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Convoys of Hope or Digital Deception?

Understanding How People-Smugglers Utilize Facebook

Introduction

“Our phones and power banks are more important for our journey than anything, even more important than food.” – Wael, a Syrian refugee

Information and Communication Technologies (ICTs) have simultaneously empowered and imperiled migrants. The mobile phone revolutionized how migrants communicate with their networks, which are located in their countries of origin, their destination, or are scattered along the way. It also has transformed how people send and receive remittances. The mobile phone is often touted as an informational tool that fosters integration and resettlement in a new country. For migrants seeking advice about prospective routes, searching for travel companions, and attempting to locate the people who will facilitate their entry across a new border, digital platforms such as Facebook and WhatsApp can serve as a one-stop destination for information.² Migrants use their smartphones for real-time updates about their routes, tips on border guard movements, safe places to stay, and as a lifeline to update their loved ones.³ Though these platforms can provide information to help migrants have safe journeys, existing regulatory mechanisms leave them susceptible to nefarious online actors who utilize social media to exploit vulnerable migrants. Through Facebook, migrants have been deceived into embarking on perilous journeys, trafficked into false employment, and even had their ransom videos posted on the site.

While most people are familiar with Facebook Marketplace as a convenient way to purchase gently-used furniture and appliances, migrant smugglers and human traf-

1 “The Most Crucial Item That Migrants and Refugees Carry Is a Smartphone — Quartz.” Accessed December 16, 2020.

<https://qz.com/500062/the-most-crucial-item-that-migrants-and-refugees-carry-is-a-smartphone/>.

2 https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf

3 “A 21st-Century Migrant’s Essentials: Food, Shelter, Smartphone - The New York Times.” Accessed December 16, 2020.

<https://www.nytimes.com/2015/08/26/world/europe/a-21st-century-migrants-checklist-water-shelter-smartphone.html>.

fickers have engineered Facebook into a new type of marketplace akin to the services offered by travel agencies. Through Facebook groups, such as “Trafficking to Europe,” “Smuggling Into the E.U.,” and “How to Emigrate to Europe,” smugglers post adverts featuring photos of popular migrant destinations, deals for fake passports and documentation, and even “50% off” sales for those traveling with children under the age of five.⁴ Testimonies and reviews from previous clients, as well as “likes” per post, are metrics shaping ways to embark on journeys from the Middle East and Northern and Sub-Saharan Africa into the Mediterranean.⁵ These Facebook groups boast thousands of members. Group content is not entirely generated by smugglers and traffickers, the groups also serve as a forum for migrants to share updates on their journeys through videos and photos.⁶ In viewing the journeys of others, a cumulative causation effect (as theorized by Douglas Massey and his colleagues⁷) occurs: the stories of migrants who successfully enter into their desired location are communicated back to their networks in their countries of origin. These success stories empower more migrants to embark in hopes of also achieving success. Migrants who have already made the journey downplay the dangers they encountered when speaking to other potential migrants. With Facebook, this communication happens more rapidly and reaches those beyond typical home networks. As one smuggler notes, “until 2012, we didn’t use social media at all. Now, it accounts for between 30% and 40% of my business.”⁸

However, it is important to note that the relationship between smugglers and social media is mutually beneficial. Because of the proliferation of information shared by other migrants on Facebook, including exact GPS coordinates tracked by their smartphones, more migrants are electing to travel without

the help of a smuggler. As noted by Matthew Herbert, an expert in irregular migration in North Africa, “self-smuggling – when migrants source boats and motors themselves and head north unaided – continues to grow.”⁹ “Smuggle Yourself into Europe Without a Trafficker” is a popular Facebook group that shares tips on how one can make their way to another country without a smuggler.¹⁰ These types of groups undermine the monopoly that smugglers have on transportation. According to Mohamed Haj Ali, an employee with a relief agency who sees many migrants, “...the traffickers are losing business because people are going alone, thanks to Facebook.”¹¹ I will revisit the dichotomy of Facebook as both advantageous and disadvantageous to the smuggler business model later in this essay.

