.clingendael.org/pub/2018/multilateral-damage/OHCHR>, 2021: "Lethal Disregard": available at: <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>

⁵ MMC and UNHCR (Eds.). (2021). A Roadmap for Advocacy, Policy Development, and Programming: Protection in Mixed Movements along the Central and Western Mediterranean Routes 2021. Mixed Migration Centre and United Nations High Commissioner for Refugees, available at: <http://www.mixedmigration.org/resource/road-map-2021/>

Hidden suffering: Reaching refugees and migrants in vulnerable situations

Reaching and assisting refugees and migrants on the move is challenging partly due to the increasingly stricter policies to reduce migration and break down smuggling networks, a securitized approach to borders and increased criminalization of mobility. People on the move or in situations of involuntary immobility often prefer to remain invisible and are hesitant to seek assistance and engaging with formal institutions including humanitarian actors for fear of interception, detention and deportation.

In contexts such as Libya, the security situation further contributes to impeding effective access and service delivery to refugees and migrants, and the fear of exposure and risk of deportation and potential *refoulement* leads refugees and migrants to opt for remaining out of sight rather than seeking and accessing services and assistance.⁶

DRC is present along the major mixed migration routes in Africa and Asia as well as the Eastern and Central Mediterranean routes towards Europe and aim to create lasting change particularly by enhancing and incentivising local protective capacities through rooting the capacity to protect and advocate for protection and access to solutions for vulnerable people on the move with local communities, local duty bearers and local civil society, whilst ensuring that humanitarian assistance is provided to people with acute needs, regardless of legal status.

Lessons learned from the implementation of a route-based mixed migration programme over the past 3 years in Niger, Mali and Libya by DRC and other partners⁷ that sought to promote a protective environment for people on the move point to the need for differentiated and contextualized strategies to reach refugees and migrants in vulnerable situation and to mitigate the adverse effects of the securitization of borders and the criminalisation of mobility. In Libya for instance, DRC conducted outreach through community focal points in order to gain access to some of the most isolated refugee and migrant populations in tense areas. While in Mali, a programme, which accompanied migrants along the route to address urgent protection needs, was implemented.

⁶ UNHCR and Mixed Migration Centre (2020) 'On this journey, no one cares if you live or die', available at: <https://mixedmigration.org/resource/on-this-journey-no-one-cares-if-you-live-or-die/> Start Network and REACH (2017), Refugees and Migrants' Access to Resources, Housing and Healthcare in Libya, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/reach_lby_report_merf_december_2017_0.pdf

⁷ Foreign Commonwealth and Development Office (FCDO) funded Mediterranean Mixed Migration Programme implemented by the Danish Refugee Council, the International Rescue Committee, the Start Network and the Mixed Migration Centre.

Ensure accountability for all actors involved in human rights violations in the context of human smuggling, including state officials

- **Support efforts to investigate allegations of abuses against refugees and migrants on the move, and to hold perpetrators to account.** Smugglers are often the number one perpetrators of violence against refugees and migrants and their blatant disregard for life and gross human rights violations must be addressed as part of anti-smuggling policies. State officials are often cited as the second most frequent perpetrators and along some routes as the first, and therefore need to be held accountable too.⁸
- **Better address the involvement and collusion of state officials in human smuggling operations.** Abuses perpetrated against refugees and migrants in the context of human smuggling often occur in an environment of impunity, with the involvement and collusion of state officials.⁹ The role of collusion and corruption¹⁰ needed to facilitate smuggling is insufficiently addressed in policy responses.

Translate commitments to enhance safe, regular and accessible pathways into action

- **Understand and recognize the role of facilitated journeys and smuggling within the reality of unavailable safe, regular and accessible pathways for refugees and migrants.** The role of actors engaged in facilitating irregular movements must be understood in conjunction with the absence of safe and regular pathways for mobility, 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.
- **Take action to enhance and diversify regular, safe and accessible pathways for protection and labour migration to decrease dependency on smugglers.** In accordance with commitments in the Global Compacts on refugees and migration, resettlement and complementary pathways for protection must be expanded, and options and pathways for labour mobility for multiple skills levels, education opportunities and pathways for migrants in vulnerable situations developed and promoted. Options for safe and regular pathways must be offered in a timely manner and be easily accessible to have an impact. While simply increasing the availability of regular channels will not end human smuggling, such channels should be expanded and increased, to contribute to responding to the existing demand and decrease dependency on smugglers.
- **Ensure effective communication on available options for safe and regular pathways.** Options for safe and regular pathways need to be accompanied by effective communication to target populations in countries of origin, to ensure awareness and accessibility of these pathways.

