



The American
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School of Global Affairs
and Public Policy

Center for Migration and Refugee
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POLICY BRIEF

The EU externalization of its external border control to North Africa and beyond: Its impact on the people and third countries of the region



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*Hassen Boubakri*¹

Preface

This policy brief is part of a study conducted by the Centre for Migration and Asylum Studies (CMRS) at the American University in Cairo in collaboration with the International Organization for Migration based on policy briefs of four themes.²

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- Is externalization a real threat to regional cooperation in Africa?
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¹ University of Sousse & University of Sfax (SYFACTE), Tunisia

² (The concept of mixed migration, its manifestations and legal impact in North Africa; data collection on Mixed Migration in North Africa, the effects of Covid-19 pandemic on migrants in North African countries; and the impact of the EU externalization migration controls on third countries in North Africa are the main elements of this policy paper).

Introduction

The term “externalization” can be defined as « [...] the extension of border and migration controls beyond the so-called ‘migrant receiving nations’ in the North and into neighboring countries or countries of origin in the South. [...] » (Stock et al, 2019)

Within the scope of this “Policy Paper”, this term refers to the transfer of part of the EU’s external border control procedures to exit border posts and to the territories of third countries in Europe’s eastern and southern neighborhoods or in more distant regions from which irregular migration flows towards Europe originate.


The choice to investigate this topics stems from the intensification of debates around migration policies implemented by the EU and its member States in respect to nationals of third countries located mainly in the neighborhoods. These debates have been ignited by academia, civil society organizations, the media and public opinion. These European policies raise questions with regards to their legitimacy in the first place and their logic from a European point of view in addition to their effects on third countries’ sovereignty and nationals...

Exploring this issue and its related implications is more relevant as both European and third states are in denial of the existence of such policy of externalization as it will be explained in further details throughout this paper.

Indeed, this term is used by Northern states hosting migrants from third countries as a cooperation initiative that aims to help southern states to strengthen their security and control measures over their borders. Therefore, externalization is presented as an advantageous policy for the benefit of the states.

This PP aims to investigate the effects of the EU’s external policy on migration management in North Africa and whether it takes into account the interests of third countries in the southern neighborhood.

More recently, this topic has gained the attention of academia and international think tanks and has affected various engaging parties in different ways: third countries represented by their institutions (ministries, agencies, offices, security bodies, judiciary, professional organizations) and social groups; namely, migrants, who end up in a doom loop of vicious control restrictions, prosecutions, abuse and detention committed by institutionalized security forces, and increasingly by security and control bodies delegated by these states and their public authorities to exercise excessive powers on them.



This paper seeks to uncover the reason why Southern states, under the guise of international cooperation for a better management of migration flows, agree to intensify their borders control while knowing that the ultimate objective of this cooperation is, paradoxically, to reduce the migration rate and increase the repatriation of migrants, which is not always to the benefit of their nationals.

North African third states, considered as transit countries, are in fact treated as buffer states between major areas of migrants such as the Sub-Saharan Africa (SSA) on the one hand and the EU, as a single area bounded by external borders from the other hand, serving as *Limes*³ between the two regions.

These buffer states fulfill the role of “gendarmes⁴” in charge of the remote control of entries to the EU’s external borders and preventing the departure of migrants originating from major migration flow areas towards Europe.

These sophisticated, digitalized and militarized security and control missions are pretty much similar to the policies applied in war zones and instability conditions, which raises the question to whether the EU is arousing hostility among third states’ populations by creating areas of tension on its doorstep, especially as these populations are increasingly confined and forbidden to reside in the European continent and in developed countries in general.

Naval missions, sophisticated control technologies and punitive detention centers located at migrants’ points of arrival are further indicators of the sanctuary of the European area, giving the impression that Europe is an encircled fortress, whereas three quarters of the sub-Saharan migrants remain in the African continent and often in the regional community to which their country of origin belongs. It should be mentioned that nine out of ten refugees are hosted by developing countries and that their travel journey to Europe can lead to their imminent death. In 2019, 10% of irregular migrants crossing the Mediterranean ended up drowned or missing at sea, compared to only 2.6% in 2017 (CMI - Chr. Michelsen Institute, 2021⁵).

