



THE REAL COMMON INTEREST

The converging EU and North African migration agendas – where do people's interests come in?



For too long the EU's migration policies have ignored the priorities of the countries it partners with for the sake of its own border security and domestic priorities. These have permeated the domestic migration and asylum policies of the Maghreb countries it supports, including Tunisia and Morocco, in a convergence of national interests of states, at the cost of people's interests. The EU's cooperation with its neighbours should encourage a real common interest: protecting people and fulfilling their rights.

© Oxfam International October 2020

This paper was written by Ana Uzelac. Oxfam acknowledges the assistance of Cristina Fernández-Durán, Eva Garzón Hernández, Abdeljalil Laroussi, Raphael Shilhav, Neus Tirado Gual, Evelien van Roemburg and Manal Wardé in its production, as well as all the key informants, and especially the migrants who agreed to be interviewed and shared the stories of their experiences. It is part of a series of papers written to inform public debate on development and humanitarian policy issues.

For further information on the issues raised in this paper please email advocacy@oxfaminternational.org

This publication is copyright but the text may be used free of charge for the purposes of advocacy, campaigning, education, and research, provided that the source is acknowledged in full. The copyright holder requests that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, permission must be secured and a fee may be charged. Email policyandpractice@oxfam.org.uk.

The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under
ISBN 978-1-78748-655-3 in October 2020.
DOI: 10.21201/2020.6553

Oxfam GB, Oxfam House, John Smith Drive, Cowley, Oxford, OX4 2JY, UK.

Cover photo: Faten, 23 years old, attempted to cross the Mediterranean to reach Europe by boat, a journey in which she disappeared. Her brother Makram holds a phone with a photo of her. She was a professional football player in Mahdia, Tunisia when she went missing. Credit: Oxfam/Pau González 2020.

SUMMARY

For too long the EU's migration policies have ignored the priorities of the countries it partners with for the sake of its own border security and domestic priorities. These have also permeated the domestic migration and asylum policies of the Maghreb countries it supports, in a convergence of national interests of states, at the cost of the interests of their populations. Morocco and Tunisia, on which this brief focuses, bear a great deal of responsibility for the implications of this emphasis on EU concerns to the detriment of their own interests, which affects the human rights of migrants and asylum seekers and the safety of the people seeking to migrate from the North African shores of the Mediterranean each year.

Over the last five years, EU migration policies in the Maghreb have increasingly focused on securitization over the protection of people. Through this lens, there has been little impetus for Tunisia and Morocco to reform their own migration and asylum systems.

The goal of EU policies has been to deter migration to the EU while supporting the strengthening of migration and asylum laws in neighbouring countries. While the number of people arriving on EU shores each year has decreased, already poor protection standards for migrants and asylum seekers have only further been exacerbated.

Morocco and Tunisia's migration and asylum systems have remained largely unreformed and outdated, and offer little structural legal protection to migrants and asylum seekers. Both countries have archaic and ambiguous migration laws, leaving too much space for ad hoc policy making that can be tactically adapted to suit changing internal or external political contexts.

To move away from these destructive policies that often encourage racism, xenophobia and human rights abuses against vulnerable populations, a new paradigm is needed, one that considers migrant protection, promotes respect for human rights and acknowledges that development goes hand-in-hand with human mobility.

This cannot be achieved through additional funding alone. It requires a complete rethink of the EU's approach in the region and the policies it incentivizes, as well as strict respect for human rights and international law.

With the launch of the new European Pact on Migration and Asylum, it is evident that the dialogue between EU and Maghreb governments will continue to shape the realities on both sides of the Mediterranean. The EU's cooperation with its neighbours should encourage a real common interest: protecting people and fulfilling their rights.

RECOMMENDATIONS

To EU institutions and EU member states:

- Work together with Maghreb countries to promote compliance with international refugee law around the Mediterranean.
- Prevent the use of EU funds in violation of international human rights law.
- Periodically conduct and publish assessments on the impact of EU migration policies on the most vulnerable populations.
- Avoid making aid conditional on partner countries' cooperation with the EU's demands regarding returns and readmission or border management.
- Include diaspora, refugee- and migrant-led organizations, in particular women-led organizations, as well as wider civil society, in the design of migration policies.

To the Moroccan and Tunisian governments:

- Urgently reform national asylum legislation to allow for a quick, effective and international refugee law-compliant asylum procedure in each country.
- Reform national migration legislation to increase protection, and allow pathways to integration and citizenship.
- Address racism, xenophobia and discrimination against migrants.
- Include diaspora, refugee- and migrant-led organizations, in particular women-led organizations, as well as wider civil society, in the design of migration policies and laws.

1 INTRODUCTION

Over the course of recent decades, and especially since 2015, the management of migration has moved centre stage in the European Union (EU)'s external policy. More and more, the EU's domestic political priorities of reducing migration and increasing returns are dominating its relations with its international partners. In doing this, the EU overlooks the needs of people and communities in partner countries. This is particularly true for the EU's external policies in North Africa.

Implementation of migration management measures across the Mediterranean, including in Morocco and Tunisia, gained new urgency for the EU in 2015.¹ As a result, a set of financial incentives was created under the EU Emergency Trust Fund for Africa (EUTF) and new impetus was given to negotiating some of the key migration management policies, such as those relating to visas and readmissions. Some ideas that went further were also floated – including opening migrant reception centres in the territories of these two countries.²

The EU's goals in the Maghreb included both limiting the number of arrivals to Europe and improving conditions for migrants and refugees in Morocco and Tunisia. However, despite relatively large incentives and efforts to reform the migration and asylum systems in the two countries, five years on only the first part of this mixed agenda has actually been implemented.