⁸ UNHCR and Mixed Migration Centre (2020) 'On this journey, no one cares if you live or die', available at: <https://mixedmigration.org/resource/on-this-journey-no-one-cares-if-you-live-or-die/>; Mixed Migration Centre (2021) Smuggling and mixed migration: Insights and key messages drawn from a decade of MMC research and 4Mi data collection, available at <https://mixedmigration.org/resource/smuggling-and-mixed-migration/>; UNHCR and Mixed Migration Centre (2020) 'On this journey, no one cares if you live or die', available at: <https://mixedmigration.org/resource/on-this-journey-no-one-cares-if-you-live-or-die/>. See also UN (2017) Unlawful death of refugees and migrants; For analysis on determinants of vulnerabilities in North and West Africa see also Mixed Migration Centre (2020) A Sharper Lens on Vulnerability (North Africa) - A statistical analysis of the determinants of vulnerability to protection incidents among refugees and migrants in Libya, available at: <http://www.mixedmigration.org/resource/a-sharper-lens-on-vulnerability-north-africa/>; Mixed Migration Centre (2020) A Sharper Lens on Vulnerability (West Africa) - A statistical analysis of the determinants of vulnerability to protection incidents among refugees and migrants in West Africa, available at: <http://www.mixedmigration.org/resource/a-sharper-lens-on-vulnerability-west-africa/>

⁹ UNODC (2018) Global Study on Smuggling of Migrants, available at <https://www.unodc.org/unodc/en/data-and-analysis/glosom.html>

¹⁰ Frouws, B., & Brenner, Y. (2019) A persistent reality: the role of corruption in mixed migration. Mixed Migration Centre, available at: <https://mixedmigration.org/articles/a-persistent-reality-the-role-of-corruption-in-mixed-migration/>

Toughened action against smuggling - tougher journeys: Vulnerabilities and reliance on smugglers and facilitators on the rise

Stricter border measures as part of anti-smuggling policies are seen across routes to impact the demand for smuggling. It affects the number of refugees and migrants using smugglers and facilitators, influences the price of the journey and increases the use of more dangerous routes, thus exacerbating vulnerabilities of people on the move.¹¹

The Western Balkans route continues to be one of the main transit routes for people on the move trying to reach Western Europe. Nationalities using this route are predominantly Syrians and Afghans. In the face of targeted actions from the EU to stem and impede irregular movements on the Western Balkans route, smuggling activities and the demand for facilitation services remain prevalent. Smuggled refugees and migrants are vulnerable to different forms of crime. Especially the women, children and unaccompanied minors are at risk of violence, rape, theft, kidnapping, extortion and trafficking in persons. Although deaths along the Western Balkan route are relatively rare, they do occur.¹²

The regional network Balkan Refugee and Migration Council (consisting of 7 national civil society organisations (CSO's) working in different countries in the Western Balkans) and the Danish Refugee Council are partners on a regional EU-funded Action, seeking to develop protection sensitive practice and legislative and policy framework responding to migrant smuggling in the region. A main objective is to enhance regional cooperation in the Western Balkans through the development of a unified regional response to migrant smuggling, based on multi-dimensional partnership. Protection activities will be implemented by CSO's in the Western Balkans with the view to provide needed assistance to refugees and migrants and to enhance awareness on the risks of smuggling and on options for legal pathways.

¹¹ See e.g., Mixed Migration Centre (2021) Smuggling and mixed migration: Insights and key messages drawn from a decade of MMC research and 4Mi data collection, available at <https://mixedmigration.org/resource/smuggling-and-mixed-migration/> and Mixed Migration Centre (2021). Mixed migration and migrant smuggling in Libya: the role of non-Libyan smuggler intermediaries, available at: <https://mixedmigration.org/resource/mixed-migration-and-migrant-smuggling-in-libya/>

¹² Global Initiative against transnational organized crime: Spot Prices. Analyzing flows of people, drugs and money in the Western Balkans, available at: <https://globalinitiative.net/wp-content/uploads/2021/05/Spot-Prices-Analyzing-flows-of-people-drugs-and-money-in-the-Western-Balkans-1.pdf>

Apply a nuanced narrative and policy approach to account for the different profiles of people engaged in facilitating irregular movements¹³

