Quasilegality and migrant smuggling in Northern Niger

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Abstract

Niger's status as a 'hub' for West African migration is now cemented in the imaginaries of interveners and global observers. Even as the number of migrants transiting the country falls sharply from a peak in 2015, the policies and practices on the part of the Nigerien government, its local partners, and international actors, continue to coalesce around irregular migration as a major security priority. This mostly repressive approach to irregular migration has had knock-on effects on livelihoods in Northern Niger, where the bulk of the economy around transiting migration is rooted. While the story of criminalization and securitization in Niger is a well-worn one, there is less attention to some of the ways these processes are incremental, erratic, incomplete, ambiguous, and contested. This article argues that once we consider the voices of market insiders in the smuggling economy alongside those in the security and intervention sector, these narratives point to the fundamentally ambiguous status of the migration economy between the licit and illicit, the legal and the illegal. To capture this ambiguity, the article draws on the concept of quasilegality, which captures the in-between status of the flows in question, and in particular the conceptual space between the licit/illicit and legal/illegal binaries. Quasilegality points to three salient factors in contesting the straightforward narrative of criminalization in Niger: a gap between the social acceptability of smuggling and state legal frameworks, the ambiguity of the state legal framework and its application, as well as market insiders' own understanding of their activities. The article's attention to narratives around migration, crime, and (in)security in Niger is at once a means of complicating the smoothness of security and control as well as a broader critique of views of migration in Niger that would see it as a straightforward example of 'transnational organized crime' in West Africa.

Keywords Smuggling · Facilitation · Irregular migration · Border security · Niger · West Africa

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Introduction

Niger's status as a 'hub' for West African migration is now cemented in the imaginaries of interveners and global observers. Even as the number of migrants transiting the country falls sharply from a peak in 2015, the policies and practices on the part of the Nigerien government, its local partners, and international actors, coalesce consistently around irregular migration as a major security priority since the early 2000's. This mostly repressive approach to irregular migration culminated in the adoption, by the Niger Government, of the 2015-036 law against smuggling of migrants, that made the transport of non-Nigerien travelers to Algeria and Libya illegal. Such mobility restrictions apply within Niger's territory, thus contradicting the ECOWAS protocol on free movement of persons. The passage of the law and its enforcement from 2016 onwards have had knock-on effects on livelihoods in Northern Niger, where the bulk of the economy around transiting migration is rooted. This has also placed the state of Niger in a delicate position, torn between its commitment to mobility as an ECOWAS member and international partners' expectations towards migration control.

While the story of criminalization and securitization in Niger is a well-worn one, there is less attention to some of the ways these processes are incremental, erratic, incomplete, ambiguous, and contested. This article argues that once we consider the voices of market insiders in the smuggling economy alongside those in the security and intervention sector, these narratives point to the fundamentally ambiguous status of the migration economy between the licit and illicit, the legal and the illegal. To capture this ambiguity, the article draws on the concept of *quasilegality*, which captures the in-between status of the flows in question, and in particular the conceptual space between the licit/illicit and legal/illegal binaries.

We argue that the concept of quasilegality is particularly useful to point to three salient factors in contesting the straightforward narrative of criminalization in Niger. The first of these analytical payoffs from the concept of quasilegality is helping to focus on the difference between the social acceptability of a particular activity and the state legal frameworks that regulate and potentially repress it. The second is the ambiguity of the state legal framework itself, particularly in its application — notably by street level officials who may exercise discretion in unexpected ways. We draw on Cassanelli's (1986) concept of the 'quasilegal' to describe this fluidity of (il)legality as well as the social embeddedness of migrant smuggling in northern Niger. The third factor that this concept helps us to be attentive to is the actors' own understanding of their activities, on both sides of the binaries in question. This refers to what we call 'market insiders' and 'control-oriented actors' respectively. This final point is where the article's methodological focus on narratives is most productive. Our attention to narratives around migration, crime, and (in)security in Niger is at once a means of complicating the smoothness of security and control as well as a broader critique of views of migration in Niger that would see it as a straightforward example of 'transnational organized crime' in West Africa.

This article builds on the authors' long-standing research on Niger. The bulk of the interviews cited draw on field research undertaken in 2019–2020 in the cities of Niamey and Agadez (Niger) as well as Lagos (Nigeria). The emphasis in the fieldwork was accessing 'market insiders' in both contexts, focusing on the 'irregular' migra-

tion economy and the trade in pharmaceuticals in Niger and Nigeria respectively. In Niger, a total of 21 interviews were carried out, including with migrant smugglers and other transporters but also national and international actors in the border security field. Interviews were carried out in English, French and Hausa. Those carried out in Hausa were professionally translated into French by a Nigerien research assistant fluent in both languages.