The use of ICTs and social media in global human smuggling is an emerging security concern that eludes law enforcement, international organizations, and state governments. Europol is well aware of social media use by traffickers: “the Internet has shifted the recruitment, advertising and selling process from the street to the digital domain.”¹² However, “this gap between identification and intervention is becoming more difficult to overcome for law enforcement.”¹³ While law enforcement is able to identify the perpetrators, this awareness is insufficient in preventing and intervening in smuggling. Similarly, the International Organization for Migration (IOM) says that criminal networks “show unfortunately great capacity in exploiting new technologies to expand their benefits,” and note that smugglers and traffickers use social media to pose as NGO personnel or legal advisors for the EU.¹⁴ International organizations lament that their role is not one of intervention and regulation and that such responsibility falls on corporate shoulders. A spokesperson for the IOM lambasted social media companies for

4 Ibid.

5 “The Facebook Smugglers Selling the Dream of Europe.” *BBC News*, May 12, 2015, sec. Magazine. <https://www.bbc.com/news/magazine-32707346>.

6 Ibid.

7 Massey, S., Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino, J. Edward Taylor, Douglas S. Massey, et al. 1993. “Theories of International Migration: A Review and Appraisal.” *Population and Development Review*, 431–466.

8 “The Facebook Smugglers Selling the Dream of Europe.” *BBC News*, May 12, 2015, sec. Magazine. <https://www.bbc.com/news/magazine-32707346>.

9 ISSAfrica.org. “Maghrebi Irregular Migration Is down but for How Long?” ISS Africa, November 7, 2019. <https://issafrika.org/iss-today/maghrebi-irregular-migration-is-down-but-for-how-long>.

10 “A 21st-Century Migrant’s Essentials: Food, Shelter, Smartphone - The New York Times.” Accessed December 16, 2020. <https://www.nytimes.com/2015/08/26/world/europe/a-21st-century-migrants-checklist-water-shelter-smartphone.html>.

11 Ibid.

12 Europol. “Trafficking in Human Beings and the Internet.” Accessed December 18, 2020. <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet>.

13 Ibid.

14 Inter Press Service. “2.5 Million Migrants Smuggled Worldwide, Many Via Social Media,” June 19, 2018. <http://www.ipsnews.net/2018/06/2-5-million-migrants-smuggled-worldwide-many-via-social-media/>.

their lack of regulation on smuggling and trafficking posts: “we think it’s time for some grown-up responsibility by the social media companies writ large for their platforms, which are clearly having a very detrimental role on young, vulnerable populations...”¹⁵ In response, Facebook has stated, “we encourage people to keep using our reporting tools to flag this kind of behavior so it can be reviewed and swiftly removed by our global team of experts.”¹⁶ But the IOM remains steadfast that “it is not our job to police Facebook’s pages”¹⁷ and “it’s an absolutely nonsensical argument that it’s up to the public to notify Facebook of stuff happening on Facebook.”¹⁸ Lastly, some state governments are similarly ill-equipped to intervene. In Libya, one smuggler boasts, “What authorities? There aren’t any authorities. There isn’t even a regime. There’s nothing,”¹⁹ when asked if he feared his practices on Facebook would lead to an arrest. This tension in regulation capacity and jurisdiction among law enforcement, international organizations, and state governments informs the policy approaches that could stem the surge of disinformation and misinformation.

Though migration is becoming heavily dependent on ICTs, particularly smartphones and social media, “digital migration studies are still fragmented and lacking an analytical focus.”²⁰ In response, I examine how smugglers and traffickers are able to conduct their business and connect to migrants as customers via Facebook. I also evaluate Facebook’s Community Standards as a set of policies for curbing human exploitation and explore whether or not the platform’s existing regulations serve to curtail this phenomenon. Through an analytic framework, I examine how governments, intergovernmental organizations, and Facebook have responded to the role of ICTs in

human smuggling and how these responses have shaped smuggler use of the Facebook platform.²¹

Analytic Framework

Definitions

As a basis for understanding the complexity of information systems in global human smuggling, a few definitions might be helpful to understand:

