

# HUMAN RIGHTS IMPLICATIONS OF EU AGREEMENTS CONCLUDED WITH TURKEY, MOROCCO, LIBYA AND TUNISIA

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**Abstract**

The tragic loss of thousands of lives at the European borders has raised concerns regarding the European Union's (EU) handling of migration. The EU's management of migration through bilateral agreements has demonstrated challenges in adequately protecting the rights and dignity of migrants and asylum seekers. Human rights principles should be universal to all individuals regardless of their migration status ensuring their freedom and dignity. This paper argues for adopting a human rights-oriented approach in such agreements comparing the implications and dimensions of human rights in these agreements on Türkiye and Northern African countries, notably Morocco and Libya offering insights across different regions. This paper will examine the human rights implications of these agreements considering the continued increase in migration flows to the EU and the efforts to manage them. Furthermore, it evaluates the mechanisms to address human rights within the migration agreements and their interaction with international laws and EU policies. The paper contributes to the ongoing debates on migration policies prioritizing human rights in EU decision-making in future migration agreements.

**Keywords:** *Human rights, European Union, Morocco, Türkiye, Libya, Tunisia*

## Introduction

Migration is a critical issue in Europe that has led to the externalisation of the EU's migration governance to third countries. Over the years, the EU migration policy has fought against irregular migration to the extent of including the neighbouring third countries as gatekeepers. The externalisation of migration policy aims to provide immigrants and refugees an alternative to remain in their place of transit or origin by making the conditions conducive enough to stop them from moving towards Europe (Carrera et al., 2019, p. 245). Migration agreements are not a new phenomenon, several bilateral migration agreements have been established since 1990 between EU member states and the countries of transit to control irregular

migration. It is necessary to distinguish between regular and irregular migrants to understand these agreements. Regular migrants have valid work and residency permits; if the EU member state accepts their application, they can also be awarded refugee status. Individuals who do not possess this status and continue to reside within EU borders are regarded as irregular migrants European Commission. (n.d.-a). The last two decades have shown a gradual increase in bilateral and multilateral migration agreements between the European Union and the migrant-sending countries from the Global South (Adepoju et al., 2010). In recent years, the European Commission has gone a step ahead in establishing EU Mobility Partnerships with several countries, each with varying degrees of engagement. The EU migration policy has extended the migration management beyond its borders and complemented the foreign policy and development cooperation efforts. In addition to the EU making agreements with other states, individual EU member states have pursued cooperation with countries in the Maghreb through bilateral agreements for similar reasons in controlling irregular migration and facilitating the return of irregular migrants. For instance, Tunisia and Italy in 1988, Morocco and Spain in 1999, and Libya and Italy in 2003 with amendments in 2004 and 2005 with the 2008 Treaty of Friendship gaining significant attention due to the changing migration patterns. All these examples of bilateral agreements since the 1990s have demonstrated the externalisation of Europe's migration control and the securitization of the migration policy (Zoomers et al., 2018, p. 2).

Security has been the driving force in the externalisation of migration management where it has been perceived as a threat prompting these efforts. These efforts have yielded new policy instruments to build cooperation between the EU and non-EU countries on migration issues (Thevenin, 2021), but have intensified restriction and control (Zoomers et al., 2018, p. 3). These agreements differ to some extent; however, they share some common elements, and both raise similar questions such as their aims, the migrants' rights and factors which influence compliance (Carrera et al., 2019, p. 219). It is important to note that, migration policies are not uniform across the EU, as different countries manage issues according to their national priorities. However, the Commission encourages members to apply similar conditional approaches in their national policies.

After the 2015 migration crisis, EU-Türkiye, and EU-Libya agreements have been controversial, receiving criticisms from non-governmental and international entities for inadequate human rights protection in these partnerships due to migration challenges (Thevenin, 2021). The implementation of the EU-Türkiye refugee agreement has sparked debates with serious concerns raised regarding fundamental human rights abuses in Türkiye (Haferlach & Kurban, 2017, p. 85). With the significant influx of migrants, the European Union's border controls have been extended beyond its territories to the sending countries that control the interdiction, interception, and detention of migrants, all to prevent undocumented migrants from

reaching the EU borders to seek asylum and hence discourage the journey altogether. While border surveillance is important, strengthening border control in the sending countries is facilitated through these migration agreements with third countries discouraging irregular migration. Irregular migrants are intercepted during these operations and detained in third countries raising questions on the rights of the persons involved (Palm, 2020, p. 12).

