How to mitigate the risk of human trafficking among migrants to Europe?

Policy shortcomings and opportunities to conciliate asylum and anti-human trafficking procedures

A policy brief by Nour Barakeh

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Central European University

This policy brief is addressed to:

- The co-legislators of the European Council and the European Parliament
- KOK - German Network against Trafficking in Human Beings
- European Council on Refugees and Exiles (ECRE)
- Central Council of Yazidis (Zentralrats der Êzîden in Deutschland)

Executive summary

The years of 2015-2016 represented a peak in the numbers of people - almost one and a half million - who irregularly entered EU countries. Since then, and in light of conflict, political instability, lack of security, poverty, and human rights violations in different parts of the world (especially in the Middle East), many people are fleeing their countries and take the risky migration routes to Europe. Along their migration journey and in the destination countries, migrants are vulnerable to human trafficking and exploitation. This paper assesses the risk factors to human trafficking among migrants, asylum seekers and refugees from a policy point of view. Particular focus is on the contribution of restrictive migration and asylum policies to such risks and the lack of cooperation and integration between asylum and anti-human trafficking procedures with respect to challenges in identification of victims. The Yazidi's case will be taken as an example before related policy options and recommendations are presented.

The problem

The years of 2015-2016 represented a peak in the numbers of people - almost one and a half million – who irregularly entered EU countries. Either by sea or overland, the majority used the Eastern Mediterranean Route to arrive first to Turkey or Greece, then taking the Western Balkan Route to destinations such as Germany, Sweden, Austria and other EU countries.[i]

Since then, there has been a shift in the choice of migration routes from the Western Balkan Route to Eastern Europe. Nevertheless, the political and security situation in Afghanistan in 2021 and the political instability in Iran in 2022 have led to an increase of migrants on the Western Balkan Route again. The main nationalities represented on this route are Afghanistan and Pakistan, followed by Iran, Bangladesh and Iraq. The main routes for Syrian migrants include Eastern Europe, with the recent use of migration via Belarus in addition to the Western Balkans.[ii]

With the devastating security, political and economic situation in Syria (partly post-conflict, partly ongoing conflict) and other origin countries, more pressure of forced and voluntary displacement is expected. National authorities and frontline respondents both along the migration routes and in the destination countries face multifaceted challenges and fall short on several levels. Examples include the provision of basic services and accommodation, while managing borders and security concerns (which are subject to conflicted priorities and political will particularly among the EU countries), the lack of financial resources and trained human resources, as well as compliance to human rights.
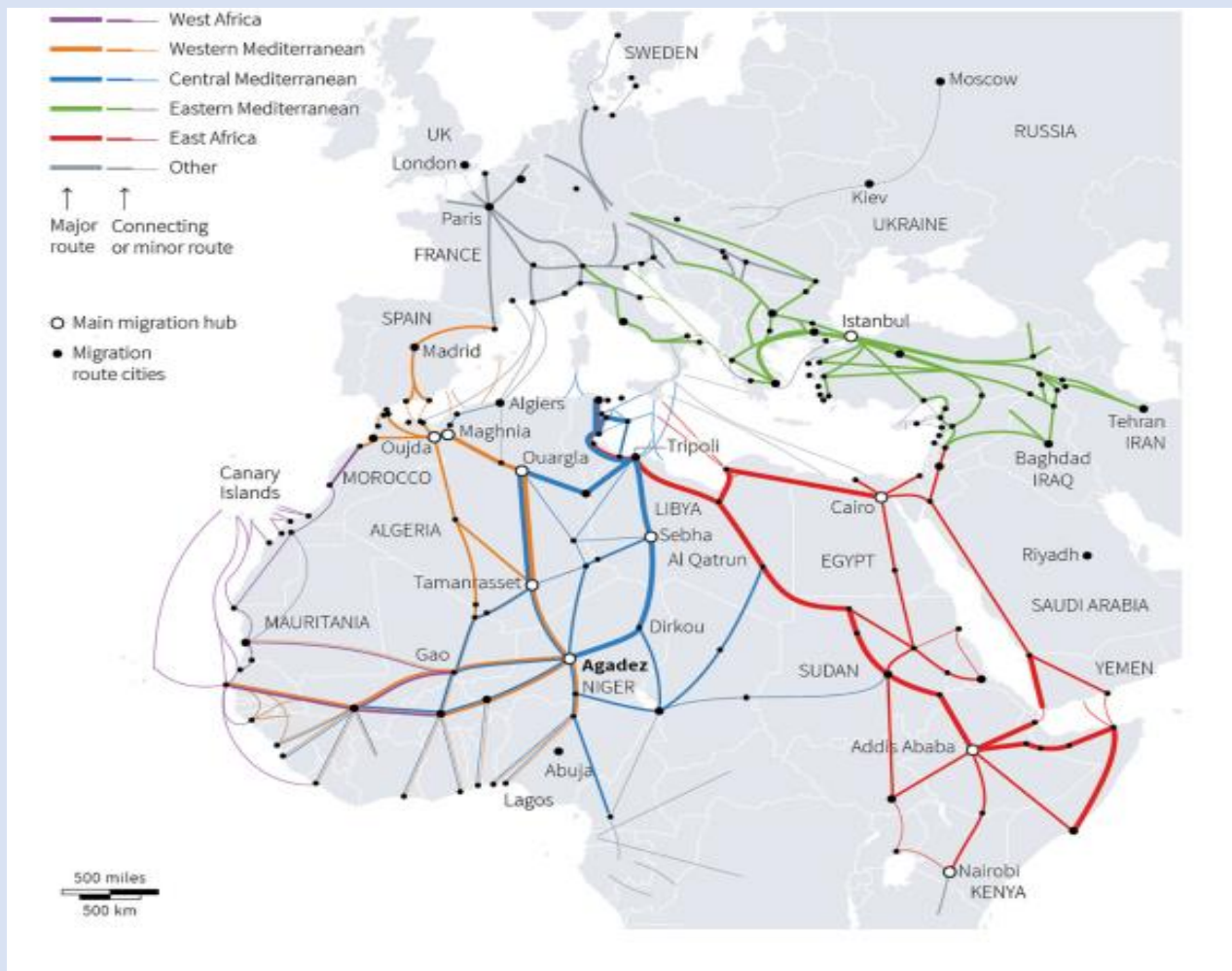
Figure: Main migration routes for irregular entry into the EU, 2015-2016