In order to restrict human movement and control irregular migratory flows, third country populations in general, and migrants in particular, are subject to intensified surveillance and are exposed to control measures, which go against fundamental freedoms of movement and choice of place of residence in their own or neighboring countries according to the conventions of free movement and the right of residence in one of the partner countries located in the same region (ECOWAS and UMA). These security policies implicitly fuel predatory practices led by

³ “Limes” is a Latin word that means “passage” in English and was used under the Roman Empire to designate the policies of fortifications established along the borders or lines of separation between the pacified and civilized territories of the Empire and those of the threatening enemies and “barbarians” located at the margins of the Empire.

⁴ Yet, this term is rejected by the two main stakeholders (the EU and its member states on the one hand, and the third-party states of the region on the other hand). All parties are in denial. Third countries refuse to play the role of “gendarmes” even though they are actually playing it as Europe believes that inter-state cooperation and the reinforcement of their resources is key in controlling their borders and ensure their security; meaning that third states are protecting the EU and its member states external borders on their own territories.

⁵ EFFEXT : Effects of Externalisation. EU Migration Management in Africa and the Middle East . <https://www.cmi.no/projects/2473-effext>



migrants smuggling and human trafficking networks that target would-be migrants who are willing to pay high travel fees to reach the European territory (Ibid). In third countries, some institutions in charge of border control and territorial security conduct similar policies and take advantage of the migratory threat to put pressure on the European states to call for more funds dedicated to the reinforcement of their control measures and security techniques.

So, what would be the alternative? How to change the paradigm? And isn't time to "move" from border security to people safety and from equipping migration control bodies with increasingly sophisticated technologies and logistics to financing sustainable development and social inclusion initiatives through the use of these techniques for the benefit of third countries populations.

North Africa, at the heart of a new migratory setting in the Mediterranean

North Africa is considered the core of the Mediterranean southern shore, as it is located between the Middle East to the east and the sub-Saharan Africa to the south. This region is deeply marked by historical, humanitarian, economic and cultural ties. The movement of people and migration are fundamental components of the historical exchanges.

The regions bordering the Mediterranean basin (North Africa, the Middle East, and the EU, as well as the sub-Saharan Africa) have undergone major geopolitical upheavals over the past decade in terms of the scope and volume of migration flows. According to data collected by FRONTEX⁶, there were just over 2.5 million entries into the EU, mainly by sea and rarely by land, between 2008 and 2020.


This new setting has led the EU to launch various initiatives such as the European Agenda for Migration (EAM) of 2015, followed by the new Pact on Migration and Asylum adopted in 2020.

Readmission agreements have been reactivated. Over nine years (2011-2019), 118 845 nationals from the three central Maghreb countries made their way to Europe: 58 168 Moroccans (49%); 33 945 Tunisians (28.6%); and 26 741 Algerians (22.5%) (Frontex, 2010 to 2020⁷). North African irregular migrants are not willing to voluntarily return to their countries of origin. In five years (2015-2019), 86 028 returns of these three countries' nationals were recorded from which 74 018 were forced returns (representing 86%) compared to only 12 000 voluntary returns (14%) (Frontex, Ibid).

The EU has been focusing on two major initiatives to stop migration flows from the Mediterranean coast of North Africa and Turkey. Following the 2016 readmission agreement with Turkey, migratory flows across the eastern Mediterranean have dropped

⁶ European Border and Coast Guard Agency

⁷ Frontex. Annual Risk Analysis. 2010 to 2020.



from over one million in 2015 to 42 205 in 2017, 56 500 in 2018, 65 963 in 2019, and 10 431 in 2020 (Frontex, Ibid). On the southern shore of the Mediterranean, the EU faced the same challenge as with Turkey. 625,044 landings on the European soil (mainly on the Italian coast) through the central Mediterranean were recorded in four years (2014-2017), with an annual average of 156 000 landings, peaking in 2014 (170,000) and 2016 (181,126). Then, the arrival curve dropped to 23 485 in 2018, 1 4003 in 2019, and 35 673 in 2020 (Ibid).