Groenendijk highlights how the question of human protection extended to non-citizens may seem obvious but explains how it took decades for many European countries to acknowledge the term 'everyone' in the European Convention on Human Rights (ECHR) (European Commission, 2010). This means that all human beings including non-EU citizens are protected by the human rights instruments which apply to immigration law potentially limiting the states' control over the movement of foreigners. These provisions protect both citizens and aliens regardless of their residency status and extend to the International Covenant on Civil and Political Rights (ICCPR) and the EU Charter of Fundamental Rights (Bogusz et al., 2004). However, despite these protection clauses, there is always a gap between the rights these laws guarantee and the actual treatment asylum seekers and migrant workers experience. These groups of people are highly vulnerable mostly because of their status as outsiders and can only stay within international borders with the consent of the host country authorities. They often lack familiarity with language, laws, and social norms which limits their understanding of their rights, and they frequently face different forms of discrimination in their daily lives. Other migrants who enter the destination country without proper documentation face detention and apprehended by authorities and face degrading treatment with no access to legal aid. They often risk exploitation from employers, criminal organizations, sexual exploitation, and human trafficking (Council of Europe, n.d.).

Decisions regarding entry and stay remain within the sovereignty of nation-states; however, there are exceptions in the principle of non-refoulement which prohibits the return of refugees and migrants to places where their life or liberty is at risk, and provisions for family reunification (Hoffmeyer-zlotnik et al., 2023). Protection of migrant rights, on the other hand, focuses on migrants who have been admitted onto the territory rather than admission itself, as per the 1951 Refugee Convention, (UNHCR, 1951) which outlines grounds for granting asylum and rights of recognized refugees (Hoffmeyer-zlotnik et al., 2023). Accountability for human rights violations especially in the migration control context is often inadequate and the mechanisms to give such accountability are often poorly understood especially when looking at various laws, international, domestic and EU laws. Costello & Mann observed that numerous human rights violations happen in migration-controlled settings, such as physical abuse of irregular migrants by security forces, detention in deplorable conditions, separation of families and child mistreatment. The same migrants sometimes try to seek justice from international courts or human

rights bodies, but they still go unaddressed. Even in Europe, known for championing human rights sometimes proves difficult to access justice for such violations (Costello & Mann, 2020).

## **EU Migration Policies Concerning Human Rights**

The European Union's revised external action framework as per the Lisbon Treaty on 1 December 2009 and the establishment of the European External Action Service (EEAS) shifted the power structure making the EU Charter of Fundamental Rights compulsory to all EU actions in promoting human rights through EU activities (European Parliament, 2007). Despite the EU Charter of Fundamental Rights being proclaimed in 2000, its legal obligations were defined by Article 6 of the TFEU which stresses humanitarian considerations in EU actions. Article 21 of the TEU outlines the guiding principles of EU foreign policy, emphasizing democracy, the rule of law, human rights, respect for human dignity, equality, solidarity, and adherence to the principles of the United Nations Charter and international law. These principles are relevant in the discussions on the treatment of irregular migrants. Outsourcing of these immigration policies to third countries could lead to potential human rights violations and a need for reassessment to address human rights concerns effectively (Mink, 2012). The Council's Comprehensive Plan to Combat Illegal Immigration, adopted at the end of 2002, was employed to combat the illegal approach but lacks a human rights component and has limited and selective references to the protection of human rights particularly for irregular migrants. The plan acknowledges the importance of international protection of irregular migrants against refoulement under Article 3 of the ECHR and the Convention relating to the Status of Refugees. However, there is little attention to the protection, detention and expulsion and it contains ambiguous elements raising human rights concerns (Bogusz et al., 2004).

The Global Approach to Migration and Mobility (GAMM) included several policies for partnerships with countries of origin to curb migration in the form of development aid, and financial assistance (European Commission, 2011). However, despite claims to protect human rights, Baldwin-Edwards et al. argue that these policies were more focused on preventing mobility and that human rights were seen as secondary considerations. These shortcomings are evident in the handling of the Syrian refugee crisis in Greece, where human rights concerns were not adequately addressed, going against the European agenda. The use of development assistance leans towards EU political aspirations rather than addressing the root causes of migration and there is a lack of coherence between EU migration policies and the prevailing rights-violating contexts. The EU's reliance on countries like Türkiye and Libya in these agreements raises concerns about human rights protection given the significant number of refugees and migrant populations from these countries

(Baldwin-Edwards et al., 2019). Measures on border controls pose risks of leaving migrants and refugees stranded in transit countries. The discussions on the criteria for the protection of partner countries are still unclear as the EU lacks an independent system to implement. The UN Special Rapporteur on the human rights of migrants has criticized the GAMM for policies that overshadow human rights jeopardizing transparent and democratic control, limiting migrants from invoking their rights, and holding accountable parties for human rights violations (Carrera et al., 2019, p. 63).