Source: Reuters Graphics (15.05.2014). Europe-Immigration/Niger Routes - Map showing migration routes from Africa to Europe. RTR3PB0F (SIN06).

Risk factors:

In such situations, migrants are vulnerable to exploitation and human trafficking. The vulnerabilities experienced by migrants include absent or insufficient legal status, communication challenges stemming from language obstacles, absence of knowledge about their rights, need for resources, being in debt to smugglers, smugglers requesting more amounts of money, restrictive migration policies combined with lack of humanitarian aid and human rights violations. These factors present risk of abuse and threat to the personal safety of the migrants, which exposes them to human trafficking and exploitation.[iii]

Therefore, quick and early identification of victims of trafficking in human beings among refugees, asylum applicants and migrants is of crucial importance. Additionally imperative is the needed design and implementation of protection and rehabilitation programs, particularly for vulnerable groups.

Challenges to identification of victims

According to the European Commission, "identifying victims efficiently and at an early stage is the first step towards making sure they are treated as 'rights holders', have access to their rights and can exercise them effectively, which includes receiving appropriate assistance and protection"[iv]

However, there are many challenges to the identification of victims of human trafficking. The recorded number of identified cases of trafficking and exploitation among migrants and asylum seekers since 2015 is very low. These numbers do not necessarily reflect reality, as they could be attributed to several factors. For example, the FAFO reports factors[v] such as the absence of a common language, interpreters, translators and cultural understanding, missing trust, and the fear of actions by the traffickers as impacting the decision not to appeal for assistance. In addition, the standard operating procedures and trafficking indicators should have been better suited to the context of the asylum and migration since 2015.[vi]

Although reports that provide information about incidences of exploitation and human trafficking along the migration routes to Europe are very few, there have been some surveys which revealed the actuality and alarming incidences, among which is the Human Trafficking and Exploitation Prevalence Indication Survey conducted by the International Organization for Migration (IOM) in 2016.[vii]

Nonetheless, in Germany for instance, the number of identified victims of human trafficking is insignificant in relation to the number of asylum applicants who took the Balkan Route. According to KOK, contributing factors include insufficient or lack of information about human trafficking among the applicants, and structural inadequacy regarding the identification mechanisms and tools, in addition to the low number of centers that offer consultancy.[viii]

The above-mentioned reasons for low numbers of identified human trafficking victims result in a lack of evidence and statistical data. This suggests insufficient mobilization of resources to address the problem and to put in place measures and mechanisms to identify cases, which is in turn

prevents gathering of statistical data. In short, this is a vicious circle.[ix]

Policy-related challenges

Among other resources, the United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons 2016 states clearly the correlation between restrictive migration and asylum policies and the vulnerability to trafficking and exploitation among migrants and asylum seekers - especially regarding people fleeing conflict and persecution. The lack of legal migration channels and family reunification opportunities encourage these people to make dangerous migration decisions and to give their trust to smugglers, because they have no other choice. Along their trip, the risk to encounter human traffickers is larger.[x]