Migrant arrivals to the EU from the two countries have been limited significantly, due in part to strict border controls across the Mediterranean. However, the migration and asylum systems of Morocco and Tunisia have remained largely unreformed and outdated, offering little structural legal protection to migrants and asylum seekers, despite some significant shifts in the debate, particularly in Tunisia, and occasional regularization of irregular migrants in Morocco.

This is due to a set of perverse political incentives created by EU policies in the region that strengthen securitized approaches to migration, while discouraging reform of the migration and asylum systems. Such approaches prioritize government control and the security of states over holistic measures that address human mobility within the framework of development, fundamental rights and individual needs. While these policies may be successful in limiting the number of people arriving in the EU, at the same time they end up entrenching poor protection standards for migrants and asylum seekers in North African countries.

One of the most complex impacts of EU policies in its neighbourhood is the propagation of norms. Since 2015, this has shifted from promoting respect for human rights and democracy to providing support for a securitized approach that often fuels racism, xenophobia and human rights abuses against vulnerable populations.³

In order to uphold its own values, the EU must ensure that the legacy of its policies in the Maghreb region is protection and defence of human rights. In this respect, more needs to be done to ensure that the management of migration does not become synonymous with rights violations. The Western Mediterranean offers an opportunity to implement a more positive policy approach with due regard for the protection of migrants and compliance with international human rights and refugee law. This cannot be achieved through additional funding alone; it requires a complete rethink of the EU's approach in the region, and the policies it incentivizes.

2 BORDER CONTROLS

In recent years, the numbers of sea crossings from Morocco and Tunisia to the EU have been steadily decreasing,⁴ demonstrating the impact of stricter border controls.⁵

This strengthening of border security is often seen as a result of the EU's push for externalization of its borders, in which it obtains the cooperation of migrants' countries of origin and countries of transit to restrict migration using a combination of pressures, conditionalities and incentives. However, the responsibility of origin and transit countries for human rights violations stemming from these externalization policies is not just an unintentional side-effect of reluctant complicity, as this disregards these countries' own agency as well as their legal and political responsibilities to protect people in their territories.

Increased border controls introduced by Morocco and Tunisia are a strong case in point. These reflect a convergence of interests with these countries' longstanding efforts to tighten control of their territories, rather than an unwilling complicity in implementing EU policy. Where such convergence was lacking – for instance, in the EU's proposal in 2018 to create disembarkation platforms for migrants in North Africa – the countries' reluctance to implement the EU's wishes was strong and effective, further indicating their power to align themselves only with those EU migration management efforts that they see as beneficial.⁶

In the case of Morocco, at least three separate policy agendas mean that cooperation on border controls converges with its own interests: territorial integrity, anti-terrorism efforts and combating drugs trafficking. Morocco's maritime borders are probably the most heavily protected in the region, with exceptional engagement by Spanish agencies that involves joint patrols and the use of high-tech surveillance systems including radar, satellites and drones.⁷

Box 1: Ceuta and Melilla

Morocco also works with Spain on securitizing the land borders of the Spanish enclaves of Ceuta and Melilla, where multiple fences are equipped with high-tech surveillance systems – although these have not stopped border crossings.

Moreover, Morocco has exceptionally accepted the arrangement of ‘hot’ deportations from these enclaves, which allows Spain to immediately send back large groups of migrants who succeed in breaching their defensive barriers.

For the people caught up in ‘hot’ deportations, the system has no safeguards built in to allow for assessment of their eligibility for refugee status in Spain, an omission that has drawn criticism from human rights defenders.

Increased control of its sea borders serves a double purpose: intercepting migration flows from third countries and of Moroccan nationals to the EU, and fighting the drug trafficking networks that operate in this area.⁸ Interception of both types of activity depends on the same equipment, which has been partly supplied through funding from the EUTF, with strong backing from Spain.⁹

Despite the official narrative that presents this as support for combating irregular migration,¹⁰ both the quantity and sophistication of the equipment in use strongly indicate that this is in fact multipurpose funding, responding to broader needs and likely focusing also – or even largely – on combating drugs trafficking.¹¹ In this way, through complying with the EU border control agenda in the Mediterranean, Morocco is equipping and funding its costly drug control operation in the north, leaving more of its own funds available for protecting its long-disputed southern and eastern borders.

Morocco has *de facto* closed its borders with Algeria, for the triple purpose of controlling access to the disputed Western Sahara territory; limiting access to its own territory for potential militants that the Moroccan government believes originate from Algeria; and curbing irregular migration to Morocco through land crossings from Algeria.¹² This has been done to ensure that Morocco does not become a country of transit for people or for illicit commodities, including cocaine, which travel overland via the Sahara Desert, often along the same routes as migrants.¹³

In the past, the Moroccan government has not shied away from an explicitly ‘transactional’ approach to border control. In 2016, when the European Court of Justice challenged Morocco’s claim to fishing rights in the waters off the coast of the disputed territory of Western Sahara, the Moroccan agriculture ministry responded by issuing threats of ‘resumption of migratory flows’ towards Europe.¹⁴ The rigid border closures in the south and north of Morocco point to government policies aimed at limiting the number of sub-Saharan migrants trying to use the country as a transit route on their way to Europe, by sending a clear signal that the EU is inaccessible from Moroccan territory.¹⁵

This message has been further strengthened by an increasingly contentious implementation of these border controls further inland. Morocco conducts regular campaigns involving identity checks and arrests in various urban centres and in the vicinity of the Spanish enclaves of Ceuta and Melilla (see Box 1), resulting in increased violations of the rights of migrants, including forced transfers towards the southern regions of Morocco, further away from EU borders, and even illegal pushbacks across the Algerian border.¹⁶

Similar dynamics are also present in Tunisia, whose government is extremely wary of the presence of smuggling networks in neighbouring Libya and their potentially destabilizing impact. With 1,300km of maritime border, which in places is just 140km away from European shores, Tunisia lies in a very sensitive geopolitical area. The EU has been keen to assist it with controlling its borders – an interest shared by Tunisia itself.