Alongside ethical questions, legal concerns are coming from the externalisation of EU migration governance. Looking at the international and European refugee and human rights laws, there is a connection between the obligation to assume responsibility for its consequences and the extra-territorial immigration control. The EU member states cannot evade their principles and values and have double standards which are not ethical and legal in their territories and should not be justified beyond their borders. Besides, the EU member states are exploiting the exercise of pre-border control in borderlands bringing up legal uncertainties. Moving territorial aspects of migration control from one nation to another thinking it will transfer the legal responsibility is a wrong assumption as this does not reduce the responsibility of the acting state and does not absolve the duties of the EU. The EU member states are responsible for protecting migrants beyond their territories and high seas, and these duties come from their human rights obligations. (Palm, 2020, p. 21).

The readmission agreements and the returnees cause the risk of denying access to basic needs in transit countries. The readmission agreements immediately shift responsibility, jeopardizing the principle of human dignity according to international law, particularly in cases when the migrant cannot return to their home country. The Commission in 2011, urged member states to prioritize the returns of undocumented migrants, however, they did not heed the Commission's directive and became cautious about including third-country nationals in readmission agreements. Despite the human rights implications, the readmission agreements do not mandate protection, and human rights standards are not part of cooperation with third countries. Due to human rights considerations, these have led to legal constraints between the European Court of Human Rights (ECtHR) and the Member States of the Council of Europe. The tendency of member States to delegate their actions to third countries raises serious questions about who is responsible for the human rights violations (Carrera et al., 2019, p.61). The new EU Pact on Migration and Asylum adopted by the Council of the EU, on 14 May 2024 aims to manage migration better by creating an asylum system while upholding European values across Europe. It builds on earlier reforms to manage migration effectively in the long run while allowing EU member states to handle their challenges while protecting those in need. The pact has four pillars: secure borders, efficient asylum processing, shared responsibility among EU countries, and partnerships with non-

EU countries working on other issues such as economy, trade, green energy, digital innovation, and security (European Union, 2024). The implementation of the pact gives two years for full implementation of member states as the preparatory work is already underway, coordinated and supported by the European Commission. Despite these efforts, it is anticipated that EU migration policy will continue to be a contentious issue.

## **EU-Migration deals**

### *The Türkiye-EU Agreement*

Türkiye's national and international laws on migration have evolved since its establishment. This was shaped by historical events as well as the relationship with the EU. Its early legal framework from 1923 to the 1950s was established after the collapse of the Ottoman Empire which led to an influx of Turkish migrants from the Ottoman territories, who were returning to their ancestral land. Key treaties in this period were the Peace Treaty of Lausanne in 1923 and the Law on Settlement in 1934 which encouraged the return of people of Turkish descent. (Bertan Tokuzlu, 2007). There was a lack of comprehensive immigration and asylum policies in Türkiye before 1994, however, there was a transition to international norms in 1994 and post-2001 driven by the EU reforms. The regulation on Asylum was introduced in 1994 which formalised these policies. Most significant changes came after 2000 marked by legislative reforms with the EU *acquis* and standards (İçduygu, 2003). In the late 20th century Türkiye's candidacy for EU membership impacted migration laws, with key legal institutions, such as the Accession Partnership for Türkiye in 2001, revised in 2003 with a focus on asylum policies. In terms of the constitutional amendments, Article 16 of the Turkish Constitution concerns rights in compliance with international law and Article 90 prioritizes international agreements over domestic laws ensuring human rights take precedence. In 2006, the Turkish penal code was amended to reflect the ECHR jurisprudence to align with the European *acquis* which strengthened asylum applications and supported asylum seekers and refugees (Bertan Tokuzlu, 2007).