The remainder of the article proceeds in three parts. The first section of the article below sets out the theoretical framework for this article, describing how the concept of quasilegality enables us to understand the particularities of social sanction, uneven criminalization, and the role of narratives and self-understandings. The second section details the incremental and ambiguous criminalization of migration and migrant smuggling in Niger, drawing on the narratives of interlocutors from the region, many of whom are key participants in the transport sector. The extended conclusion summarizes the arguments and contributions of the article and turns to a broader analysis of one of the ramifications of its methodological and empirical approach: the repudiation of the cartographic and numerical approach to understanding irregular migration in West Africa (centred on 'flows') in favour of one that is grounded in actors' envisioning and experiences.

Perspectives on migration, smuggling, and criminalization in Niger

Migration in Niger has been the subject of sustained investigation, with a new wave of literature driven by expansion since 2015 of international intervention in the country – largely in response to the so-called 'migration crisis' that followed the Arab Revolutions in the Maghreb and the Middle East in the early 2010s. The collapse of the Libyan state in 2011 in particular, destabilized trans-Saharan dynamics and provoked political, economic, and social havoc that logically impacted migration patterns. With its role as a major "transit state" reinforced through security cooperation and domestic discourse, there has been a lot of recent scholarly work on Niger's migration management practices and broader security politics. Much of this work has focused on international intervention, particularly by the European Union (EU), emphasizing its efforts to curb trans-Saharan migration. Many scholars focus heavily on the EU's actions even if their normative aim is to critique its various interventions. Stambøl (2019) examines Niger and migration governance there through the lens of the EU's counter-crime policies in the Sahel, while Dauchy (2019), Van Dessel (2019) explicitly frame their contributions around the 'Europeanisation' and 'externalization' of EU border controls respectively. Boyer (2019) also writes of the EU as one actor among others such as the IOM and UNHCR who work to make Niger a space of 'blockage' of displaced people, building on earlier work on the 'Europeanization' of migration policies in Niger (Boyer and Mounkaila 2018; Moretti 2020) considers the impacts of international intervention explicitly, linking primarily EU action to the decline of a regional economy dependent on transiting migrants. Bøås (2020) and Frowd (2020) focus on how migration is inserted into broader security interventions including domestic politics. Our article positions itself within this broad thrust of literature, yet also seeks to develop it further: while much of this literature is

written from a critical standpoint that centres attention on the policies and practices of states, it has considerably less attention to the everyday impacts of criminalization and the actors who are impacted by it.

To advance this critique, this article is inspired by and seeks to contribute to work on the embeddedness of smuggling — and smugglers themselves. Sanchez and Natividad (2017) argue that the work of the smuggler is epistemic, networked, and affective. Of the many contributions focusing on the Sahel-Sahara, Scheele's (2012) is one of the most extensive recent histories of trade and transport, including smuggling, in deep historical perspective and building from extensive ethnographic engagement. Her work complements arguments about the social embeddedness of smuggling in the region, such as the work of Gutelius (2007) on drug smuggling as a form of autonomy-seeking in Mali, but also recent contributions that have highlighted the growing security framing of smuggling in the region (e.g. Ellis 2004), or even contributed to it by linking Saharan jihadist groups to migrant smuggling (Larémont 2011). On the specific question of *migrant* smuggling, Raineri (2021) critiques what he calls the 'criminological perspective' and stresses the need to focus on the relations of sociality and their interplay with state security efforts. There has been relatively little work on the social embeddedness of migrant smugglers in the Sahel-Sahara, but existing contributions have been important. Maher (2018) analyses the relations between migrants and smugglers, contesting existing narratives around the smuggler as criminal while in the case of Niger, contributions such as Brachet's (2018) emphasize the 'manufacturing' of smugglers in the country, identifying a long process of criminalization of migrant movement and those who facilitate it. Raineri's analysis of smuggling in Niger (2018), in which he envisions a "state-sponsored protection racket", is much more firmly of the view that the state is a willing participant in the processes it claims to be seeking to control. These all complement earlier work such as that of Kohl (2013) on Tuareg migrant transporters and that of Brachet, Choplin and Pliez (2011) on the Sahara as a space of connectivity including that of migrant *passeurs*. Our attention in this paper is directed towards the individual narratives of smugglers and their relation to the state, security actors, but also their own livelihoods. It therefore contributes to a broader analysis of migrant smuggling across the social sciences which examines how they are criminalized (Watson 2015), and the invocation of migrant smuggling as a form of 'moral borderwork' (Richter 2021). This article's focus on smugglers' own narratives; its effort to highlight the flipside of the politics of control/security and to re-situate criminalization within a moral economy of smuggling, surely contributes to widening the existing literature.