Regional cooperation frameworks in the management of migration flows

North African migratory international cooperation frameworks have been developed in relation to the three common spheres linking the region's countries: Europe, Africa and the rest of the Arab World.

Even though association agreements with Europe have been concluded since the 1990s or 2000s⁸ and Mobility Partnership Agreements (MPAs) between the EU and Morocco in 2013 and with Tunisia in 2014 have been signed, they are still considered as void political statements. Nevertheless, other dialogue frameworks on the issues of migration and borders are in action, such as the Rabat Process (Euro-African dialogue on migration and development), the Khartoum Process (dialogue platform between the Horn of Africa and Europe), as well as the 5+5 dialogue (in the western Mediterranean).

With the Southern Sahara nations, dialogue and cooperation frameworks continue to increase rapidly in the domains of economic cooperation and free trade. Tunisia and Morocco are making great strides to take part in the African market; however, the management of migratory flows between the two shores of the Sahara is only discussed within the limited framework of bilateral relations between the Sahel countries and those of North Africa.

With regards to North Africa, the fundamental question of how to reconcile the interests of third countries while respecting their commitments and responsibilities towards their European partner should be tackled.

Indeed, third countries of the region are often willing to fully cooperate with the EU, especially with its member states, in controlling external borders and solving the issue of irregular migration. These countries' administrative institutions, security bodies and judges receive training sessions to better manage the flows under the guise of protecting migrants' rights. Besides, the EU and its most powerful member States (Spain, Italy, Germany, and France) constantly provide third countries in the region with equipment, logistics and advanced technology to help them reinforce their surveillance measures in the southern land borders.

The existence of detention centers reflects the excessive logic of migration policies adopted by third countries and the EU member States. Consequently, North African and European CSOs

⁸ Renewable Labor agreements were signed between North African countries from where migrants are originated and immigration countries in Europe, as well as with Libya. More recently, other agreements have been signed (such as the 2008 agreement between Tunisia and France for "the concerted management of migration and solidarity-based development").

(civil society organizations) often express their concerns about the recurring violations of migrants' rights in detention centers installed in North Africa and the EU (Migreurop, 2020⁹). According to these organizations, the EU turns a blind eye to the abusive practices committed in detention centers against the illegally arrested migrants in Libya, Tunisia, and Morocco (EuroMed Rights, 2021¹⁰).

Nevertheless, most countries of the region are more alert in other areas as they do not seem urged to conclude negotiations leading to the signing of the Mobility Partnership protocols, as in the case of Morocco and Tunisia. Algeria and Egypt have not even engaged in preliminary talks on the agreement. With the exception of Libya, third countries in the region refuse the readmission of nationals of other third countries other than their own, mainly nationals of the Sub-Saharan African countries. Moreover, all these countries, including Libya, have formally rejected the European proposal to install hot spots for migrants and refugees on their respective territories. For their part, civil society organizations (CSOs) working in these countries continue to express their opposition to the externalization of border controls and have asked not to consider countries in the region as safe for the return of irregular migrants from the EU. Indeed, CSOs, academics, and even some administrative institutions start questioning their interests on the implementation of the European logic of externalization.

In Tunisia, despite the EU explicit “solidarity” and “support” for the Tunisian spring, the European Union continues to believe that CSOs have become key factor in the new legitimized framework of migration governance at the place of the old authoritarian framework delegitimized by the nation's uprising, making them believe that they participate in the policy creation process (Dini, Sabine, Giusa, Caterina¹¹, 2020). However, reality is quite different: Mobility Partnership Agreements (MP) are in fact a continuation of the traditional logic of the EU's migration policy towards third countries. In this way, CSOs are being manipulated to legitimize the EU externalization policy to resolve the migratory issue.