- **Reflect the complexity of the smuggling sector in policy interventions.** In policy circles, the term “smuggler” is often used to refer to anyone engaged in smuggling or facilitation of movements through irregular pathways. Roles range from negotiators, recruiters, intermediaries or even “guides,” who are often refugees and migrants, to more powerful decision-makers, who tend to be nationals of the countries in which they operate. While some smugglers are committing sanctionable abuses and grave rights violations, not all smugglers or smuggling intermediaries are committing such abuses.¹⁴
- **Understand the diverse nature of smuggling networks and the effects of anti-smuggling measures on the smuggling business and resulting protection implications.** The extent to which smuggling networks resemble highly centralised and organised criminal networks is often exaggerated. Data and analysis suggest that more often, smuggling networks consist of many loosely connected individuals engaging in a wide range of activities. However, indications are that the harder the fight against migrant smuggling, the more this leads to fewer and more organised criminal actors and exacerbates protection risks.¹⁵
- **End the criminalisation of live-saving assistance to people on the move.** Too often human trafficking and human smuggling are conflated, and the portraying of smuggling as trafficking is used to justify a tough and criminalising approach.¹⁶ The criminalisation of human smuggling has increasingly been extended to criminalisation of refugees and migrants themselves as well as to those who aid refugees and migrants.¹⁷ The criminalisation, persecutions, and other forms of retaliation against public or private entities providing live-saving aid to vulnerable refugees and migrants on the move must end.

¹³ See further elaboration in the recent briefing paper by the Mixed Migration Centre: Mixed Migration Centre (2021) Smuggling and mixed migration: Insights and key messages drawn from a decade of MMC research and 4Mi data collection, available at <https://mixedmigration.org/resource/smuggling-and-mixed-migration/>

¹⁴ Mixed Migration Centre (2021). Mixed migration and migrant smuggling in Libya: the role of non-Libyan smuggler intermediaries, available at: <https://mixedmigration.org/resource/mixed-migration-and-migrant-smuggling-in-libya/> and Mixed Migration Centre (2018), Players of many parts: The evolving role of smugglers in West Africa's migration economy. Dakar: Mixed Migration Centre, available at <https://mixedmigration.org/resource/players-of-many-parts/>

¹⁵ Brenner, Y., Frouws, B. & Horwood, C. (2019) Taking root. The complex economics of the global smuggling economy, Mixed Migration Centre, available at: <https://mixedmigration.org/articles/taking-root-the-complex-economics-of-the-global-smuggling-economy/>; Horwood, C. (2019) The new 'public enemy number one' - comparing and contrasting the war on drugs and the emerging war on migrant smugglers. Mixed Migration Centre. Available at: <http://www.mixedmigration.org/>

¹⁶ Frouws, B. & Horwood, C. (2018) Both Angels and Demons? The role and nature of migrant smugglers, Mixed Migration Centre, available at: <https://mixedmigration.org/articles/both-angels-and-demons-the-role-and-nature-of-migrant-smugglers/>

¹⁷ Mixed Migration Centre (2019) The ever-rising securitization of mixed migration, available at: <https://mixedmigration.org/articles/the-ever-rising-securitisation-of-mixed-migration/>

Unpacking and understanding vulnerabilities and adverse effects of anti-smuggling policies on people on the move

Actions against human smuggling not only affects the ability of and the conditions under which criminal smuggling networks and facilitators operate, but have both direct and indirect impact on the safety, security, possibilities and choices of people on the move. Building a protection-sensitive approach to actions against human smuggling must consider the potential adverse human rights effects and rely on data and evidence, including listening to the voices of those directly affected by the policies.

Over the years, the Mixed Migration Centre (MMC) and its predecessor the Regional Mixed Migration Secretariat (RMMS) have conducted extensive research on different aspects and characteristics of human smuggling, across different regions and settings. The MMC's flagship data collection program, 4Mi offers a regular, standardised quantitative system of collecting globally comparable primary data on mixed migration, including questions on the interaction with smugglers. Further, MMC conducts 4Mi surveys with smugglers themselves.

Since 2014, the 4Mi, has interviewed over 85,000 refugees, migrants as well as hundreds of smugglers, becoming the largest in-depth data collection mechanism on migration globally, operational in between 15-20 countries with a network of approximately 100 enumerators in Africa, Asia, Europe and Latin America. 4Mi field enumerators situated along frequently used routes and in major migratory hubs conduct face-to-face interviews with refugees, migrants and smugglers on a continuous basis. More information about 4Mi can be found here: <https://mixedmigration.org/4mi/>.