The EU and its Member States had several agreements with Türkiye regarding various aspects of the migration policy. It started with the Association Agreement in 1963 and was complemented by the Protocol in 1971, then followed by the Association Council Decisions in 1976 and 1980 and subsequently the Readmission Agreement in 2013. Additionally, in 2013, Türkiye and the EU initiated a visa liberalization dialogue working towards a visa-free regime. Then followed by the EU-Türkiye statement in 2016. The EU-Türkiye Agreement outlined several key action points on 18 March 2016. These included the return of new irregular migrants from Türkiye to the Greek Islands, would be returned to Türkiye. Additionally, for every Syrian refugee returned to Türkiye from the Greek Island, another Syrian would be

resettled in the EU. Furthermore, Türkiye committed to taking measures on the transit routes to prevent irregular migration from Türkiye to the EU.

The deal between Türkiye and the EU in 2016 was in response to the large influx of migrants since 2015 through the Aegean and Mediterranean Sea routes. This agreement was marked with prior pressure and some observers labelled the process as blackmail by the Turkish President Recep Tayyip Erdogan who leveraged its position to extract concessions in terms of financial aid from the EU. He made it clear that Türkiye would not be able to host millions of refugees without adequate support which would lead to more migrants entering Europe (The Guardian, 2016). This caused pressure from German Chancellor Angela Merkel, who was already facing backlash over handling the refugee crisis and resulted in an agreement as a demonstration of power play and was used as a bargaining chip securing both financial and political benefits from the EU (Albayrak, 2016). However, the deal has been criticized, in that it prioritizes national interests over humanitarian concerns and there are still doubts about its effectiveness considering the refugee numbers are still on the rise (Yesil, 2023). Besides the failed coup in 2016, erosion of the rule of law, and terrorist attacks raised concerns about the deal's sustainability due to alleged human rights violations rather than the EU advocating for reforms in Türkiye. Other legal concerns have been raised by human rights activists in several EU member states who perceived the agreement as illegal due to its perceived violations of human rights and international law (Haferlach & Kurban, 2017, p. 89). Di Bartolomeo raises concerns about the implementation and effectiveness of the relocation to and resettlement in Türkiye, highlighting the disparity in the numbers of individuals resettled in the EU compared to those returned to Türkiye from Greece. From 4 April to 15 April 2016, a total of 79 Syrians were resettled from Türkiye to three EU Member States, while 325 people were returned from Greece to Türkiye. This disparity highlighted the failure to meet the objectives in the agreement on the relocation and resettlement processes. The low numbers of individuals who resettled in the EU compared to the ones who returned to Türkiye raise doubts about the effectiveness of this agreement raising questions about whether similar agreements can succeed in the future. He further points out that after the implementation, there was a decline in arrivals in the Eastern route, but an increase in a more hazardous central route raising concerns about whether migrants will seek alternative routes (Di Bartolomeo, 2016). In other instances, both Greece and Türkiye could not process and accommodate any more migrants, and many were compelled to return to their countries of origin. After the EU-Türkiye Statement, Türkiye signed an agreement with Pakistan which increased the concerns of migrant repatriation, moreover, the EU commitment to redistributing refugees and migrants failed, with fewer refugees resettled in the EU. Despite these challenges, policymakers still view this as a viable strategy for managing migration. However, the realities on the ground reveal challenges including overcrowding in the encampments, limited

legal assistance, and prolonged detention that pose serious concerns as the detention facilities lack adequate conditions for humane treatment both within and outside EU borders (Zoomers et al., 2018, p. 5).

Concerns about Türkiye being a safe third country became relevant in the migration talks, and the European Council and the Commission encouraged the application of this concept to consider Türkiye as a safe country too. Many reports can demonstrate this in the treatment and protection of Syrians and non-Syrians as they do not still meet these standards. Throughout the implementation of this statement, there were several reports on the position of the refugees and asylum seekers. Upon their deportation, and readmission of refugees, they are sent to Turkish removal centres with little or no access to lawyers or the asylum process. With limited social welfare access, most of the Syrian refugees and children are exploited in the informal labour market. Since its conclusion only refugees who face life-threatening situations are admitted into the territory (Carrera et al., 2019, p.67). Amnesty has reported instances of abuse of refugees and asylum seekers by Turkish authorities doubting its status as a safe country. Other concerns on these pacts have raised questions on serious human rights issues (Amnesty International, 2023b).