Quasilegality

Focusing on the ambiguity of migration and the il/legal and il/licit in Niger helps to move the debate about migration in Niger away from a focus on state policies and a focus on state-driven criminalization. This article's main conceptual argument is that quasilegality is the most effective frame through which to understand the contemporary governance of migration in Niger, and in particular the role of the smuggling economy within it. The term 'quasilegality' is inspired by Cassanelli's (1986)

analysis of the social acceptability of the drug *qat* in the Horn, which highlights the drug's ambiguous status as both an occasionally prohibited narcotic but also its social embeddedness in various life events and routines. Cassanelli notes that "the balance between social acceptance and social condemnation of qat is a precarious one" and that is has always existed in the "indistinct boundary between legality and illegality" (1986: 254). Carrier and Klantschnig (2018) take up the term in the context of their own research on drugs, noting that it refers to the ambiguous status of law and its interaction with social codes. In their work on drugs in Africa, they use the term to describe what they call the "vagueness of the law and its flexibility" (2018: 2), but also how the "spaces that the substances [they] examine travel through while often regulated by relationships of trust more than legal contract" (2018: 2). In our work on Niger, particularly through interviewing smugglers in the Agadez region, we find this term particularly helpful as a means of accounting for precisely these social and informal, rather than formal-legal, factors which shape how irregular migration takes place and is governed in the country. While Carrier and Klantschnig use this term to focus on the *flow* of substances, we are concerned with the whole issue area (high diversity of actors and activities, social and historical roots, economic and political contexts…) in its local manifestations in Niger. The approach to quasilegality here engages with the specific context of Agadez Region — one in which international intervention is central to shaping dynamics of smuggling and policing — but foregrounds the complexity of il/legality and il/licitness and how these phenomena appear in the narratives of key actors in the world of migration in Niger.

We argue that there are three main analytical payoffs of the concept of quasilegality: critiquing the il/licit and il/legal binaries, centring dynamics of criminalization, and methodologically drawing our attention to narratives. The first analytical payoff of 'quasilegality' as a concept is that it provides a mode of understanding as well as critiquing binaries around legal/illegal and licit/illicit. This article places these two binaries on a spectrum, where questions of legality are issues of textual and formal law, whilst the question of licitness foregrounds the issue of the more socially negotiated (and fluid) aspects of sanction and (dis-)approval. Issues such as migrant smuggling are frequently understood through a focus on 'illicit flows', but as Van Schendel & Abraham's (2005) argue, there is rarely clarity on where the line between legal and illegal falls, and focus should instead fall on micro-focused approaches that eschew a concern with defining 'crime' and its degree of organization. We have consistently used the term 'irregular migration' throughout to sidestep precisely this challenge of assessing legality. We are keen to emphasize through this term 'irregular' that it is not necessarily an objective descriptor of the phenomena under study. Much of what we examine is in fact mostly regular and often predictable (e.g. seasonal) migration, some of which has been irregularized through policy and practice or simply come to be understood as such irrespective of the legal framework. As Düvell has argued in a seminal piece on the concept, "it was only once states issued legislations that declared unwanted immigration illegal and punishable, and introduced technologies, administrations and enforcement procedures to support this legislation, that previously regular migration finally became irregular" (2011: 276). The constraining of human mobility by states strongly resembles its approach to those who seek to facilitate it: a socially embedded and regular activity, often inextricable from livelihoods,

increasingly made legible and regulated often through a security logic. The second payoff is that quasilegality helps us to understand the uneven and ambiguous nature of this criminalization process. Carrier and Klantschnig point to how it "links to debates in criminology regarding the concept of 'discretion'" (2018: 2), highlighting the role of uncertainty and uneven application of the law. The question of discretion is also fundamental in shifting the scale of analysis of something like irregular migration in Niger, in the sense that we move away from a focus on high-level policy decisions, and more towards the meso and micro level of street-level interactions in the social world of irregular migration and its control. Returning to the concept of irregularity, Mezzadra's (2011) approach to it is grounded in a view that recognizes the autonomy and agency of migrants, and he describes it as ambiguous and ambivalent, ever conditioned by struggle and contingency — much like the processes under study in this article. Third, the concept of quasilegality, by virtue of emphasizing the social dynamics of the il/legal and the il/licit, also provides a methodological stance for research such as ours on the smuggling economy in Northern Niger. We focus on the narratives of those we call 'market insiders', particularly around Agadez, as a means of providing a more complete picture of economies and flows that face criminalization — beyond the more frequently aired narratives and worldviews of those who work in the politics of control (e.g. law enforcement agencies). Emphasizing the 'quasi' imbues the smuggling economy with ambiguity as an object of analysis, opening the door for us to investigate *meanings* through actors' narratives and self-understandings. The payoffs of this concept for the analysis of migration in Niger are thus analytical and methodological.

Untangling the (il)licit and the (il)legal

There exists a disjuncture between legal frameworks and the social approval of migrant smuggling in Niger. This social perception of smuggling derives in part from a prevailing social understanding of transport and cross-Saharan mobility as integral to the modes of existence of Tuareg and Tubu people in the Niger/Chad/Libya borderzone. Understanding this social embeddedness of the smuggling economy requires a look back to the 1980's, when Northern Niger, and the Agadez region in particular, was a famous tourist area. The residents of this region, mostly Tuaregs by ethnicity, developed flourishing tourism-oriented business enterprises, taking foreign visitors on desert tours and thus, providing sources of income, directly and indirectly linked to tourism (Grégoire & Scholze, 2012). In the early 1990's, the armed rebellion that broke out in Northern Niger, challenging the government and engaging the army, had a strong impact on the security situation, preventing all tourist activities. Drivers, guides, and tourist agents then found alternative opportunities in the transport business and started carrying goods and people across the Sahara.