- **Refugee** - Refugee carries a strict international law definition as “a person who is fleeing persecution or conflict in her or his country of origin.”²² As such, refugees are entitled to the full protection of international law on refugees, a contrast to a migrant, which is “a neutral term.”²³ It is of note that under the 1951 Refugee Convention and Protocols,²⁴ those who leave their homes for employment, though they may have also experienced persecution and conflict in their countries of origin, are migrants rather than refugees.
- **Migrant** - A migrant is “any person who is outside a State of which they are a citizen or national.”²⁵ Because “migrant” is a general, catchall term inclusive of those who do not meet the legal definition of “refugee”, I use “migrant” to include both migrants and refugees as both seek transportation advice and services via Facebook and experience vulnerabilities as targets for exploitation.
- **Smuggling** - As Human Rights Watch reports, it is possible for migrants to be both smuggled and trafficked. Smuggling is a consensual act in which migrants pay a smuggler or smuggling network to move them across one or more borders undetected.²⁶ While the international community may think

15 The Independent. “UN Migration Agency Calls on Social Media Giants to Crack down on People Smuggling,” November 4, 2020. <https://www.independent.co.uk/news/world/europe/un-migration-agency-calls-on-facebook-to-crack-down-on-people-smuggling-a8103621.html>.

16 Batha, Emma. “Facebook Lambasted over Ransom Video of Traffickers Abusing Migrants.” *Reuters*, August 25, 2017. <https://www.reuters.com/article/us-migrants-trafficking-facebook-idUSKCN1B51VB>.

17 The Independent. “UN Migration Agency Calls on Social Media Giants to Crack down on People Smuggling,” November 4, 2020. <https://www.independent.co.uk/news/world/europe/un-migration-agency-calls-on-facebook-to-crack-down-on-people-smuggling-a8103621.html>.

18 Batha, Emma. “Facebook Lambasted over Ransom Video of Traffickers Abusing Migrants.” *Reuters*, August 25, 2017.

19 “The Facebook Smugglers Selling the Dream of Europe.” *BBC News*, May 12, 2015, sec. Magazine. <https://www.bbc.com/news/magazine-32707346>.

20 Mancini, Tiziana, Federica Sibilla, Dimitris Argiropoulos, Michele Rossi, and Marina Everri. “The Opportunities and Risks of Mobile Phones for Refugees’ Experience: A Scoping Review.” *PLOS ONE* 14, no. 12 (December 2, 2019): e0225684. <https://doi.org/10.1371/journal.pone.0225684>.

21 “The Facebook Smugglers Selling the Dream of Europe.” *BBC News*, May 12, 2015, sec. Magazine. <https://www.bbc.com/news/magazine-32707346>.

22 United Nations Human Rights Office of the High Commissioner. “Migrants and Refugees”. <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompact-Migration/MigrantsAndRefugees.pdf>

23 Ibid.

24 United Nations High Commissioner for Refugees. “The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol”. <https://www.unhcr.org/en-us/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

25 Ibid.

26 2015. “Smuggling and Trafficking Human Beings.” Human Rights Watch. July 7, 2015. <https://www.hrw.org/news/2015/07/07/smuggling-and-trafficking-human-beings>.

of migrants as victims, smugglers view them as clients who pay for their services. Like conventional business owners, some smugglers are concerned about their reputation and customer service. Others are not.²⁷

- **Trafficking** – Trafficking, unlike smuggling, is a direct violation of consent. Victims of trafficking have not agreed to be moved to another location or have only agreed to do so based on deception, such as the promise of a job with good wages and a safe place to sojourn.²⁸ Both traffickers and smugglers profit from the business of moving people, with a thin line dividing smuggling (where consent is involved) and trafficking (where consent is not). A smuggler can easily become a trafficker. For example, he or she can demand that a migrant work in a low-wage job to pay off debts, even if those debts had already been paid. They can lock them up or beat them unless a family member sends an additional payment.

Because it can be challenging to discern when smuggling ends and trafficking begins, I will use the terms in conjunction to describe phenomena that arise on Facebook and can potentially exploit and harm vulnerable migrants with violence.