The agreement with Türkiye lacks coherence with other aspects of the asylum policy, creating inconsistencies and challenges in its implementation. The failure to have a cohesive approach undermines the EU's credibility as an effective international actor. Additionally, by deviating the international laws, the EU is losing support from both international and nongovernmental organizations. For instance, the agreement allows for the detention of asylum seekers on the Greek Island, supported by Greek law 4375/2016. This contradicts the principles of the UN Refugee Agency (UNHCR) which does not allow mandatory detention unless by the individual's specific circumstances (UNHCR, 2012). As much as the EU portrays its legitimacy as an international protector of human rights, it has failed to adhere to its norms and international standards. (Helme, 2021). The EU-Türkiye Statement provided a legal framework for the resettlement of migrants from Greece to Türkiye, but it raised serious concerns about compliance with the 1951 Refugee Convention after the allegations of mass expulsion. Reports from human rights organizations highlighted the negative impacts of the agreement in their efforts to protect the Syrian refugees and failure to acknowledge Türkiye's human rights situation in the 2016 EU-Türkiye summit statement is alarming. The delays in releasing a progress report by the EU also weakened the Union's political leverage and the refugee agreement bolstered Türkiye's position as a crucial partner in addressing the refugee crisis. It is still debatable whether the EU was genuine in strengthening regional partnerships but its failure to address sensitive topics has intensified the disapproval of the Union and a growth of mistrust between the two complicated this cooperation (Haferlach & Kurban, 2017, p. 86).

In terms of the legal challenges confronting the agreement, concerning the rights of refugees and adherence to international conventions, many cases have been brought before the European Court of Human Rights (ECtHR). These cases have highlighted violations under the European Convention of Human Rights (ECHR), particularly on the collective expulsion (Article 4 of Protocol No. 4). The forced resettlement to Türkiye undermines the EU's asylum standards despite them transferring the problem to other border countries. The rulings of the European Court of Human Rights remain low, and the decision makers view this as a calculated risk especially when individuals are unlikely to seek legal recourse in good time and the legal actions take time to resolve. The EU's ambiguous interpretation of its legal obligation has led to political tensions that have resulted in several political asylum cases originating from Türkiye and yet documented in Europe (Haferlach & Kurban, 2017, p. 89). The implications of the EU-Türkiye agreement need a proper and procedural safeguard for asylum claimants and refugees as without these protections, they risk a forcible return to their countries of origin where they may encounter persecution or human rights violations. It is crucial to uphold the right against refoulement and provide comprehensive asylum reviews amidst the ongoing political and refugee influxes from the border countries. (Poon, 2016).

### *The Libya-EU Agreement*

Libya has had significant evolution in governing migration considering its geopolitical and diplomatic priorities. Its earlier laws granted Arabs freedom of entry and access to opportunities within the country. It also had bilateral agreements with neighbouring countries that facilitated the Libyan national movement. In the 1990s, Libya made closer ties with other African nations and accommodated more African workers however the Arab migrants formed most of the immigrant population. In the 2000s, the migration laws moved more to bilateral relations rather than a regional approach, leading to tighter immigration laws that resulted in a lack of access to public services for migrants without bilateral agreements. This led to more irregular migration flows across Libya (Perrin, 2018). The legal amendments introduced in 2006 and 2007 imposed stricter rules on migrant workers which affected the Sub-Saharan migrants who initially enjoyed unrestricted access to Libya in the 1990s. These laws increased their vulnerability due to their irregular status. Such developments were driven by political, economic, and social factors such as prioritizing employment for Libyan citizens amidst the financial instability. When Gaddafi fell in 2011, the migration laws were standardized in alignment with the global trends and violation of migrant rights persisted. The civil war in 2011 led to a shift of many foreign nationals who made up a significant number of foreign workers in Libya (Perrin, 2018). Libya hosts many refugees and asylum seekers, and despite this, it lacks a comprehensive asylum law as it is not a signatory to the 1951 Geneva Convention Relating to the Status of Refugees and hence falls under the national

immigration law. This criminalises irregular migrants who are prone to mistreatment due to security challenges and weak institutions and detained migrants lack access to redress. (Kalush, 2020). However, Libya has been party to several international humanitarian law conventions such as the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa, but it does not fully adhere to the complaint's procedures in the treaties (de Guttry et al., 2018).