Human movement and transnational trade in the Agadez region have been major economic activities since the 8th century. Former tour guides who turned into transporters during and after the rebellion became part of the old and well-structured economic dynamics of the Sahara. But the severe economic crisis that followed the austerity policies - imposed by the International Monetary Fund (IMF) on develop-

ing countries through its structural adjustment programmes - at the end of the 1980's triggered an increase in economic migration, notably through the Sahara. Contrary to the popular idea that a constantly increasing number of sub-Saharan migrants were, then, trying to reach Europe, most of them stayed in North African countries such as Algeria and Libya (Bredeloup and Pliez 2005). The development of regional transport businesses in the Agadez region then responded to local demand for mobility, as well as structural economical constraints. Competences and knowledge of Agadez people were leveraged, irrespective of the 'licit' or 'illicit' label that could be attached to these activities.

It is in this context that the socially licit nature of transport — of goods but also of migrants — should be understood in Northern Niger. Even in the context of greater restrictions and eventual criminalization of many of these activities, a number of trends illustrate the socially embedded nature of the smuggling economy. For instance, migrants have been expected to pay a form of 'city taxes' typically around 1,000 XOF (about €1.50) in towns through which they transit (Interview 13) on the way to Libya. This taxation relationship with the foreigner suggests a form of intelligibility of their journeys and should also be understood as an economic development strategy of the kind alluded to by most observers of the economic windfall from irregular migration in Northern Niger. A local journalist we interviewed pointed directly to the financial difficulties faced by the administrative authorities of Agadez (Interview 23), laying out a clear asymmetry (between local governments and the central state) of the economic harms of criminalization. While the whole Northern Region was seriously affected, the negative effects were less obvious in Niamey, located 900 kilometers away from Agadez, in the southwestern part of the country. Saharan confines such as the Diffa or Agadez regions have long endured isolation from the capital, which is the preeminent centre of economic and political power in Niger.

The criminalization of migrant transport, mostly since 2015 but with roots before this, is aimed directly at those labelled as smugglers and has knock-on effects for practices that are socially accepted. There are of course limits on the socially 'licit'; nature of migrant transport, and some transporters point to elders and village chiefs as actors trying to *prevent* transport activities — due to the perception of heightened legal risks (Interview 19). While such data is partial, it is indicative of the fact that it is difficult to label migrant smuggling as a question that straightforwardly pits social acceptance against state repression. It is also important to recognize that the socially sanctioned nature of smuggling does not mean it is a glamorized occupation. Many of our interlocutors mentioned they had fallen into this line of work due to lack of alternatives and poverty or unemployment — or simply survival (Interview 20). They also acknowledged that very few jobs in Niger could provide anything like the weekly cash flows available to those working in migrant transport.

The mostly socially accepted nature of smuggling has come under increasing pressure, and the context of migration 'crisis' across the Sahel has reshaped livelihoods in Northern Niger. Here, 'crisis' corresponds, in the Sahara and the Sahel, to the collapse of Muammar Gaddafi's regime in 2011 and the civil war in Libya from 2014 –a sequence of events that has triggered important changes in the region's mobility dynamics. According to Delphine Perrin (2021: 95), the geopolitical reconfiguration of migration that has taken place in post-Gaddafi Libya is due to the dynamics of

the adaptation of actors in the migration ecosystem, also interlinked with Libya's political and security landscape and other changes in both migration routes and the migration economy. European countries, panic-stricken, committed to curb what they analysed as threatening migration flows, moving the delocalized management of border control down South. Pressure from the European Union on Sub-Saharan countries to limit migration flows preceded the so-called "migrant crisis" – as illustrated by the presence of the International Organisation for Migration (IOM) in Niger since 2006 – but control reinforcement in the 2000's translated first into agreements with North African states and, first and foremost, Libya, in particular. Acting as the EU's watchdog for several years, Libya was supposed to arrest Sub-Saharan migrants on its own territory, and then send them back down South. But after the fall of Gaddafi, when the Libyan territory became uncontrollable, the focus switched to Niger. Relatively stable compared to Mali, Niger has often been preferred by migrants willing to reach Algeria and Libya and became a key space for the EU's migration policy. The IOM, which was officially conducting migrant rescue operations, participated in the development of a mobility surveillance and control system focused on the repatriation of migrants from various parts of Sub-Saharan Africa to their respective countries, turning the Sahara into "a security belt to enable EU migration management" (Brachet, 2016). These practices precede the adoption of the 2015 anti-smuggling law discussed below, and go beyond simply legal repression.

This is notable as international interveners, despite orienting and supporting the Nigerien government's migration management policies, acknowledge the link between smuggling and everyday mobility — pointing out that many smugglers may have identity papers (and mobility rights) across more than one country (Interview 13). The government of Niger and its partners acknowledge a certain degree of such socially *licit* behaviour coexisting with its illegal nature, even as the repression of migrant transport ratcheted up. While many of our interlocutors saw the 2015 law as a sea change, others mentioned that it simply confirmed or made 'automatic' some of the state's previous repressive practices (Interview 20). The last decade has therefore been one in which migrant smuggling is 'quasilegal' in Niger: first with social acceptance and an occasionally permissive legal framework, and later with expanding legal restrictions coinciding with continued social licit-ness.