Libya, an advanced area for the implementation of the externalization policy ?

In Libya, the EU has set up the “European Union Border Assistance and Management” mission (EUBAM)¹² as part of the Common European Security and Defense Policy. Under the guise of supporting the Libyan authorities in the fields of border management and the enforcement of the state of law and justice in the country, this mission is primarily intended to integrate the externalization policy of the EU borders control thousands of kilometers away from its physical borders and between the single European area and the southern

⁹ Migreurop. (2020). Locked up and excluded. Informal and illegal detention in Spain, Greece, Italy and Germany. 50p.

¹⁰ EuroMed Rights (2021). Return Mania. Mapping policies and practices in the EuroMed Region. Introduction. 10p. https://euromedrights.org/wp-content/uploads/2021/04/EN_INTRO-migration-research.pdf
Chapter 1: https://euromedrights.org/wp-content/uploads/2021/04/EN_Chapter-1-EU-Return-Policies.pdf

¹¹ Dini, Sabine, Giusa, Caterina (2020). Externalising Migration Governance Through Civil Society: Tunisia As a Case. Palgrave Macmillan. XI, 94p

¹² EUBAM : European Union Border Assistance and Management

neighboring countries. The EUBAM programs cover two main aspects: the movement of people across the Libyan borders, especially by land and sea, into and out of Libya and vigilance against terrorism and illicit trafficking of all kinds.

M. Mohamed¹³ who investigated the Libyan position in this regard pointed out that Libya has opposed the achievement of the EU vision regarding the settlement of migrants and refugees in the country¹⁴. At the same time, Libya has chosen to adopt a strict and responsive approach to irregular migration despite its pressing need for foreign labor. This approach strongly intersects with the externalization objectives and measures put by the EU and its member States. In 2012, the creation of the Department for Combating Irregular Migration (DCIM) was intended to centralize the response to such flows. The DCIM was initially envisioned as a mean to process migration flows and to arrest and deport irregular migrants. However, the DCIM detention centers where migrants and refugees are placed, mainly those intercepted at sea, escape judicial scrutiny, which leads to arbitrary detention.

The acts of abuse, violence and murder reported by recurrent testimonies from detention centers, are denounced not only by civil society organizations, but also by the European Union and the United Nations. Despite the commitment of the Libyan government of national accord recognized by the United Nations, there exists broad consensus (especially among the Libyan local communities) to reject the externalization policy and to turn Libya into a large space for the detention of the sub-Saharan¹⁵ migrants and the processing of asylum applications.

Libya's current migration regulations¹⁶ inherited from the former regime meet the European ambitions to involve third countries in efforts to "combat irregular migration" while it continues to punish illegal entry, stay, or exit with fines, detention, forced labor, and possible deportation.


The EU treats Libya, and the region in general - a migratory transit area to Europe, to justify the acts of sea crossing blockage, interceptions and returns carried out by the Libyan coast guard trained by the EU under the agreement signed with Italy in 2017. To avoid the criticism and opposition of international organizations, the EU and Italy implicitly encouraged the Libyan authorities to turn a blind eye to the extension of its search and rescue (SAR) zone in the same year. A few months earlier, they helped the Libyans to set up their own Maritime Rescue and Coordination Center (MRCC). The fight against irregular

¹³ Mohamed, Maroua.(2021). Unpacking Libya's migration narrative (pp.52-64). In Boubakri, H (Editor): Migration in North Africa. An Uncomfortable Position Between Sub-Saharan Africa and Europe? 80p.

¹⁴ Patrick Wintour, The Guardian, "La Libye rejette le plan de l'UE pour les centres de réfugiés et de migrants", July20, 2018.

¹⁵ It has to be recalled that the numerous reports and testimonies published by the press, NGOs and international organizations expose the various forms of abuse, violence, and murderous acts witnessed by migrants in Libya, both inside and outside detention centers, many of which are controlled by militias and armed gangs. The latest reports (including that of the CNN) on migrants trafficking in Libya confirmed the allegations about these recurrent abusive practices.