The EU established an agreement between the EU and Libya under the Malta Declaration which was endorsed by the European Council in 2017 outlining measures to combat illegal migration and human trafficking along the Central Mediterranean (European Council, 2017). The Malta declaration involved a joint effort between Libya and the EU and involved funding Libya and enabling the Libyan Coast Guard to intercept migrant-smuggling boats headed to Italy and facilitate voluntary return to Libya. The agreement allowed detainment in EU-supported encampments which was normalised leading to human rights violations because of long-term detention and lack of due process. Libya was trained and funded by the EU and backed up by the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) to reinforce the naval borders in deterring migrant smuggling boats. This approach has faced criticism due to human rights violations (Amnesty International, 2023a). The EU has continued this collaboration despite evidence of human rights abuses. It has raised moral and legal questions regarding proposed detention and violation of fundamental human rights. The EU has been criticized for underestimating the challenges in Libya particularly on human rights violations and a lack of a stable government. The UN High Commissioner for Human Rights labelled the situation in Libya a "human rights crisis." There is evidence of human rights abuses including the Libyan coast guard shooting migrants and the detainees lacking access to basic needs and protection which violates international law particularly the principle of non-refoulement applying to refugees and asylum seekers. Reports on serious abuses in Libyan detention have been documented and human rights organizations have criticized the EU Member States who fail to address these levels of abuse raising ethical concerns and factoring the long periods of detainment (Palm, 2020, p. 13).

The EU's cooperation with Libya has been condemned because of its democracy and human rights record like Türkiye. Revelations on the slave trade in Libya brought attention to the EU's involvement as per the reports by Amnesty International highlighting the EU's complicity all clashing with the EU's obligations to protect human rights. International organizations have openly condemned these violations, for instance, the Office of the United Nations High Commissioner for Human Rights (OHCHR) made statements saying that they cannot be silent and witness modern-day slavery in the name of managing migration at Europe's shores (OHCHR, 2017).

### *The Morocco-EU Agreement*

Migration has long been a political, economic, and sociocultural fabric of contemporary Morocco identified as a country of immigration, emigration, and transit (Jiménez-Alvarez et al., 2021). Morocco ratified the 1951 Convention relating to the Status of Refugees in 1956 and its 1967 Protocol in 1968 and established the Office for Refugees and Stateless Persons (BRA) through the Royal Decree of 29 August 1957 to ensure the protection of the refugees and migrants' rights. It is also party to the International Convention on the Protection of the Rights of Migrant Workers and their Families since 1993 and the United Nations Convention against Transnational Organized Crime and its additional Protocols since 2000. However, it has not signed the 1954 Convention relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness (UNHCR, 2022). It incorporated international migration conventions into its legal system with Law N°. 02-03 of November 2003 concerning the entry and stay of foreigners in the Kingdom of Morocco, and irregular immigration. This law aimed to address provisions related to the illegal detention of migrants in irregular situations, and deportation (Máster et al., 2021). These immigration laws align with the EU interests and domestic geopolitical aims, that bridge the EU-African migration challenge (Natter, 2014). After the Arab Spring in 2011, Morocco signed an agreement with the UNHCR to develop a national refugee law and asylum system. It additionally created Conseil National des Droits de l'Homme (CNDH) in 2011 which reinforced human rights provisions including migrant rights in the new constitution. The National Strategy for Immigration and Asylum (NSIA) integrated newly regularized migrants and refugees which was established before the King of Morocco introduced the new immigration policy. This facilitated their access to the labour market, basic healthcare, and education. The launch of the NSIA made the EU officials re-evaluate the Migration Partnership (MP) and consequently, the EU and the member states-initiated projects to support its implementation. The new migration policy introduced by the King of Morocco was based on its interests and needs, but the support of the EU in the NSIA was a way for the EU to externalise migration and refugee reception which in turn improved access to socio-economic rights influencing migrants to permanently settle in Morocco rather than a transit (Carrera et al., 2019, p.250).

The establishment of the Mobility Partnership' (MP) between the EU and Morocco holds significant importance due to geographical, economic, and historical reasons. European policies have shifted from focusing on labour migration to border security, irregular migration, and readmission. This transition not only changes the European economies but also the political transformations in Morocco (Den Hertog, 2016). The cooperation with Morocco has also undergone modification due to European integration and the bilateral agreements on border management, especially with Spain and France who have supplemented the European legal