The EU's primary focus has been Tunisia's maritime borders, across which both sub-Saharan migrants and Tunisians attempt to reach Europe.¹⁷ The most recent funding efforts of the Border Management Programme for the Maghreb region (BMP-Maghreb), financially supported by the EUTF, focus on naval equipment and maritime border control and are aimed at improving operational cooperation in the maritime domain between Tunisia and Italy and other neighbouring countries.¹⁸

The migration agreements between Tunisia and the EU and the bilateral agreements between Tunisia and a number of European countries, particularly those focused on securitization such as the one with Italy¹⁹, mean that the EU and its member states are effectively outsourcing the prevention of irregular migration to the bloc by stopping people trying to reach European shores from Tunisian territory.²⁰

While Tunisia does not intercept people coming from Libyan territorial waters, there have been a number of cases where boats originating from Libya have not been assisted and people have drowned as a result of this inaction. This is a clear violation of Tunisia's legal responsibility to search for and rescue people in distress at sea. In other cases, Tunisia has refused to accept people on board boats originating from Libya and who had been rescued by others in its territorial waters.²¹

In 2013 the EU included Tunisia in the Seahorse Mediterranean Network,²² but the country's actual participation in the programme has been low-key and reluctant.²³ Its reticence is likely fuelled by concerns that these working arrangements could lead to stronger penetration of the EU's border control systems into Tunisian territory, including EU patrols in Tunisian territorial waters.²⁴ The Tunisian government might also be concerned that it would be investing its limited security resources in issues that are not at the top of its own list of priorities.²⁵

Tunisia's interests have been focused mainly on securing its land borders with Algeria and Libya; this latter border is politically as well as economically sensitive due to special relationships and close economic

ties between the two countries. Based on its experience during the unrest in 2011, Tunisia is also concerned about another potential spillover into its territory from the situation in Libya, in terms of mass displacement of Libyans and migrants and refugees currently in the country, as well as about becoming a hub for Libya's drug and people smuggling networks.²⁶

By implementing an extensive border security policy in the south, which makes it challenging for large groups of migrants to enter the country irregularly, Tunisia's strategy – much like Morocco's – has been to keep transit through its territory at a relatively low level. Similar to the situation in Morocco, this has had the additional effect of EU funds for capacity building and maritime control freeing up national-level funding for its own border control priorities.²⁷

Countries have the right to control their own borders and access to their territories – and both Morocco and Tunisia have legitimate concerns regarding their land borders. However, the emerging border control policies of both countries have been implemented with very low regard for the rights of migrants and refugees, leading to violations of international refugee law and further erosion of global human rights and refugee protection standards. These policies have been implemented as a result of the convergence of interests between the EU and these states – indicating a large degree of responsibility for these violations by Morocco and Tunisia.

3 NATIONAL MIGRATION POLICIES

Despite efforts and financial support directed at modernizing the national governance of migration, legislation on migration and asylum in both Morocco and Tunisia is outdated and limited in scope and is often highly restrictive. It also has a strong bias towards securitization that predates by decades the EU's current focus on migration control, demonstrating a historically rooted securitization approach to migration that still seems to inform policies across the region.

Morocco is the only country in the region to have a formally articulated vision on migration, embodied in its 2014 National Strategy on Immigration and Asylum (SNIA).²⁸ Through this strategy, it has tried to position itself as a regional and even pan-African leader on migration, with a long-term plan that proposes 'humanist'²⁹ migration policies across the region and globally. The timing of the strategy indicates Morocco's high sensitivity to its own reputation:³⁰ it was adopted in the wake of the signing of the EU Mobility Partnership after negative international media coverage of Morocco's treatment of sub-Saharan migrants, prompted by a series of disturbing reports by civil society – including the National Human Rights Council (CNDH), which documented widespread human rights abuses against migrants.³¹

The policy was followed by two regularization programmes for undocumented migrants (in 2014 and 2017) and the issuance of the first round of refugee and asylum seeker cards to around 50,000 predominantly sub-Saharan irregular migrants present in the country.³² The regularized migrants were allowed to access the labour market, albeit in limited ways.³³

The adoption of the SNIA also opened the door for EU financial assistance to Morocco to support integration programmes and the development of progressive domestic laws and practices. Between 2014 and 2018, the EU channelled at least €232m to Morocco (excluding regional cooperation projects), which was intended to capitalize on this progressive policy momentum.³⁴ In 2019, this cooperation was boosted by a further €389m.³⁵

In providing this funding, the EU might have been hoping for the environment in Morocco to become more hospitable for sub-Saharan migrants, ultimately deterring them from continuing their journey to Europe via the Western Mediterranean route.³⁶ However, and despite several international cooperation programmes focused on improving the situation of migrants and migration and asylum policies, the funding has not yet led to any systematic reform of the immigration and asylum system (see Box 2).³⁷

No actual changes to legislation have been made, which makes it harder for regularized migrants to renew their residency permits and complicates their access to essential services, including education and healthcare. Migration in Morocco is still legally regulated by Law 02-03,³⁸ which approaches it from a securitized perspective and imposes high penalties on anyone attempting or facilitating irregular migration, without defining pathways to social and economic integration of migrants.