Framework

To address the question of how smugglers and traffickers can successfully use Facebook to connect with prospective migrants,²⁹ I use the “pathetic dot theory” developed by Lawrence Lessig, a Harvard Law School professor. As Lessig explains, the four constraints of laws, norms, markets, and architecture (code) are separate yet related realms, which can be tailored to the unique problems that policy-makers hope to solve. The sum of these interdependent constraints is how a behavior or act is regulated.³⁰ Lessig suggests each constraint can be thought

of as a “regulator” in itself.³¹ Building on these four constraints, I offer three broad dimensions across which Lessig’s four modalities can be examined. Taken together, they answer how smugglers and traffickers are able to conduct their business and connect with migrants:

- **Incentives for using Facebook as a marketing tool by smugglers**
- **Incentives for using Facebook to gain information about migration by migrants**
- **Enforcement of content removal by various regulatory actors (state governments and law enforcement, IGOs, and Facebook)**

Methods

This essay attempts to investigate an emerging field where “... little empirical evidence about the implications of the use of Information and Communication Technologies in the business of human smuggling” exists.³² At the forefront of understanding the role of ICT in human smuggling are intergovernmental organizations (IGOs) and European law enforcement agencies who continue to grapple with the changing business operations of smugglers, traffickers, and all other actors participating in the smuggling supply chain. Reports from Europol, the European Migrant Smuggling Centre (EMSC), primary journalistic sources, and Facebook’s Community Standards provide the bulk of the evidence which follows.

Evidence, Analysis, and Interpretation

Dimension 1: Incentives for Facebook Use by Smugglers

Per Article 19 of the United Nations Declaration of Human Rights (UNDHR), “everyone has the right...

27 Existing literature contends with the notion of smuggling as criminal or exploitative and suggests that it is an entrepreneurial act created in a vacuum of lack of economic opportunities (see “Crimes of Solidarity in Mobility: Alternative Views on Migrant Smuggling - Sheldon X. Zhang, Gabriella E. Sanchez, Luigi Achilli, 2018.” <https://journals.sagepub.com/doi/abs/10.1177/0002716217746908>). One smuggler states: “I don’t want my clients to die, because my work is based upon my reputation. At the beginning of my career I was searching for clients. Now that I am a big smuggler people come to me because of my reputation for safety”. To abuse or harm migrants (in this scenario, clients) would be detrimental to the smuggling business model. Though this nuance is beyond the scope of this essay, it is noteworthy for contextualization purposes in understanding the business of smuggling, which is evolving due to the implementation of ICT, and how harms to migrants may be conducted through ICT as well. *BBC News*. 2015. “Who Are the People Smugglers?,” April 23, 2015, sec. Europe. <http://www.bbc.com/news/world-europe-32381101>.

28 Ibid.

29 “Journey” is employed here to include transportation, fake documentation, and continued advice even after the physical act of moving from one border to another is completed, as these are all services that smugglers and traffickers provide as a “package”.

30 Ibid.

31 Ibid.

32 Diba, Parisa, Georgios Papanicolaou, and Georgios A. Antonopoulos. “The Digital Routes of Human Smuggling? Evidence from the UK.” *Crime Prevention and Community Safety* 21, no. 2 (June 1, 2019): 159-75. <https://doi.org/10.1057/s41300-019-00060-y>.

to seek, receive and impart information and ideas through any media and regardless of frontiers.”³³ With this understanding, smugglers are entitled to impart information and ideas through any medium, including social media platforms. Though the UN affirms information exchange, the current usage of Facebook by smugglers goes beyond mere information exchange. Instead, the platform has been transformed into a marketplace for *selling* such information. As an investigative journalist following people-smuggling states, Facebook has become “probably the cruelest illegal travel agency in the world.”³⁴ Law remains an explicit constraint in its conditions, but in reality, its constraints have little impact on smugglers’ behavior.

Facebook is made aware of content that violates the company’s Community Standards and removes the content. The law is not operating in a way that dissuades the re-emergence of certain posts, accounts, and groups. The IOM has excoriated Facebook for harmful content continuing to pop up despite prior removal.³⁵ As Lessig highlights, defying the law threatens procedural outcomes: “legislatures enact, prosecutors threaten, courts convict.”³⁶ Circumnavigating the law, smugglers and traffickers use Facebook to find migrant customers. The legal consequences of intervention have been undermined. As members of criminal networks who operate by breaking the law, law is not a behavioral constraint.