frameworks and actors. The inclusion of Spain in the Schengen Area led to the imposition of visas and increased irregular immigration. Additionally, the EU-level actors introduced negotiations such as the EU Readmission Agreement (EURA) discussions with Morocco by the Commission in 2003 (Commission of the European Communities, 2003). Frontex was crucial in operation near the Moroccan border, focusing on irregular migration towards the Canary Islands. The EURA faced hurdles during negotiations regarding the inclusion of a Third-country National Clause (TCN) and mandating the readmission of third-country nationals transiting through Morocco (Den Hertog, 2016). The beginning of EU-Morocco border management started in 2002, however, despite the initial plans of implementation, the progress stagnated. The events in Ceuta and Melilla brought Sub-Saharan migration to the forefront and the cooperation regained traction. The EU increased initiatives of the Mediterranean countries (MEDA) project with an additional €27 million enabling Morocco to implement their initiatives with their priorities in 2006. This was aimed at helping Morocco's migration strategy, but challenges were persistent in reaching the intended goals. Human rights protection has been undermined raising concerns about the balance between security initiatives and humanitarian considerations (Wunderlich, 2010). It recently launched programmes worth €624 million for cooperation on green transition, migration, and reforms (European Commission, 2023).

Despite the enhanced cooperation, Morocco's migration policy has been characterised by repressive measures raising questions on the approach to safeguarding migrants' rights. The critical aspects of migrants' human rights have not been addressed and instances of abuses and violations continue, reflecting the reluctance to have a comprehensive asylum system (United Nations, 2023). There is a need to prioritize a balanced and rights-based approach in the context of EU-Moroccan cooperation on migration and border controls. Besides legal advancements, challenges are persistent because of inadequate legal assistance and access to asylum procedures with allegations of violations by Moroccan authorities (EUAA, 2023). Documentation on raids and collective expulsions breaches these legal conventions. They also lack access to health care and are detained in inhumane conditions. Despite Morocco officially recognizing migrants' and refugees' rights, challenges persist due to funding. The housing and employment policies also pose challenges reflecting challenges in migrant integration efforts (UNHCR, 2023).

Earlier investigations from human rights and migrant organizations on the impact of the Mobility Partnership (MP) framework on human rights were uncertain and criticized the signing process in Rabat on June 6, 2013. Other international observers have documented human rights violations against Sub-Saharan migrants and harsh refoulements to the Algerian border and desert and some remain stranded facing marginalisation due to the ineffective asylum system (Human Rights Watch, 2014). The joint declaration on international protection needs measures to

effectively address these challenges, despite the tension on the EU's commitment to promoting democracy and the rule of law yet still jeopardizes human rights (Fargues & Fandrich, 2012). The evolution of Morocco's migration policy offers insights into the intersections between national interests and human rights. Morocco has made efforts by establishing frameworks and aligning with domestic and international laws however, inconsistencies persist. The externalization of this mobility partnership shows a shift towards security and border control away from human rights protection. Despite the recognition of migrant rights in Morocco, their conditions reveal gaps between policy and reality. The EU's reliance on Morocco as a partner in managing migration has compromised human rights despite its benefits on border control objectives calling for a policy approach that combines security measures with strong protections for human rights.

### *The Tunisia-EU Agreement*

Tunisia has been the hub for migration since the early 2000s as a point of origin, transit, and destination which led to a series of challenges including increasing mixed migration flows, irregular sea crossings, and a notable brain drain (Abderrahim et al., 2021). The revolution in 2011 and the conflict in Libya made Tunisia reform its migration governance however, it was mostly driven by external pressures. Given the obstacles such as the political and economic, hinder these reforms, it still faces difficulties in prioritizing migration-related issues. European interest has grown over the years as evidenced by the double financial aid to Tunisia, mostly driven by an increase in arrivals to Italy from Tunisia since 2017.

The EU's influence on Tunisia's migration policy has aimed at supporting Tunisia in areas such as border management, people mobility, and irregular migration which was not a priority by the Tunisian population according to a survey conducted by Veron (Veron, 2021). Despite the notable progress in migration governance, Tunisia still lacks a formal national asylum system though partly supported by the EU (Abderrahim et al., 2021).

The partnership between Tunisia and the EU dates to 1976 with the Association Agreement of 1995. The 2011 Arab Spring made the EU a crucial partner in Tunisia's democratic and socio-economic transitions. This led to the establishment of a Privileged Partnership in 2012, followed by an Action Plan between 2013-2017 and a Mobility Partnership in 2014. A budget support of €150 million in March 2024 has been provided to stabilize Tunisia's economy and improve public finance and investment conditions. Previously, €105 million was provided in 2023 for migration-related support, enhancing border management, anti-smuggling efforts, refugee protection, and legal migration (European Commission, n.d.-b).