This fall-back to more securitized policies intensified after increased arrivals in Spain of migrants and asylum seekers from Morocco in the autumn of 2018, and was followed by strengthened cooperation between Morocco and Spain around migration and an ensuing crackdown by Moroccan security forces on irregular migrants suspected of wanting to make a crossing.

While many of these dynamics may be blamed on the pernicious impact of EU migration policies, the resilience of Law 02-03 and the persistence of xenophobia and racism in Morocco indicate that this securitized approach to migration is not created by exogenous factors alone. The drivers for a securitized interpretation of migration are as much internal as they are influenced by the EU policy framework that focuses on curbing migration, making the liberalization of the country's migration policies even harder than it would have been otherwise.

Box 2: Protection of refugees in Morocco

There has been no progress on the law on asylum, which has been drafted but not discussed or adopted by Parliament. Morocco is a signatory to the 1951 Refugee Convention and its 1967 Protocol but, instead of a clear legal framework, the determination of refugee status has been outsourced to UNHCR, with an ad hoc government commission issuing special residency permits to refugees.

This ad hoc commission – staffed by representatives from all the key security ministries (interior, defence, state security) and a representative of the minister of social affairs – determines the granting of refugee status after individual interviews, which by some accounts focus very much on the actual routes that migrants have taken to reach Morocco, probing for intelligence that can be used to improve border controls.

The commission does not meet regularly, and it has a large backlog of cases. There is also an important gap between the number of refugee status decisions taken by the UNHCR and the reduced number of residence permits granted by the commission. Unlike migrants, refugees in possession of a national residency permit are not subject to any limitations on employment and can be employed on the same basis as Moroccan citizens.

While Morocco's approach to migration has been modernized at the strategic level, that of Tunisia remains archaic, still governed by laws and policies dating from over half a century ago. The basic law governing migration in Tunisia is Law 1968-7, relating to the conditions of foreigners in the country.³⁹ Much like Morocco's Law 02-03, this sets relatively simple rules regarding entry to the country and conditions there, without laying down any path to citizenship or for the social and economic integration of migrants. Another key piece of legislation is Law No 75 and its modifications from February 2004,⁴⁰ which punishes attempts at irregular migration to Tunisia. The law lays out punishments for anyone assisting with irregular migration, as well as penalties for assisting or attempting irregular entry and financial penalties for overstaying visas, which were reviewed in 2018 and capped at about \$1,060.⁴¹ Much like in Morocco, this legislation long predates the Mobility Partnership and the EU's 2015 approach to curbing migration, which indicates strong internal securitized approaches to migration.

Passing a law on combating human trafficking⁴² in 2018 and opening a small sub-governmental office to operationalize and implement this law has been Tunisia's most significant piece of progressive migration legislation and practice. While the vast majority of irregular migrants in Tunisia are not victims of trafficking, for those who are, this law and its implementation have created a functioning protection mechanism that allows for relatively easy identification of status and assistance, albeit mainly linked with returns.⁴³

For a majority of migrants, the only way to access a residency permit, other than marrying a Tunisian citizen, is by obtaining the right to work through a formal contract with a Tunisian employer, who in turn has the

obligation to prove that they could not have found a Tunisian to do the job.⁴⁴

In an extremely informalized economy, these demands are hard to meet – especially considering that unemployment among the highly educated local workforce is estimated to be as high as 42%.⁴⁵ The jobs available are mostly in construction or agriculture, where regular contracts are hard to come by. Hence, the majority of migrants remain in a situation of permanent irregularity.

The law, however, has been stalled for years, and the consensus among Tunis-based analysts is that this is due mainly to the government's fear that the existence of such a law would give EU member states an additional argument for treating Tunisia as a 'safe third country' and returning asylum seekers who have come from Tunisian territory back to the country.

Box 3: Protection for refugees in Tunisia

Like Morocco, Tunisia is a signatory to the 1951 Refugee Convention and its 1967 Protocol, and in 2011 it signed a cooperation agreement with UNHCR, allowing it to carry out registration and determination of refugee status, including for people rescued at sea.

Refugees have access to basic services in Tunisia, such as health and primary education, with UNHCR covering costs for the most vulnerable.

The new constitution of 2014 formally acknowledges the right to asylum and prohibits the extradition of political refugees, and UNHCR has been involved in the drafting of a national asylum law, developed with the Ministry of Justice.

One of the key obstacles to a thorough reform of national legislation is the visa and readmission agreements that the EU is seeking to sign with the two countries. Based on similar agreements that it has signed with a number of its Eastern European neighbours,⁴⁶ these agreements would include not just readmission of nationals of partner countries who are irregularly present in the EU – something that both countries agree with in principle – but also readmission of third-country nationals who have entered the EU directly through Moroccan and Tunisian territories.⁴⁷ This includes irregular migrants and even individuals seeking asylum in the EU whose claims have been rejected.