According to the European Council: The 2015 "migration crisis" highlighted the need to reform EU asylum rules. Under the current rules, asylum seekers are not treated uniformly across the EU, and the share of positive asylum decisions also varies greatly. As a result, the 2016 reform package of the EU asylum law was proposed. These include: 1) reform the Dublin system, 2) reinforce the Eurodac regulation to improve the EU fingerprint database for asylum seekers, 3) establish a fully-fledged EU asylum agency (EUAA), 4) replace the asylum procedure directive with a regulation, 5) replace the qualification directive with a regulation, 6) reform the reception conditions directive, and 7) create a permanent EU resettlement framework.[xi]

However, these reforms were not implemented because of disagreement among the Member States and the "package approach" of the European Parliament meaning that all (or most) of the proposals should move forward together. With no agreement by 2019, a new Pact on Migration and Asylum was proposed in 2020, which included new recommendations and proposals on the different areas of the Asylum

Law and the 2016 reforms. New elements were introduced, such as a Screening Regulation and an Asylum and Migration Management Regulation (replacing Dublin).[xii]

More proposals were presented in 2021, particularly the proposal for an amended Schengen Borders[xiii], and the proposal for a regulation addressing instrumentalization regulations.[xiv] In addition was a voluntary solidarity mechanism among the Member States in light of the Russian invasion of Ukraine in 2022.

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Info box 1:

Instrumentalization: A mechanism which allows Member States to derogate from their responsibilities under EU asylum law in situations of "instrumentalization" of migration. If adopted, States would be allowed to:

- Limit border crossing points
- Extend registration period for applications for asylum for 4 weeks
- Use border procedures for all and extend them to 16 weeks
- Limit reception conditions
- Evade rights in the Return Directive

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The European Commission and the European Parliament end their mandates in 2024; there are only two years for the co-legislators, the Council and the European Parliament to decide on their position, and to mutually agree on the legislation for adoption.

There is disconnection between the migration and asylum procedures - which include reception, screening, accommodation and asylum application - on the one hand and the anti-trafficking procedures on the other hand. The latter is not integrated into the former, which leaves frontline respondents without sufficient tools to identify possible victims of human trafficking among the vulnerable migrants.[xv]

As mentioned, restrictive migration and asylum procedures are considered as risk factors for human trafficking. Examples are longer waiting periods for receiving decisions on asylum applications, asylum statutes based on refusal, and irregular legal status at the borders, especially with the new screening procedure hindering people from seeking help from the authorities.[xvi]

The Yazidi's case

On August 3, 2014, fighters from the terrorist group calling itself the Islamic State of Iraq and Syria (ISIS) attacked Sinjar, committing genocide against minority communities, murdering 1,298 Yazidis[xvii] and kidnapping 6,417 Yazidis[xviii]. Women and girls were sold into sexual slavery. As of 2022, 200,000 Yazidis remain internally displaced.[xix]

Although the so-called ISIS has lost most territorial holdings since 2017, Sinjar is still a militarized conflict zone. Safe return of displaced families is compromised and threatened by the lack of basic security requirements. The Iraqi State is failing in enforcement of rule of law, and the presence of different militarized groups endangers the sustainable return of these families. Many who have risked return are only to be re-displaced again back to the Internally Displaced People (IDP) camps where their basic needs are not met.[xx]

Against that background, many Yazidi families - among others - have migrated, and continue to seek asylum around the world, mainly in Europe.[xxi] According to an International Centre for Migration Policy Development (ICMPD) and Trafficking along Migration Routes (TRAM) report, people who have previous experiences of violence, abuse and exploitation in the countries of origin are more vulnerable to

exploitation and/or trafficking. Considering the horrors that the whole Yazidi community has encountered, its members are at risk of becoming victims of human trafficking along the way of the migration route.[xxii]

Recommendations

Considering that the co-legislators, the Council and the European Parliament, are negotiating the reforms of the asylum law to be adapted in 2024, there is a window of opportunity of two years to influence the outcome. In light of that, the recommendations are:

1. Establish an immediate collaboration between the European Council on Refugees and Exiles (ECRE) and the anti-trafficking networks in different Member States, such as KOK - German Network against Trafficking in Human Beings, to better integrate the anti-human trafficking procedures and indicators into the proposals of the new asylum law.
2. Incorporate the identification of trafficking cases into the screening regulation.
3. In efforts to mitigate the risk of restrictive migration and asylum policies on the vulnerability to human trafficking, further promote the recommendations of ECRE regarding the screening regulation. Namely: A. Delete the section of non-entry, which suggests that migrants in the screening process are not on the territory of the EU. B. The refusal of the asylum should not be the outcome of the screening process. C. A monitoring mechanism should be implemented at this stage insuring no human rights violations. D. Provide the possibility to appeal the decision of the screening process.[xxiii]
4. In the same vein, adopt the Union Resettlement and Humanitarian

Admission Framework (URF). This framework secures safe and sustainable migration through structured resettlement, which decreases the possibilities of human trafficking incidents.[xxiv]
5. Abandon the instrumentalization proposal entirely, because of its ability to undermine the united application of the asylum law and implications of different rules in different states.[xxv]
6. Include people with lived experience into the whole process of asylum procedure, starting with the screening process and the reception stage all the way to integration in the hosting societies. This can particularly be crucial for the language and cultural barriers previously mentioned as challenges to identify victims of human trafficking.