¹⁶ Law 19 of 2010



migration is one of the most permanent and recurrent issues discussed by the European states and Libya during their joint meetings, conferences or talks and regarded as the EU's main political commitment towards Libya. To that end, the EU has allocated certain means. A fund of 200 million Euros offered by the UTF (Emergency Trust Fund for Africa) adopted in 2015 at the Valletta summit has been allocated to Libya since 2017. Libyan naval forces have also been authorized to chase and intercept migrant boats attempting to flee the war-torn country since 2011.

Instead of prioritizing the reconstruction of the Libyan state and working on restoring its sovereignty and control over its territory and rebuilding its institutions, the EU has chosen to prioritize the issue of migratory flows control by reinforcing security measures on vulnerable migrants and refugees who are exposed to abuse and violation of their rights by both the authorities and armed groups and militias (Mohamed, M. Ibid). The 2017 Sabratha events (a coastal city in Tripolitania, 50 km away from the Tunisian borders) are an undeniable illustration of the major risks to which migrants are exposed because of the prevailing chaos and insecurity in the country. In October 2017, an armed conflict between two militia groups in the city showed the extent of violence exerted on foreign migrants in Libya, namely those coming from sub-Saharan Africa. 8,500 migrants (Source: NGO & UNHCR, 2017)- other sources reported 20,000 trapped migrants- were sequestered in different areas in the city by criminal human trafficking and smuggling groups to be put in makeshift boats (overloaded boats and zodiacs). Persistent rumors also accuse Italy of funding and conspiring with an armed group to end its involvement in migrant trafficking on the Italian coast which angered the second militia who crossed swords with the Italian-allied armed group to claim their share of the pie.

Regional Movement of people in North Africa's Sub-Saharan Neighborhood

The African member States of the Regional Economic Communities (RECs) have agreed on rules regulating the free movement of their nationals within the territory covered by the REC through conventional and non-conventional migration governance instruments of regional and bilateral nature. However, unilateral and other regulations regarding the control of human movement at the states' borders are also implemented.

In fact, these agreements seeking to organize, control and facilitate free movement of people within the REC also aim at strengthening the economic free trade relations in the region. A constant Southern Saharan Intra-regional migration is noticed within the African continent as 7 out of 10 international migrants in sub-Saharan Africa remain within the same region, compared to only one in 10 migrants staying in North Africa.

Therefore, free movement of people and free trade go hand in hand to ensure better intra-continental and regional cooperation, which is a prerequisite for achieving the continent's prosperity objectives as outlined by the AU Commission.

Overall, most of the South Saharan countries are signatories to various migration conventions/instruments, some of which are drawn as follows:

- Article 43 of the Treaty Establishing the African Economic Community (AEC), adopted in Abuja (Nigeria) on June 3, 1991 and entered into force on May 12, 1994;
- the 1990 Protocol establishing the ECOWAS biometric identity card;
- The Kigali Agreement (Rwanda) of March 21, 2018 for continental economic and trade integration through the establishment of a free trade area (AFCFTA).

Three relatively successful examples are worth mentioning:

- Despite some ongoing implementation challenges, ECOWAS has been, relatively, the most advanced regional bloc in terms of allowing free movement, which can be explained by the long dated human exchange in the region in spite of the contextual challenges that hinder the implementation of these internationally applicable texts.
- SADC member States have agreed on a visa-free travel rule for their nationals.
- Rwanda has adopted a highly liberal policy of “free-visa travel” policy for foreigners since 2010. Anyone can visit Rwanda by simply presenting their national identity card.


However, these agreements are poorly implemented due to the slow process of text promulgation, which can take years and even decades to be completed in addition to the lack of real efforts on the ground.

Besides, the danger of integration by the European logic of externalization by the African states and regional communities seems significantly threatening.

Is externalization a real threat to regional cooperation in Africa?

The two regions studied in this policy paper (North Africa and Sub-Saharan Africa) will be taken as an example to answer the above-raised question.