Morocco and Tunisia also fear that if they were to be considered so-called 'safe third countries', this group might include all asylum seekers who reach Europe via their territory, regardless of the validity of their claims.⁴⁸ These concerns were substantiated in 2018, when the EU proposed the creation of disembarkation platforms in the region, where people trying to reach the EU via the Mediterranean would be assembled and 'screened' for the validity of their asylum claims.⁴⁹

Both countries have opted to retain their old migration laws and have built systemic ambiguity into their legislation, which leaves a lot of space for ad hoc policy making that can be tactically adapted to the internal or

external political context. Rather than helping to reform the migration system, the EU's overall approach to migration in the region has in fact solidified these tendencies and has played up to a conservative and narrow interpretation of protection, which often has a dramatic impact in human terms.

4 HUMAN IMPACT

As discussed above, stricter border controls and outdated migration systems in Morocco and Tunisia have resulted in negative protection trends manifesting in human rights violations, such as difficulty in obtaining asylum and illegal pushbacks, as well as stigmatization, discrimination and exclusion.

In Morocco, arbitrary and often violent pushbacks to Algeria or Mauritania of people seeking asylum have been reported, including of people in vulnerable positions, such as pregnant women and small children.⁵⁰ Reports have also documented disproportionate police violence witnessed by many migrants, prompting criticism of the EU funding directed towards these same law enforcement agencies.⁵¹

Furthermore, people from sub-Saharan Africa face harassment and discrimination as well as *éloignement* or distancing, e.g. keeping them away from Mediterranean shores in order to discourage irregular maritime crossings.⁵²

In Morocco, migrants are often presented as a threat and face social and institutional discrimination: the stereotypes associated with migrant women (including prostitution, AIDS, crime, etc.) are perpetuated and reinforced both by the authorities (with raids and forced expulsions, violence and illegal evacuations) and by Moroccans through racist acts and comments (insults, harassment, aggression, ignorance, etc.).⁵³

The lack of clear and implementable migration and asylum policies negatively affects women migrants in particular, as their vulnerability increases with the absence of clear administrative status (lack of residency, passports, social security coverage), the related lack of socioeconomic resources (lack of employment, underemployment, exploitation) and limited possibilities for legal recourse.⁵⁴

In Tunisia, migrants' rights are also violated, albeit in more subtle ways:⁵⁵

- through legislation that criminalizes irregular migration and migration-related activities, including the criminalization of irregular departure from Tunisia;
- through practices used by Tunisian security forces that are based on this legislation (e.g. pushing back irregular migrants at Tunisian borders, detaining them in order to prevent them from making asylum claims, etc.);

- through other practices that prevent irregular migrants from seeking asylum (such as refusing to allow them access to lawyers and interpreters) or from enjoying a dignified life after obtaining the right to asylum (e.g. preventing refugees with status from obtaining residency permits).

While Tunisia's human rights record has been steadily improving since 2011, the absence of an adequate legal framework that promotes a human-based approach to migrants provides additional incentives for the EU to encourage and rely on these practices in order to prevent irregular migrants from reaching its own shores.⁵⁶

However, at the same time Tunisia stands out as the only North African country that (since 2018) has a law criminalizing racism, both against its own black population, as well as against foreigners, which allows for fines and even imprisonment for public use of racist language.⁵⁷ This has been hailed by Tunisian and foreign observers alike as a unique and unprecedented step.⁵⁸ The law itself has not eradicated casual racism from the lives of sub-Saharan migrants in the streets, however. A quantitative study published in late 2019 shows that more than half of migrants in Tunisia report exposure to casual racism, especially in public spaces.⁵⁹ The report also documents numerous incidents of physical violence against migrants.⁶⁰

5 CONCLUSIONS AND RECOMMENDATIONS

Migration policies across the Western Mediterranean are policies by states for states, with an occasional convergence of interests of all the participating states regarding border control. However, these interests very seldom align with those of the people, including migrants, asylum seekers and refugees.

Despite this convergence of interests, it is also clear that the EU has exerted significant influence on the domestic migration policies and practices of all countries in the region, sometimes directly but often inadvertently, in ways that Brussels-based policy makers may not have predicted. EU migration policies certainly shape the environment for national policy making, in both positive and negative ways.

Many of these policies have blind spots and are having adverse effects on the more vulnerable populations – young and economically insecure nationals of the Maghreb states,⁶¹ sub-Saharan migrants and those seeking international protection. There is a dangerous trend in the region whereby hostile environments are deliberately being created for irregular migrants, underpinned by repressive policies and rights violations.

With the launch of the new European Pact on Migration and Asylum, it is evident that the dialogue between EU and Maghreb governments will continue to shape the realities on both sides of the Mediterranean. In so doing, it is critical that all parties acknowledge and address the incoherencies involved and their adverse effects on vulnerable groups. This is particularly crucial given the interplay between the EU's financial support to partner countries and these countries' compliance with the EU's political priorities.

The EU should work with the Maghreb countries to promote sustainable development that relies, in part, on human mobility, on remittances and on equal opportunities to grow out of poverty. The EU's cooperation with its neighbours should incentivize respect for human rights and international law, putting them at the core of mutual interest.