Incremental and ambiguous criminalization

The last two decades have seen an incremental criminalization and securitization of irregular migration through Northern Niger. This has been driven by the increasing involvement of European migration management and facilitated by the acquiescence of the Nigerien authorities in this process. While many of these dynamics are driven by regional processes of migration governance as well as national policies, they are also prone to crisis-driven turning points. One such event occurred in this context, impacting the perception and the management of migration in Niger: in October 2013, ninety-two dead bodies, including fifty children and thirty-three women were found in Northern Niger, near the Algerian border. All of the deceased had been travelling from the district of Kantché, in Southern Niger. The large scale of the deaths, coupled

with the fact that most of them were women and children all of whom were Nigerien nationals, sent a massive shockwave across Niger. The Nigerien government subsequently declared three days of national mourning for the deceased migrants. While the 'migrant crisis' was arguably an opportunity for the EU to reinforce its position in the Sahel, notably through the IOM's activities, the Kantché tragedy was used by the Niger government which appropriated the humanitarian argument, made it echo within the population of Niger and then, inserted it into the national discourse on migration. The drivers of criminalization therefore weave together domestic and international actors and priorities, and are the product of alignment (albeit for different reasons) across security agendas.

This wind in the sails of the securitization of migration in Niger has therefore been provided by humanitarian discourse, which has served as a basis to develop and implement restrictive and coercive measures. This has furthered the gradual criminalization of the main income-generating activity of the Agadez region. Since 2015, the broad trend of transit migration through Niger has been on a downward trajectory. Data from the IOM's flow monitoring statistics, which estimate migration flows based on extrapolations from observations at selected observation points across the country, show 333,891 people leaving Niger in 2016 (IOM 2017) and a drop to 69,637 in 2017 (IOM 2018). While these numbers may wax and wane, the smuggling industry in Niger is longstanding, to the extent that the label of 'smuggling' only partly captures this highly mobile economy. The broader region is a hub of movement of goods, people, and ideas — a form of Saharan crossroads whose role vastly pre-dates any association with 'migration', let alone its irregularized form. The profile of migrants themselves suggest that they are mostly ECOWAS (the Economic Community of West African States) nationals, who benefit from free movement in the region, making the determination of who is moving legally (or not) more challenging. The profile of migration in Northern Niger is also changing, from the typical profile of irregular migrants to Europe (young, male, often highly educated) towards return migration from Algeria (Interview 13). Nevertheless, the salience of transiting migration remains high even as statistics show large drops.

At the height of the crisis framing of migration, in 2015, Niger adopted a law (#036-2015) against human smuggling which has since dramatically reshaped the political economy of, and daily life in, the Agadez region. While there is much handwringing over the politics of the law, and the context of European intervention and diplomatic pressure in which it was adopted, the law effectively ensures Niger transposes the Palermo convention's stipulations on organized crime into domestic law. The rollout of the law, however, has been a major step in the incremental (and indirect) criminalization of migration movements in Niger. Until 2015, the transportation of migrants was an official and well-structured activity within Niger. Transport agencies, drivers and transporters were recognized as professionals delivering services and were organized into a union (*Syndicat des passeurs*), which could no longer exist after the adoption of the aforementioned law. An association was subsequently created (*Association des ex-passeurs*), in order to defend their rights and stand against what members of the defunct *Syndicat des passeurs* consider to be an unfair decision.

An activity that was hitherto rooted in centuries of trade practices, the transnational transportation of migrants became, officially, a crime. Thus, this switch of sta-

tus turned the main economic operators of this region into 'criminals'. In the months following the adoption of the law, several of them were arrested, their vehicles were seized, and bus parks blocked, resulting in the closure of many shops, restaurants, garages and money transfer agencies, among others. The shutdown of cross-border transport links also disrupted the longstanding circular migration system of people who usually crossed the Sahara to engage in temporary and mostly 'legal' migration journeys to North Africa. This category of seasonal migrants usually sought work for a few months in Algeria or Libya before returning home. Before the passage of the 2015 law, transnational transport activities were handled by 'professionals', registered drivers, and members of unions. After they became illegal, those who continued their transnational activities had to find alternative routes, deeper into the desert, which involved more risks both for themselves and for their customers. A local NGO official we interviewed in Agadez remarked that the 2015 law had not only created a new crime but pushed existing actors to new forms of crime, such as fraud, to continue smuggling (Interview 22). This dovetails with what smugglers themselves told us about alternatives, which they considered difficult to access, with one noting that there is "nothing" in the gold mines nearby, forcing youth into theft and other crimes (Interview 26). This reflects the multiple forms of criminalization occurring in Northern Niger.