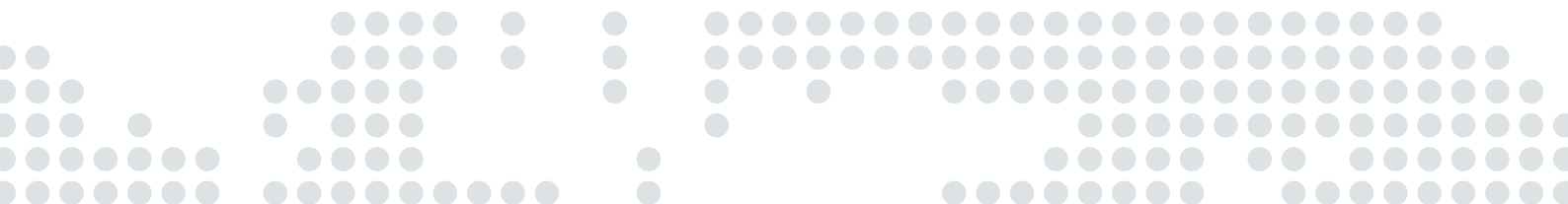
Along this policy paper, MMC released a paper with key messages on human smuggling based on a decade of data collection, research and analysis, available here: <https://mixedmigration.org/resource/smuggling-and-mixed-migration/>

Explore and document the unintended protection implications of anti-smuggling measures and base policy responses on evidence

- **Invest in research to unpack the effects of anti-smuggling policies.** Regular data collection and research should be conducted by appropriate agencies, including civil society organisations, to map protection risks and gaps, to assess the rights violations perpetrated by smugglers and border authorities and the implications of anti-smuggling measures, and to gather reliable and updated information on smugglers’ modus operandi following the “whole of route approach.” While evidence point to unintended protection implications of anti-smuggling measures¹⁸, empirical evidence is scarce on the impacts of anti-smuggling measures on curtailing smuggling activities. Investment in research to unpack the effects of anti-smuggling policies is needed.
- **Ensure timely integration of evidence in policy responses.** Timely integration of evidence must be ensured to inform policy responses, incl. related to better understand how smugglers target refugees and migrants in countries of origin, first asylum and/or transit, and to inform awareness-raising initiatives where recruiters operate.¹⁹ A more community-based understanding of human smuggling and understanding of the political economy of migration should be the basis of anti-smuggling responses such as addressing economic development needs of communities, including reducing dependence on migration economy, and promoting protection and conflict sensitive responses in support of efforts of justice and security actors.

¹⁸ See e.g., Clingendael 2018, Multilateral damage. The impact of EU migration policies on central Saharan routes, available at: <https://www.clingendael.org/pub/2018/multi-lateral-damage/>; MMC and UNHCR (Eds.). (2021). A Roadmap for Advocacy, Policy Development, and Programming: Protection in Mixed Movements along the Central and Western Mediterranean Routes 2021. Mixed Migration Centre and United Nations High Commissioner for Refugees, available at: <http://www.mixedmigration.org/resource/road-map-2021/>; OHCHR, 2021: “Lethal Disregard”. Available at: <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>; Mandić D and Simpson C (2017) ‘Refugees and Shifted Risk: An International Study of Syrian Forced Migration and Smuggling’, International Migration, available at: <https://doi.org/10.1111/imig.12371>

¹⁹ MMC and UNHCR (Eds.). (2021). A Roadmap for Advocacy, Policy Development, and Programming: Protection in Mixed Movements along the Central and Western Mediterranean Routes 2021. Mixed Migration Centre and United Nations High Commissioner for Refugees, available at: <http://www.mixedmigration.org/resource/road-map-2021/>



About MMC

The Mixed Migration Centre (MMC) is a global network consisting of six regional hubs (Asia, East Africa & Yemen, Europe, North Africa, West Africa and Latin America & Caribbean) and a central unit in Geneva. The MMC is a leading source of independent and high-quality data, research, analysis and expertise on mixed migration. The MMC aims to increase understanding of mixed migration, to positively impact global and regional migration policies, to inform evidence-based protection responses for people on the move and to stimulate forward thinking in public and policy debates on mixed migration. The MMC's overarching focus is on human rights and protection for all people on the move. The MMC is part of, and governed by, the Danish Refugee Council (DRC). While its institutional link to DRC ensures MMC's work is grounded in operational reality, MMC acts as an independent source of data, research, analysis and policy development on mixed migration and the position of MMC does not necessarily reflect the position of DRC and vice versa.

About DRC

Danish Refugee Council is a leading, international humanitarian displacement organisation, supporting refugees and internally displaced persons during displacement, in exile, when settling and integrating in a new place or upon return. DRC delivers protection-focused programs, including direct emergency assistance, information activities and capacity building activities of local protection capacities along major displacement and migratory routes from regions of origin in the Middle East, Central Asia, Horn of Africa, and West Africa, to transit/destinations points in Turkey, Sudan, Algeria, Libya, Tunisia and South-Eastern Europe, as well as in Italy, Greece and Denmark as destination points in Europe. DRC is uniquely positioned with knowledge about people on the move, their situation in regions of origin, and their needs and protection concerns along the journey and in destination points.