RECOMMENDATIONS

To EU institutions and EU member states:

- Work together with Maghreb countries to promote compliance with international refugee law around the Mediterranean, and develop a political environment of democratic accountability.
- Prevent the use of EU funds in violation of international human rights law, and investigate and address any allegations of such violations, through enhanced oversight and monitoring mechanisms.
- Periodically conduct and publish assessments of the impact of EU migration policies on the most vulnerable populations, taking into account the human rights context in each country. Such assessments should measure progress on the various dimensions of cooperation on migration and, where negative impacts and human rights violations are documented, policies and cooperation should be adjusted accordingly.
- Avoid making aid conditional on cooperation by partner countries with the EU's demands regarding returns and readmission or border management, so that individuals and communities in need have access to much-needed assistance.
- Include diaspora-, refugee- and migrant-led organizations, in particular women-led organizations, as well as wider civil society, in the design of migration policies to improve the understanding of dynamics across the Mediterranean, and adopt human-centred policies and programmes.

To the Moroccan and Tunisian governments:

- Urgently reform national asylum legislation to allow for quick and effective asylum procedures that are compliant with international refugee law, and create national asylum systems to support the full social and economic integration of refugees.

- Reform national migration legislation to increase protection and allow pathways to integration and citizenship, in line with the Global Compact for Safe, Orderly and Regular Migration, which was adopted at the 2018 Marrakech intergovernmental conference.
- Address racism, xenophobia and discrimination against migrants (specifically, the Moroccan government should introduce anti-racism legislation) and engage civil society, including representatives of refugee and migrant communities, in developing long-term strategies to tackle social issues which concern these groups.
- Include diaspora-, refugee- and migrant-led organizations, in particular women-led organizations, as well as wider civil society, in the design of migration policies and laws, in order to improve understanding of their situations, and adopt human-centred policies and programmes.

NOTES

- 1 In the summer of 2015 over one million people, most of them Syrian refugees travelling via Turkey and the Eastern Mediterranean, arrived in Europe in the space of just three months. This mass arrival caused a profound political crisis in Europe by showing up the weakness of the EU's governance of migration and exposing rifts between different member states.
- 2 European Commission. (2018). *Managing migration: Commission expands on disembarkation and controlled centre concepts*. https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4629
- 3 For a detailed discussion of this, see M. Limmam and R.A. Del Sarto. (2015). *Periphery Under Pressure: Morocco, Tunisia and the European Union's Mobility Partnership on Migration*. European University Institute Working Paper RSCAS 2015/75. https://cadmus.eui.eu/bitstream/handle/1814/37521/RSCAS_2015_75.pdf
- 4 This is a trend that started in 2018, following an initial increase in crossings in comparison with 2017. In 2019, the number of arrivals by sea in Spain more than halved, from 58,525 to 26,168. See relevant datasets at International Organization for Migration (IOM). *Flow Monitoring: Europe*. <https://migration.iom.int/europe?type=arrivals>. The first two quarters of 2020 showed further downward trends; see: <https://dtm.iom.int/reports/europe-%E2%80%94-mixed-migration-flows-europe-quarterly-overview-april-june-2020>
- 5 Interviews with officials of the EU and member states, Rabat, Tunis, February 2019.
- 6 L. Witschge. (2018). *European proposals to outsource asylum centres condemned*. Al Jazeera News. <https://www.aljazeera.com/news/2018/06/european-proposals-outsource-asylum-centres-condemned-180627165710147.html>
- 7 S. Carrera, J.P. Cassarino, N. El Qadim, M. Lahlou and L. Den Hertog. (2016). *EU-Morocco Cooperation on Readmission, Borders and Protection: A model to follow?* CEPS Papers in Liberty and Security in Europe, No. 87. <https://www.ceps.eu/ceps-publications/eu-morocco-cooperation-readmission-borders-and-protection-model-follow/>. Since 2006 this collaboration has been strengthened and broadened, first with the creation of the Seahorse Programme and later the Seahorse Network, a communication and information exchange system that links border authorities in countries on the Mediterranean and West African coasts to enhance cooperation.
- 8 See European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol (2019). *EU Drug Markets Report 2019*. Publications Office of the European Union, Luxembourg. https://www.emcdda.europa.eu/system/files/publications/12078/20192630_TD031933_2ENN_PDF.pdf. Also, interviews conducted in Europe, April 2020.
- 9 European Institute of the Mediterranean (IE Med). (2018). *The EU will give €140 million to Morocco to contain migration*. <https://www.euromesco.net/news/the-eu-will-give-e140-million-to-morocco-to-contain-migration/>. See also EUTF. (2018). *Soutien à la gestion intégrée des frontières et de la migration au Maroc*. https://ec.europa.eu/trustfundforafrica/region/north-africa/morocco/soutien-la-gestion-integree-des-frontieres-et-de-la-migration-au-maroc_en; and EUTF. (2019). *Appui aux actions des autorités marocaines contre les réseaux facilitant les flux migratoires irréguliers*. https://ec.europa.eu/trustfundforafrica/region/appui-aux-actions-des-autorites-marocaines-contre-les-reseaux-facilitant-les-flux-migratoires_en
- 10 Morocco World News. (2019). *EU Grants Morocco €101.7 Million to Curb Irregular Migration*. <https://www.morocoworldnews.com/2019/12/288769/eu-morocco-irregular-migration/>
- 11 Interview with officials at an international security organization, April 2020.
- 12 A. Boukhars. (2019). *Barriers Versus Smugglers: Algeria and Morocco's Battle for Border Security*. Carnegie Endowment for International Peace. <https://carnegieendowment.org/2019/03/19/barriers-versus-smugglers-algeria-and-morocco-s-battle-for-border-security-pub-78618>; and interviews conducted in Rabat, February 2020.