Facebook’s Community Standards broadly regulate the solicitation of migrants under an umbrella of “human exploitation”. With an understanding of how its platform interacts with international law, Facebook distinguishes between human smuggling as a “crime against a state, relying on movement” and human trafficking as a “crime against a person, relying on exploitation.”³⁷ Because there is little political will to protect smuggled migrants, who were consensually transported, much more emphasis is

placed upon mitigation of human trafficking where no such consent exists. Users are not to post “content that offers or assists in smuggling of humans.”³⁸ This is distinct from its section describing trafficking, which directs users not to post content “geared towards the facilitation of human exploitation by coordinating, transporting, transferring, harboring or brokering of victims...”³⁹ Susan Benesch, a scholar of speech that inspires violence, argues that Facebook’s interpretations of international human rights law manifest in unilateral determinations of risk of harm and public interest, which continue to endanger people.⁴⁰

In examining the role of the market in the use of Facebook to solicit customers, it is important to understand the smuggler. The people-smuggling industry is estimated to generate \$35 billion per year worldwide.⁴¹ Through Facebook pages and groups, their ads can reach more people than through the traditional word-of-mouth approach. Digital media also allows for propaganda to create the illusion of safe travel, glossing over the dangerous realities of most clandestine journeys. In addition to selling logistical services, smugglers are also selling the dream of Europe: “We study Europe, we study the laws, and the more you close the borders the more money we’re going to make.”⁴² This awareness of the perennial demand for illegal transport motivates smugglers to continue their work. The awareness of the law poses no constraints on their behavior.

As digitally-enabled migration evolves, the use of Facebook to solicit customers may backfire. Increasingly, migrants are using the platform not just to find smugglers but also to avoid being lured by the promise of smooth trips across the Mediterranean. Moreover, the platform helps them draw on the “... collective wisdom and lived experiences of migrants and their communities, and the strategies to in-

33 “Universal Declaration of Human Rights | United Nations.” <https://www.un.org/en/universal-declaration-human-rights/>.

34 May 15, CBC Radio · Posted; 2015 5:13 PM ET | Last Updated: May 15, and 2015. “Inside the Big Business of People Smuggling | CBC Radio.” CBC, May 15, 2015. <https://www.cbc.ca/radio/day6/episode-233-keeping-mad-men-s-finale-a-secret-the-people-smuggling-business-nude-beach-pics-nitrous-more-1.3072800/inside-the-big-business-of-people-smuggling-1.3072829>.

35 The Guardian. “Social Media Refuse to Pull People-Smuggling Pages, MPs Told,” September 3, 2020. <http://www.theguardian.com/law/2020/sep/03/social-media-not-removing-people-smugglers-pages-mps-told>.

36 Lessig, Lawrence at p. 89. *Code and Other Laws of Cyberspace*. Basic Books, 1999.

37 “Community Standards | Facebook.” https://www.facebook.com/communitystandards/human_exploitation.

38 Ibid.

39 Ibid.

40 Yale Journal on Regulation. “But Facebook’s Not a Country: How to Interpret Human Rights Law for Social Media Companies.” <https://www.yalejreg.com/bulletin/but-facebooks-not-a-country-how-to-interpret-human-rights-law-for-social-media-companies/>.

41 The Guardian. “Facebook Removes Posts Made by People Smugglers Aiming to Lure Migrants,” August 25, 2017. <http://www.theguardian.com/global-development/2017/aug/25/facebook-removes-posts-made-by-people-smugglers-aiming-to-lure-migrants>.

42 “The Facebook Smugglers Selling the Dream of Europe.” BBC News, May 12, 2015, sec. Magazine. <https://www.bbc.com/news/magazine-32707346>.

crease the odds of success and to reduce the hazards and uncertainty of traversing foreign terrains”.⁴³ Because these voyages cost several thousand Euros, those who see that it is possible to enter Europe without a smuggler will do so, and smugglers will lose potential clients. For now, Facebook remains an easy way to attract and secure customers. However, it also presents challenges to the smuggler business model when used by migrants as a community forum where lived experiences trump the promises of smugglers. Markets, when undermining smuggler profit, can produce a constraint on illicit behavior.

Lastly, the architecture of Facebook incentivizes smugglers to use the platform for business. People smuggling is a low priority for the platform as compared to child pornography, for example. Alterations to Facebook’s code to address smuggling are thus left unexplored.⁴⁴ Facebook maintains that it works with international law enforcement to identify and remove harmful content. However, IGO leaders and state government leaders have highlighted Facebook’s failure to remove content even when alerted. In the UK, the National Crime Agency reported over 1,200 pages with harmful migrant smuggling and trafficking content, but only 578 of those pages were ultimately taken down.⁴⁵ IGOs have called for more platform regulation and responsibility, such as algorithms to detect when pages may violate Community Standards. Without such adaptations, the architecture of Facebook does not constrain smuggler use of the platform.