Criminalization is not the only game in town, and an approach grounded in the lens of quasilegality urges us to account for the ways criminalization is an unfinished process and continually subverted. The subversion of criminalization is, paradoxically, occurring through the accompanying measures officially taken by the Niger government to tackle the massive rise in unemployment provoked by 2015 law. The president of the *Association des ex-passeurs* alleged that 6565 people voluntarily stopped their commercial activities, expecting the financial support of one million five hundred thousand francs CFA (1,500,000) promised by the government to start a new activity, but as of 2019, only 521 persons had received this support. This aligns with interview data from a Niamey-based NGO that shifts since the 2015 law had seen about 6,000 people lose their livelihoods directly or indirectly tied to migration (Interview 14). There is a consciousness on the part of international interveners that smugglers consider themselves 'transporters' as well as a recognition that the 2015 law was unpopular particularly in the absence of alternatives (Interview 13). These alternatives were not only expected from the government but also requested from the European Union. The programme called PAIERA, funded through the EU Emergency Trust Fund for Africa adopted after the Valletta summit, has been intended to help former smugglers move into the formal economy through support for business plans. Many applicants have been bitterly disappointed by the success rate for applications and placed blame on corruption by local notables, with some noting that drivers themselves did not get any help (Interview 19). The broader implication of these compensatory measures in the context of Northern Niger is a reluctant acceptance by the government and international funders that a socially licit activity has been made criminal. Indeed, many transporters simply did not stop transporting people and chose to engage in an activity that is now considered illegal, rather than unemployment, which many individuals in this category felt was the only other option.

Migrant smugglers in Agadez describe a languishing migration economy that is exposed by the shifts in practice brought about by the 2015 law, but the persistence of elements of this economy shows the resilience of quasilegal practices. There is an ambivalence regarding the effects of the 2015 law on the local economy, which it is pertinent to qualify. While the stifling effect of the legislation has severely impacted on the buoyance of the local economy in Northern Niger, especially the transportation sector, other local actors have adopted a more optimistic perspective to the local economic downturn because it has provided them with the opportunity to increase their profit. In other words, a lesser number of Nigeriens are still engaged in the transportation of migrants which has also meant that many of these individuals are unemployed. On the other hand, however, the price bracket for transporting migrants across the Sahara has exponentially increased, which means that for those still willing to take the risk of transporting migrants there is the incentive of making larger profit from their journeys. Previously, one person involved in migrant transport could make personal gains of up to 300,000 XOF (roughly 535 USD) on the day that a convoy departed — typically on Mondays, during which roughly three convoys go in the day (Interview 16). The law has impacted the profile of those who leave, with the bulk of passengers now being Nigeriens who 'do not pay enough'— paying roughly 40,000–50,000 XOF each to go to Sabha in Southern Libya (Interview 16). For others, however, prices have risen, demonstrating the added costs of taking riskier routes due to more intensive state enforcement. One market insider spoke of prices going from 50,000 to 100,000 XOF per migrant to around 300,000 XOF to get to Southern Libya (Interview 25). The persistence of smuggling as a mostly open economy, rather than crime, is central to our qualification of this space as quasilegal.

The social embeddedness and informality of the migration economy in Northern Niger defies efforts to clearly categorize it as criminal or determine where illegality begins and ends. It is important to note that informal does not necessarily mean unstructured or unreliable — it simply refers to everyday practices which may be unofficial and outside of bureaucratic structures. One example of this is the practice of bus station operators who phone smugglers to inform them of potential passengers, in exchange for a fee of 10,000 XOF (Interview 17). In many cases, the hybrid nature of the goods and people transported makes it difficult to decipher what is trafficking, smuggling, or transport (Interview 13). The same interviewee we spoke to alluded to the possibility of divergent meanings of 'irregular migration' in play, suggesting that there is an EU-centric view and one that the government of Niger may be moving towards which is more focused on weapons and drug smuggling (Interview 13). Local actors, like one radio host we spoke to, explicitly use the term 'criminalization' to describe the situation of migrants in Agadez (Interview 29).

Calling migrant smuggling in Niger 'quasilegal' reflects the fact that although there is a clear process of criminalization underway, it is unsystematic and ambiguous as well as refracted through narratives and social understandings. One smuggler vividly reflected the criminalization he saw underway with a comparison to drug trafficking: "Even in town, if you're caught with a load of migrants, it's as if you had drugs on you, it's over for you" (Interview 16). It is worth noting here that while the public discourse about migration in Niger centres on its naturalness and historical roots, drugs are more widely seen as worthy of condemnation and more unequivocally criminal.

The 2015 law has frayed the social relationships between smugglers and law enforcement agencies. According to one smuggler, "we can pass [security forces] without speaking" (Interview 18), suggesting that the more sociable encounters — such as bribery and checkpoints — are being avoided in the post-2015 environment. Other smugglers stress that while penalties were inconsistent before the law, they have become systematic since 2015 (Interview 20) — these include imprisonment and vehicle seizures — but this contradicts many other smugglers' experiences.