- 13 UNODC. (2011). *The role of organized crime in the smuggling of migrants from West Africa to the European Union*. https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Report_SOM_West_Africa_EU.pdf
- 14 France24. (2017). *Morocco uses migrant crisis as leverage in EU free trade dispute*. <https://www.france24.com/en/20170222-morocco-hundreds-migrants-storm-spain-ceuta-amid-eu-trade-tensions>
- 15 Interviews with human rights and migrant activists and analysts in Morocco, February 2019.
- 16 Representatives of relevant international and national refugee protection organizations have confirmed that registered refugees and asylum seekers also get swept up in these operations. They are then, as a rule, allowed to contact the relevant organizations and are released, but only after these organizations have intervened.
- 17 As a result of successful maritime border controls, there is growing anecdotal evidence that in late 2019/early 2020 Tunisians were trying to reach Europe through Ceuta and Melilla, relying on visa-free travel agreements with Morocco. See InfoMigrants/ANSA. (2020). *800 migrants detained in Spain in poor conditions, says NGO*. <https://www.infomigrants.net/en/post/22406/800-migrants-detained-in-spain-in-poor-conditions-says-ngo>
- 18 The programme includes the provision of communication systems and on-board command and control systems that make maritime surveillance more effective, increasing its operational and surveillance capability and expanding it by integrating pre-existing radar sites and developing new ones, equipping them with state-of-the-art tools to identify people on the move.
- 19 Tunisia signed its first bilateral agreements with Italy as long ago as 1998 and expanded on them in a series of note exchanges in 2011, though not all of these notes have been made public. See President of the Council of Ministers. (2011). *Measures of temporary protection for foreign citizens arriving from North African countries*. *Gazzetta Ufficiale No. 81*; and Italian Legislature. (2012). *Legislatura 16 Risposta ad interrogazione scritta n.4-06711*. *Senato della Repubblica*. 14 June 2012. <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Sindispr&leg=16&id=667145>. In the summer of 2020, Italian government officials visited Tunisia and allegedly promised €11m for tighter border control activities. See Sara Creta. (2020, 6 October). *Migranti, in Tunisia si chiedono: "Che accordo abbiamo firmato con l'Italia? Fateci vedere il testo"*. <https://it.euronews.com/2020/10/06/migranti-in-tunisia-si-chiedono-che-accordo-abbiamo-firmato-con-l-italia-fateci-vedere-il->
- 20 V. Badalic. (2018). *Tunisia's Role in the EU External Migration Policy: Crimmigration Law, Illegal Practices, and Their Impact on Human Rights*. *Journal of International Migration and Integration*, 20, 85–100. <https://doi.org/10.1007/s12134-018-0596-7>; and S.P. Naceur. *Tunesien*. Migration Control. <https://migration-control.info/wiki/tunesien/>
- 21 T. Amara. (2019). *After three weeks stranded off Tunisia, migrant group to be repatriated*. Reuters. <https://www.reuters.com/article/us-tunisia-migrants-europe/after-three-weeks-stranded-off-tunisia-migrant-group-to-be-repatriated-idUSKCN1TK178>
- 22 This programme is aimed at establishing a communication network to exchange information on irregular migration between North African countries (Libya, Egypt, Tunisia and Algeria) and EU countries.
- 23 Euro-Mediterranean Human Rights Network (EMHRN). (2013). *The Seahorse Mediterraneo Maritime Surveillance Programme: EU Security Dangerously Off-Beam?* <https://euromedrights.org/publication/the-seahorse-mediterraneo-maritime-surveillance-programme-eu-security-dangerously-off-beam/>
- 24 M. Fink. (2012). *Frontex Working Arrangements: Legitimacy and Human Rights Concerns Regarding 'Technical Relationships'*. *Merkurios*, 28(75), pp.20–35. DOI: <http://doi.org/10.5334/ujjel.be>
- 25 T. Abderrahim. (2019). *Pushing the Boundaries: How To Create More Effective Migration Cooperation Across The Mediterranean*. ECFR Policy Brief. https://www.ecfr.eu/page/-/pushing_the_boundaries_effective_migration_cooperation_across_Mediterranean.pdf