In West Africa, the agreement signed between the EU and Niger to control travelers' flow and human movement between this country and other regional countries has drastically altered the mobility map of the region. The city of Agadez, which economy was based on the transport sector, is no longer considered the region's main migratory hub to North Africa. Niger is also a member of the Economic Community of West African States (ECOWAS) whose member states signed an agreement 40 years ago to allow free movement of their nationals. However, travel restrictions between ECOWAS member states hinder the work of this Regional Economic Community (REC) and get in the way of the smooth movement of people, which is the founding principle of ECOWAS and the key factor of cooperative incentives among its member states.



The African Union has adopted a migration policy framework that doesn't involve North African countries. Its commission has also issued an action plan from 2018 to 2030 to facilitate the so-called “coherent” migration management in the continent. The final chapter of the plan related to border management focuses on regional security challenges across the continent, namely in the Sahara region.

In another recent policy paper (Boubakri, 2021)¹⁷, we tried to study the way North African states deal with the concept of externalization.

How do North African third countries serve their own interests in managing human movement from other third countries in the region or from the southern Sahara states without taking into account the interests of northern neighboring countries, i.e. the EU and its member States? Are we applying the European migration policies on other third countries in the region?

Indeed, North African countries apply a set of restrictive measures and controls at the expense of nationals of other neighboring third countries despite their common regional grouping (the Arab Maghreb Union ; UMA) and at the expense of the citizens of the sub-Saharan third countries (members of ECOWAS, for example) with whom North African countries share historical traditions of human exchange and long lasting cooperative relations initiated by historical leaders such as Bourguiba, Houphouët-Boigny, Sedar-Senghor, Sekou-Touré, Ben Bella and Mohamed V.

The recent diplomatic and migration crisis of May 2021 between Morocco and Spain¹⁸ is the perfect example of the existence of such interference between international relations and migration policies and how migration can be used as a tool of pressure-intimidation among partners with conflicting interests, or a tool of persuasion-seduction to serve the partners' common interests.

¹⁷ Boubakri, H. (2021). Migration Policies of North African Countries Towards Third Country Citizens. In Policy Papers Series, Number 6 - September 2021. 21p.
https://repositori.upf.edu/bitstream/handle/10230/48450/EuroMedMig_PP6sept2021.pdf?sequence=1&isAllowed=y

¹⁸ Following Spain's reception of the Sahrawi Arab Republic leader, which is not recognized by Morocco, the latter loosened its surveillance of land and sea borders on the Spanish enclave of Ceuta and turned a blind eye to the passage of over 10,000 Moroccans, including 2,000 minors, into the enclave in two days.

Conclusion

North African societies and governments, along with their neighbors in North Europe, must keep investigating the repercussions and shortcomings of migratory flows management methods and how to address them properly. Indeed, the current migratory policy implemented on both shores of the Mediterranean reveals a form of cynicism that prioritizes security over human rights, criminalizes migrants, resorts to sophisticated technologies and eventually marginalizes the humanitarian dimension of the issue. However, the establishment of a humanistic approach that respects human rights and engagements toward neighboring communities is imperative to establish potential partnerships between regional countries, by making migratory exchanges of reconciliation, solidarity, and cooperation for the interest of both parties, and work on turning the Mediterranean to a peaceful and prosperous area instead of the void statements made a quarter of a century ago following the Barcelona Declaration, the objectives of the association agreements, the neighborhood policies... etc. The region can no longer deny such a failure.

Beyond the Mediterranean, North African countries and Europe also share a huge responsibility towards the southern states, namely in the Sahel region to resolve the issues of poverty, conflicts and vulnerability (including climate change, which threatens all these countries equally). Overcoming these challenges, or at least mitigating them, helps reducing the numbers of enforced and disordered migration which threatens the lives of migrants on their way to their final destination and in transit areas.

The ongoing strategic shift towards the Asian-Pacific region should encourage the European Union and North African countries to work together on reshaping their relationship and foresee any kind of strategic marginalization. Well-thought and truly shared governance would contribute to the achievement of this goal.