Criminalization is ambiguous because it is subverted through informal practices and encounters with the state. Some smugglers refer to bribes as being common and relatively fixed, at around 5,000 XOF (about 9 USD) per migrant, which can net a police patrol 1,000,000 XOF from a single vehicle (Interview 16). One smuggler told us most of his clients are ECOWAS citizens who dispose of their identification documents before travel (Interview 16), which means they are legally in Niger but not in conformity with document requirements for regional free movement — which opens up the need to pay bribes. Others point to the fact that even since 2015, the security forces may inform smugglers when and where they go out for patrols (Interview 18) — effectively blending the enforcement of the law with its own subversion. Perspectives are multiple, however, and the risk is that not all police or military actors are bribe-able — even though many recognize the economic importance of the smuggling activity they are sent out to control (Interview 19). Others point to a "very limited" number of agents who let trucks pass (Interview 20) or distinguish police and military by identifying the latter as more lenient along their travel routes (Interview 19). The intensity of policing is therefore immensely variable and ambiguous, making it difficult to ascertain whether criminalization is successful — in other words, whether the reduction in smuggling journeys and rise in prices is the result of a simple shift in market demand or due to enforcement action. The uneven criminalization of migrant smuggling is a clear example of the unpredictable and unsystematic application of law that is typical of situations of quasilegality.

Smugglers' narratives and self-perceptions

One of the main contributions of the concept of quasilegality is methodological. By focusing on questions of trust and sociality, it helps us to foreground the self-perceptions, identities and discursive claims made by smugglers. Smugglers in Northern Niger tend to see themselves as entrepreneurial, stressing the financial and career decisions that go into their life choices. Smugglers' self-image as businesspeople, rather than as simply criminal operators, emerge from economic visions of their own activities: one smuggler, frustrated by the lack of progress without a degree, explored the migration pipeline (home, vehicle, taxi, foreign exchange, food) and selected their strong suits accordingly (Interview 17). This same interlocutor also saw it as a family employment opportunity. Another smuggler got into it after job market failure and noticing that their less-educated brother was making more money than them in the smuggling industry (Interview 18). Narratives of personal success were common, with one transporter pointing out that there was a direct relationship between his romantic successes and his financial situation, noting that one is considered a "good

for nothing" once transport revenue dries up (Interview 18). One smuggler we spoke to had been married based on his prior wealth, which has since fallen apart as his wife left him (Interview 21). It is impossible to fully grasp the politics of migration in Northern Niger, and the uneven effects of criminalization, without being attentive to the narratives of these market insiders.

These self-understandings are not limited to the local context, and some international interveners also see the relationship between themselves, state and smugglers in a corporate sense. One spoke of market insiders, notably smugglers, and international organizations as existing in a "communication war" (Interview 13) in which they compete over migrants' information about the journey across the Sahara. This signals their recognition as actors in the broader migration economy, because "they need customers" (Interview 13). The same interlocutor suggested smugglers "just adapting to what […] was coming to them" (Interview 13), that is, responding to shifts in market demand from their 'customers'. Migrant smugglers do think of themselves as operating in a market, seeing the job as better paying than anything else locally and also speak of migrants' appreciation of their services and the reputation that builds from this (Interview 16). Smugglers interviewed repeatedly referenced the importance of expertise and the recognition of expertise as a form of business acumen. For example, one can only drive the route between Agadez and Southern Libya after having been a 'co-driver' a few times and observed the route (Interview 18). Most smugglers emphasize relations of trust with clients, and reputation — and criticize some of their colleagues' harsher practices e.g. putting migrants in "maison de crédit" (Interview 21) — detention houses for migrants who do not pay.

While we should pay attention to smugglers' narratives and personal trajectories, we must avoid the trap of seeing smugglers as saints who are blissfully unaware of the legal limbo they face. Their own narratives highlight this. One former smuggler who had been imprisoned did not contest the criminal framing of his activities but spoke most clearly in favour of the economic alternatives offered to former *passeurs* (Interview 26), highlighting at once criminalization but also the losses incurred by state pressures on the smuggling economy. Others spoke of having little choice but to engage in crime faced with highly uneven outcomes of the peace process put in place after the 2007 Touareg rebellion: those who did not get plush jobs had few other options (Interview 23). In other interviews, smugglers acknowledged a change in the *law* but did not see this in terms of *crime*, insisting that the law only concerned foreign migrants (Interview 21). When it comes to interactions with police, smugglers perceive the security forces as being relatively similar to them in terms of responding to particular opportunity structures. One smuggler spoke of shifts since the 2015 law, pointing to what was past informal collaboration with the national police which had, since 2015, seen a change in the police's internal incentive structure for interceptions (Interview 17). Here, the smugglers' narrative sees the police as operating according to similar logics: not so much guided by questions of law, but rather by personal advancement within their respective worlds. It is also notable that despite the ambiguous legal status of irregular migration even before the 2015 law, *sociality* took precedence over legality in these interactions with the state.