The EU and Tunisia signed a Memorandum of Understanding on a Strategic and Global Partnership (MoU) on July 23, 2023. This MoU aimed to address irregular migration and improve the return of Tunisian nationals who are staying in

the EU without authorization in exchange for cooperation and economic support based on the 'more for more' conditionality principle (Strik & Robbesom, 2024). This agreement outlines the commitments and cooperation between the EU and Tunisia. It outlines commitment to an improved partnership by addressing mutual challenges such as managing migration by promoting legal ways for migration while supporting economic development and enhancing trade relations. Areas on better border control, combating human trafficking, and smuggling and improving search and rescue operations are also agreed on in this agreement, and both parties commit to facilitating the return of irregular migrants while supporting their reintegration (European Commission, 2023).

This agreement with Tunisia was modelled on the 2016 EU-Türkiye agreement, which, has some controversy, particularly with concerns on the lack of inclusion of human rights provisions. This raises questions about the EU's commitment to protecting human rights in cooperating with Tunisia. The negotiations were made secretly anticipating that it could lead to human rights issues as observed in reports. The European Ombudsman asked for clarification on what will ensure human rights are upheld within the agreement reflecting the need to include conditions to uphold basic rights (Mustafazade, 2024).

Furthermore, Strik and Robbesom (2024) argue that the deal lacks provisions for monitoring human rights impacts, which raises concerns about the EU potentially supporting practices that harm migrants. A study from Oxfam demonstrates that funding might be used in ways that do not fully respect human rights and that the EU has not set up effective monitoring mechanisms (Pope & Weisner, 2023). This criticism is compounded by the EU's failure to apply strict human rights conditions to the MoU, reflecting a broader trend of prioritizing migration control over protecting migrants' rights.

## Conclusion

The effectiveness of externalisation measures in managing the flow of irregular migrants and asylum seekers is increasingly questioned in academia. Casas-Cortes et al. suggest that these measures may lead to the discovery of new migration routes as certain routes face stricter enforcement measures or discouragement of asylum seekers, and other routes are facilitated by smugglers, creating a vicious cycle (Casas-Cortes et al., 2015). (Podkul & Kysel, 2015) find that diversion of routes increases the likelihood of migrants smuggling, trafficking, violence and even death. On the other hand, (de Haas et al., 2018) have highlighted that there is a potential for policies intended to deter migration that may lead to an increase in irregular arrival driven by the "now or never effect." Other scholars see it as a political tool to enhance leverage in political contexts where borders are externalised, exposing migrants and asylum seekers to severe human rights abuses, particularly in regions where legal

frameworks are weak, such as Libya (Palm, 2020, p. 24). Women are especially vulnerable, facing heightened risks of sexual and occupational exploitation when crossing externalized borders (Tyszler, 2019).

The human rights impact of these agreements continues to be a concern. The EU border control measures have been linked to numerous human rights violations and, unfortunately, the European police and the immigration services have not been keen on prioritizing human rights concerns (European Union, 2023). The challenge in safeguarding human rights stems from the lack of transparency and informality surrounding migration agreements. Many EU member states have favoured flexible agreements, especially with the African states, which have often been established outside the formal agreements and have been elusive and informal (Garcia & Ivan, 2015). The experiences with Türkiye have shown that legally binding agreements do not guarantee effectiveness and while the informal agreements have effects on the ground, they often neglect migrant rights. This demonstrates the need for adherence to international human rights obligations to protect the victims of trafficking while maintaining control of their territories.

The EU migration policy emphasizes a security approach that sidelines the protection of human rights which undermines its credibility as a defender of human rights. The EU's migration policy faces significant challenges while striving to adapt to the changing circumstances, but must find effective strategies beyond the border and address the human rights challenges in its externalization measures. This balanced approach is paramount as it manages migration while adhering to international human rights obligations.

The outcomes of the Tunisian deal are still uncertain, despite the determination of the European Commission to establish similar partnerships with other countries in the region. However, the conclusion of the New Pact on Migration and Asylum, emphasizes stronger cooperation with third countries. With the current political climate within the EU, it is important to provide more strategies to address illegal migration but also not to ignore the human rights violations happening in partner countries with similar migration deals. The EU can improve this by the inclusion of strict conditions that safeguard human rights where refugees and migrants face daily learning from past failures.

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