Dimension 2: Incentives for Facebook Use by Migrants

“To give people the power to share and make the world more open and connected”⁴⁶, Facebook’s original mission statement, maps directly onto migrant use of the platform, especially in instances

where users seek community solidarity and collective wisdom. Though posts providing smuggling and transport services violate Community Standards, Facebook stated that its staff made the decision to “allow people to share information on how to leave a country illegally.” They say such information can help those fleeing drastic situations.⁴⁷ When a migrant does not have a personal connection to someone who has firsthand experience of being smuggled to a particular destination, they will rely on social media for information.⁴⁸ An ideal regulatory framework would preserve the ability for migrants to gain accurate, life-saving information pre-departure and during transit.

From the business model perspective, Facebook’s maximization of user engagement and retention has harbored harmful content, which escalates into real-world harm and violence.⁴⁹ As Benesch underscores, “the companies decide...which content to regulate and how, such as by removing it, posting warning notices, fact-checking, or making it visible to fewer people by means of algorithms.”⁵⁰ But this company-only discretion contributes to unilateral decision-making. This alienates the efforts of state governments and IGOs who rely on digital platform companies to implement these architectural changes in order to reduce the risk caused by harmful content. For example, fact-checking or a warning notice on a post for smugglers posing as legal representatives of the EU or NGO personnel could improve the regulatory efforts to reduce the risk of harm. There is a lack of transparency about when and how Facebook decides to implement the aforementioned architectural changes. The opacity of platform architecture and code underscores internet freedom advocate Rebecca MacKinnon’s notion of digital companies as “sovereign states.”⁵¹ Digital platforms have failed to make evident the inner mechanisms

43 “Crimes of Solidarity in Mobility: Alternative Views on Migrant Smuggling - Sheldon X. Zhang, Gabriella E. Sanchez, Luigi Achilli, 2018.” <https://journals.sagepub.com/doi/abs/10.1177/0002716217746908>.

44 European Commission. “The Use of Social Media in the Fight Against Migrant Smuggling”. http://www.emn.lv/wp-content/uploads/emn-informs-00_emn_inform_on_social_media_in_migrant_smuggling.pdf

45 The Guardian. “Social Media Refuse to Pull People-Smuggling Pages, MPs Told,” September 3, 2020. <http://www.theguardian.com/law/2020/sep/03/social-media-not-removing-people-smugglers-pages-mps-told>.

46 Limbachia, Dixie, and Dixie Limbachia. “Mark Zuckerberg Unveils Facebook’s New Mission Statement.” *Variety* (blog), June 22, 2017. <https://variety.com/2017/digital/news/mark-zuckerberg-changes-facebook-mission-1202476176/>.

47 The Guardian. “Social Media Refuse to Pull People-Smuggling Pages, MPs Told,” September 3, 2020. <http://www.theguardian.com/law/2020/sep/03/social-media-not-removing-people-smugglers-pages-mps-told>.

48 IOM, World Migration Report 2018. https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf

49 Yale Journal on Regulation. “But Facebook’s Not a Country: How to Interpret Human Rights Law for Social Media Companies.” <https://www.yalejreg.com/bulletin/but-facebooks-not-a-country-how-to-interpret-human-rights-law-for-social-media-companies/>.

50 Ibid.

51 Rebecca MacKinnon, *Consent of the Networked*, (Basic Books, 2013), 150.

behind their code and where it functions to moderate content to protect its users. Until they make this change, the onus to discern veritable information will continue to fall on migrants, particularly those who do not have other real-life networks as sources. Through code clarity and transparency, digital citizens gain agency and advocacy vehicles through international organizations and can place pressure upon corporations while interacting with platforms with more knowledge.