In the specific context of the Yazidi migrants, the Central Council of Yazidis in Germany can collaborate with the KOK - German Network against Trafficking in Human Beings to work together in developing culturally sensitive indicators of human trafficking. Furthermore, trainings both involving and providing access to people with lived experience should be developed.

INFO BOX 2:
Against the background of the genocide that was committed against the Yazidis in 2014 by fighters from the terrorist group calling itself the Islamic State of Iraq and Syria (ISIS), the German state of Baden-Wuerttemberg launched "The Special Quota Project for Especially Vulnerable Women and Children" which resettled 1,100 women and children. However, until today, 30 husbands of the recipients of the project have not been able to join their families because of the complications of the family reunification procedure.

7. Further collaboration should be encouraged between the Central Council of Yazidis in Germany and the European Council on Refugees and Exiles (ECRE) to pressure the adopting of the Union Resettlement and Humanitarian Admission Framework (URF) and the effective implementation of the family reunification.

8. Raising awareness in the public sphere about human trafficking is of high significance to facilitate the process of anti-human trafficking especially in the destination countries. For that, it is important to include people with lived experience who carry the knowledge and the credibility to influence policies. Some survivor-led organizations and initiatives are contributing a great deal to that end, such as Footprint to Freedom which is an organization founded by human trafficking survivor leaders and experts and leading the way to a climate-smart future without human trafficking and modern-day slavery in the Netherlands.[xxvi]

9. Promote the meaningful participation of young people - both those with lived experience and from the general public - in the hosting countries. An example of an initiative working towards that aim is Stolen Dreams - a youth-led anti-slavery collective - based in the United Kingdom.[xxvii]

10. Frontline respondents, law enforcement personnel and border management teams should be trained to be able to use the developed trafficking indicators.

11. In order for the victims of human trafficking to gain the trust of the authorities and to seek help, criminalization of the victims in the context of illegal migration should be avoided. The identification of the victims should happen in a protective environment.[xxviii]

Resources

Info Box1: "A Step Too Far: Introducing 'Instrumentalisation' In EU Law" (ECRE, 2022), https://ecre.org/wp-content/uploads/2022/03/Policy-Note-40.pdf.

Info Box2: Nour Barakeh and Sophia Fehrenbach, "The Search for Transformative Justice of the Yazidi Respondents of the Special Quota Project" (CEU, 2022).

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[ix]Roberto Forin and Claire Healy, "Trafficking along Migration Routes to Europe_ Bridging the Gap between Migration, Asylum and Anti-Trafficking (Full Study) EN.Pdf" (ICMPD, 2018), https://www.icmpd.org/file/download/48387/file/Trafficking0along0Migration0Routes0to0Europe_0Bridging0the0Gap0b etween0MigrationC0Asylum0and0Anti-Trafficking06full0study60EN.pdf.

[x] "2016_Global_Report_on_Trafficking_in_Persons.Pdf" (UNODC, 2016), https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

[xi] "Quo Vadis EU Asylum Reform? Stuck Between Gradual Approach, (Mini)-Package Deals and Instrumentalisation" (ECRE, September 2022), https://ecre.org/wp-content/uploads/2022/09/Policy-Parer-Quo-Vadis-EU-asylum-reform-September-2022.pdf.

[xii] ibid

[xiii] "Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Amending Regulation (EU) 2016/399 on a Union Code on the Rules Governing the Movement of Persons across Borders" (2021), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A891%3AFIN.

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[xxv] ibid

[xxvi] "About Us," Footprint to Freedom, accessed December 8, 2022, https://www.footprinttofreedom.org/en/about-us/.

[xxvii] "Stolen Dreams – Driving Action to End Modern Slavery," accessed December 8, 2022, http://stolendreams.co.uk/.

[xxviii]Roberto Forin and Claire Healy, "Trafficking along Migration Routes to Europe_ Bridging the Gap between Migration, Asylum and Anti-Trafficking (Full Study) EN.Pdf" (ICMPD, 2018), https://www.icmpd.org/file/download/48387/file/Trafficking0along0Migration0Routes0to0Europe_0Bridging0the0Gap0b etween0MigrationC0Asylum0and0Anti-Trafficking06full0study60EN.pdf.