Smugglers' narratives go beyond personal trajectories and explicitly appeal to the state and other constituencies. Most market insiders identify the economic impacts

of the 2015 anti-smuggling law readily, speaking directly to its specifically *political* origins and ramifications. One spoke of the influence of "others" (likely the EU) on the law's adoption in 2015 (Interview 16). The head of the ex-smugglers' union described the formation of this group as specifically intended to resist the narrative of the state, arguing that "we pay the taxes" (Interview 28). The same interlocutor mentions that the association was created to be a single credible actor to deal with authorities and specifically mentioned EU pressure in passing the 2015 law on these very same authorities. The union's meetings with local authorities "when there's a problem" (Interview 28) highlights the negotiated and social nature of social control around migration in Northern Niger. The existence of an officially recognised "smugglers union" (*Syndicat des passeurs* in French), prior to the law, already illustrated the ambiguity of the state toward the migrant transport business. While the word *passeur* refers to an informal and even illicit activity, Niger authorities had, until 2015, granted the smugglers and their union a long-standing legitimacy. Drawing on the relational and social context of migrant smugglers, we are better able to understand their political claims and identities — which are crucial factors shaping the precise contours of their social (non-)acceptance and legal vulnerability.

Conclusion: rethinking 'illicit flows'

This article has argued that the concept of 'quasilegality' offers a route to better understand the dynamics of criminalization around migration in Niger. It has emphasized that this concept's focus on the complex interplay of the socially licit and formally illegal helps us to understand the social context of migrant smuggling in Northern Niger, drawing on the perspectives of market insiders (migrant smugglers/transporters). Further, the article has demonstrated that quasilegality also contributes to add nuance to processes of criminalization, using the example of the build-up to (and fallout from) Niger's 2015 anti-smuggling law. Finally, the article has expanded on the methodological stakes of this concept, highlighting the narratives and self-understandings of the market insiders interviewed as part of the project. This move is a methodological one but also one that helps us highlight the social embeddedness of irregular migration and the political role of market insiders. By grounding the analysis in the concept of quasilegality, this article contributes to a newer wave of literature on irregular migration, that is focused less on the policies and practices of the state and more on the social context of the actors outside the world of control. It also plays a role in contesting the idea of 'illicit flows' which anchors many of the policy and academic analyses of the region.

We think that the research agenda for irregular migration in West Africa should take stock of perspectives anchored in the everyday economy and give greater attention to the social context of the interplay between control-oriented and market insider actors. The concept of quasilegality itself has a certain number of analytical limits when it comes to the study of migrant smuggling. Its focus on the gap between legal framework and actual practice does risk overestimating the smoothness of the law and its application in general. Similarly, the concept may obscure other relevant distinctions, notably that between formal and informal, which may be effective tools

for the study of economies such as that around human smuggling in Niger. In light of these contributions and limits, we conclude with a few remaining research questions and curiosities which we think will be essential in future, and which can also contest the prevalence of security-focused approaches. One relates to the impact of research and over-researching. We were conscious in our own study of the tremendous amount of attention Niger is getting from Northern researchers who have more recently developed an interest in migration. Some of our interlocutors told us quite directly that many had come before us with similar questions. How do we account for this effect? What are the ethical stakes around this, and does it play a role in criminalization in its own right? Scholarly researchers should be working to see how their data and writing can de-securitize, by eschewing the concepts and categories of the state and reinforcing that it is security rather than mobility that is the exception. A second more empirical set of questions that deserves more attention in Niger and in the region more broadly relates to rethinking the modes of international intervention themselves which are strong drivers of criminalization. While the bulk of studies of migration in the region focus on security actors, there is still considerable work to be done on the overlap between migration management agendas and broader efforts towards stabilization and state-building. Finally, with climate and insecurity also prominent in global and local agendas in the region, with predictions of mass displacement and migration ever-present in these discussions, the narratives of migrants and those who facilitate their mobility will be crucial in an uncertain future.

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27 November 2019	
Interview 14	Local NGO staff, Niamey (Niger)
2 December 2019	
Interview 15	Former smuggler, Agadez (Niger)
7 December 2019	
Interview 16	Anonymous smuggler, Agadez (Niger)
7 December 2019	
Interview 17	Former smuggler, Agadez (Niger)
7 December 2019	
Interview 18	Anonymous smuggler, Agadez (Niger)
8 December 2019	
Interview 19	Anonymous smuggler, Agadez (Niger)
8 December 2019	
Interview 20	Former smuggler, Agadez (Niger)
9 December 2019	
Interview 21	Anonymous smuggler, Agadez (Niger)
10 December 2019	
Interview 22	Local NGO staff, Agadez (Niger)
11 December 2019	
Interview 23	Journalist, Agadez (Niger)
16 February 2020	

Interview 24	Local NGO, Agadez (Niger)
17 February 2020	
Interview 25	Local NGO, Agadez (Niger)
19 February 2020	
Interview 26	Former smuggler, Agadez (Niger)
20 February 2020	
Interview 28	President of ex-smugglers' union, Agadez (Niger)
21 February 2020	
Interview 29	NGO staff, Agadez (Niger)
23 February 2020	

Declarations

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