Dimension 3: Enforcement of Harmful Content Removal

Law enforcement, state governments, and IGOs prioritize organized crime, people smuggling, and trafficking in human beings, operating with more intentionality and urgency than Facebook. The introduction of digital technologies is rapidly altering the landscape of organized crime and migration. The European Commission claims “the use of social media in migrant smuggling has witnessed an exponential growth in recent years.”⁵² Law enforcement agencies have utilized social media to counteract harmful content that platforms refuse to remove through counter-narratives.⁵³ These counter-narratives consist of information and awareness campaigns about the dangers presented by smugglers. Functionally, these efforts fill the gap left by Facebook’s lack of willingness to proactively moderate harmful human smuggling content. There is a jurisdictional misunderstanding in which Facebook views its role as one of after-the-fact cooperation with law enforcement rather than pro-active assistance. In order to intervene and apprehend perpetrators, Facebook must play a role in enforcement efforts.

The need for multilateral enforcement is only crystallized by the COVID-19 pandemic as Europol warns of exploitation of the “new normal.”⁵⁴ Increased financial distress and closed borders have translated to increased smuggler activity and heightened desires to flee by migrants. With digital platforms emerging as the formation site of smuggler busi-

nesses, multilateral enforcement is a must, not just for identification but also intervention. Intervention continues to be complicated by an array of other factors such as a lack of consistent EU member state case law and restricted access to certain Facebook groups.⁵⁵ Beyond Facebook, more intervention is needed as smugglers and traffickers further exploit the Facebook-owned WhatsApp, demanding ransom and even posting the ransom videos to the platform despite calls for removal of such content.⁵⁶ Ultimately, a lack of jurisdictional clarity of roles for regulating harmful content helps smugglers promote their business activities. States without the institutional and infrastructural capacity to regulate and enforce, such as Libya, are taken advantage of by smugglers who are aware that though they may be identifiable, intervention in their business is rare. IGOs and law enforcement agencies, though dedicated to the prevention of such abuse and prosecution of it after the fact, experience monitoring challenges such as encryption, the opacity of Facebook’s decision-making processes in removing selected content, and restricted access to certain pages or accounts. These various actors have expressed mutual frustration and urged Facebook to play a more prominent role in regulating its platform and the content it harbors.

Conclusion

The regulation of people-smuggling pages on Facebook is murky. When are they a tool of empowerment and liberation, and when are they a tool of manipulation and exploitation? Ultimately, this essay uses a narrow angle to shed light on a complex, cross-sectoral, multi-stakeholder crisis. Existing regulations allow smugglers and traffickers to thrive on digital platforms due to 1) ease of access and ability to reach many individuals; 2) a continued demand, and in the wake of COVID-19, increased demand for transportation that can be supplied to reap material gain, which is made more accessible by the use of digital platforms; 3) the lax reactive measures taken by Facebook to remove harmful and exploitative

52 European Commission. “The Use of Social Media in the Fight Against Migrant Smuggling”. http://www.emn.lv/wp-content/uploads/emn-informs-00_emn_inform_on_social_media_in_migrant_smuggling.pdf

53 Ibid.

54 “Migrant Smugglers and Human Traffickers to Become More Ruthless and Clandestine Says New Europol Report | Europol.” <https://www.europol.europa.eu/newsroom/news/migrant-smugglers-and-human-traffickers-to-become-more-ruthless-and-clandestine-says-new-europol-report>

55 European Commission. “The Use of Social Media in the Fight Against Migrant Smuggling”. http://www.emn.lv/wp-content/uploads/emn-informs-00_emn_inform_on_social_media_in_migrant_smuggling.pdf

56 Time. “The Families of Migrants Held Hostage Are Using Facebook to Raise Money for Smugglers’ Ransoms.” <https://time.com/5510517/facebook-smuggling-libya-ransoms/>.

content; 4) absence of architectural changes in the code to regulate harmful content in addition to moderator removal; and 5) the lack of clarity and coordinated jurisdictional effort to tackle people smuggling and human trafficking through digital means across the private, public, and government sectors. An adequate policy approach will be centered around international human rights law rather than merely accounting for it,⁵⁷ ensuring that migrants do not suffer dire consequences as a result of deceptive content found online. However, enforcement must follow as a constraint to deceptive or harmful smuggler behavior – the current lack of prioritization in response to the use of the platform for this specific purpose of advertising and selling journeys empowers smugglers to continue expanding their business in our increasingly digital world.

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⁵⁷ Yale Journal on Regulation. "But Facebook's Not a Country: How to Interpret Human Rights Law for Social Media Companies." <https://www.yalejreg.com/bulletin/but-facebooks-not-a-country-how-to-interpret-human-rights-law-for-social-media-companies/>.