- 26 Interviews with national CSO actors and analysts and with representatives of international organizations, Tunis, February 2020.
- 27 T. Abderrahim. (2019). *Pushing the Boundaries*, op cit.; and interviews conducted in Tunis and remotely in Europe, February–March 2020.
- 28 Kingdom of Morocco. (2014). *Stratégie Nationale d'Immigration et d'Asile*. <https://marocainsdumonde.gov.ma/wp-content/uploads/2018/02/Strate%CC%81gie-Nationale-dimmigration-et-dAsile-ilovepdf-compressed.pdf>. The adoption of the strategy was accompanied by the creation of a new ministerial department devoted to migration affairs, beyond the existing department in charge of Moroccan residents abroad, a department which also exists in various forms in other countries in the region.
- 29 *Les Discours de Roi : SM le Roi adresse un message à la Conférence Intergouvernementale sur la migration à Marrakech*. <http://www.maroc.ma/fr/discours-royaux/sm-le-roi-adresse-un-message-la-conference-intergouvernementale-sur-la-migration>
- 30 Interviews, Rabat, February 2020.
- 31 This topic is discussed in greater detail in the following section.
- 32 Some of these migrants were Syrian refugees, who used the regularization procedure to speed up the long and politically controversial refugee status determination process.
- 33 Due to Moroccan policies which require employers to show that they cannot find a Moroccan national fit for the job, formal employment remains hard to find even for regularized migrants. The one area of the labour market where such restrictions are waived as a rule is call centres, which employ large numbers of mainly Francophone sub-Saharan migrants.
- 34 This included five broad categories of programme: (1) socioeconomic integration of migrants; (2) development of the government's new migration policies; (3) migrants' protection, resilience and rights; (4) migration management, border management and mobility; and (5) the fight against human trafficking. European Commission. (2018). *Western Mediterranean Route: EU reinforces support to Morocco*. https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6705
- 35 Of this, €289m was financed from the bilateral cooperation envelope to support Morocco's reforms and inclusive development and €101.7m was for cooperation on border security. See European Commission. (2019). *The EU is boosting its support to Morocco with new programmes worth €389 million*. https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6810
- 36 Interviews, Rabat, February 2020.
- 37 The CNDH has offered multiple proposals for new migration policy in Morocco – a new migration and asylum law that would ensure better protection, a comprehensive strategy to fight human trafficking and a regularization programme that would help irregular migrants obtain residency permits. National Council of Human Rights (CNDH). *Conclusion et recommandations du rapport : étrangers et droits de l'homme au Maroc pour une politique d'asile et d'immigration radicalement nouvelle*. <https://www.cndh.org.ma/fr/rapports-thematiques/conclusions-et-recommandations-du-rapport-etrangers-et-droits-de-lhomme-au>
- 38 *Loi n° 02-03 relative à l'entrée et du séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulières*. <http://adala.justice.gov.ma/production/legislation/fr/penal/immigration%20clandestine.htm>
- 39 *Loi 1968-7 relative à la condition des étrangers en Tunisie (entrée, séjour, sortie)*. <https://www.refworld.org/pdfid/54c25b2b4.pdf>
- 40 *Loi organique n° 2004-6 du 3 février 2004, modifiant et complétant la loi n° 75-40 du 14 mai 1975, relative aux passeports et aux documents de voyage*. <https://www.jurisetunisie.com/tunisie/codes/passeport/passeport2000.htm>
- 41 *Décret gouvernemental n° 2018-331 du 6 avril 2018, fixant les droits de chancellerie (pénalités d'irrégularité de séjour)*.

- 42 *Loi organique n° 2016-61 du 3 août 2016, relative à la prévention et la lutte contre la traite des personnes.* <http://www.legislation.tn/sites/default/files/news/tf2016611.pdf>. Most irregular migrants in Tunisia start off as regular visitors from countries with which it has a no-visa regime and traditional historical and economic links, or as students, and then fall into irregularity when they overstay their visas.
- 43 According to the National Committee against Trafficking in Persons (Instance Nationale de Lutte contre la traite), the majority of trafficking victims are from Côte d'Ivoire and have been trafficked through personal and often also family networks. Interview, Tunis, February 2020.
- 44 *Loi organique n° 2004-6 du 3 février 2004*, op cit.
- 45 A. Flayols, D. Jongerius and F. de Bel-Air. (2010). *Tunisia: Education, Labour Market, Migration*. SEO Amsterdam Economics. http://www.seo.nl/uploads/media/Annex_C_Tunisia.pdf
- 46 Ukraine, Georgia, Moldova, Armenia and most recently Belarus, where a visa and readmission agreement came into force on 1 June 2020.
- 47 For an example of how this works, see Article 3 in the readmission agreement with the Republic of Georgia: <https://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=14561>
- 48 Interviews conducted in Rabat and Tunis, February 2020.
- 49 Council of the EU. (2018). *European Council conclusions, 28 June 2018.* <https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/pdf>
- 50 Amnesty International. (2018). *Morocco: Relentless crackdown on thousands of sub-Saharan migrants and refugees is unlawful.* <https://www.amnesty.org/en/latest/news/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/>; GADEM. (2019). *Expulsions gratuites : Note d'analyse sur les mesures d'éloignement mises en œuvre hors tout cadre légal entre septembre et octobre 2018.* https://gallery.mailchimp.com/66ce6606f50d8fd7c68729b94/files/3690d5cc-2b47-404c-a43d-ca0beeb7e383/20181011_GADEM_Note_Expulsion_gratuite_VF.pdf; and interviews in Rabat and Tangier, February 2020.
- 51 Ibid.
- 52 Ibid.
- 53 Ibid.; and H. Houdaïfa (ed.). (2019). *Migrations au Maroc : l'impasse ?* Casablanca, En toutes lettres, coll. « Enquêtes ».
- 54 France24. *Morocco uses migrant crisis as leverage in EU free trade dispute*, op. cit. Some analysts, however, have argued that discourses centred around vulnerability of migrant women often serve to further limit their agency; see N. Ferdaoussi. (2020). *Making Sense of Female Sub-Saharan Migrants' 'Vulnerability' in Morocco.* Morocco World News. <https://www.moroccoworldnews.com/2020/03/295491/making-sense-of-female-sub-saharan-migrants-vulnerability-in-morocco/>
- 55 This list is compiled on the basis of interviews in Tunis and of legal research by V. Badalic. (2018). *Tunisia's Role in the EU External Migration Policy*, op. cit.
- 56 V. Badalic. (2018). *Tunisia's Role in the EU External Migration Policy*, op. cit.
- 57 *Loi organique n° 2018-50 du 23 octobre 2018, relative à l'élimination de toutes les formes de discrimination raciale.* <http://www.legislation.tn/sites/default/files/news/tf2018501.pdf>
- 58 S. Grewal. (2018). *In another first, Tunisia criminalizes racism.* Brookings Institution. <https://www.brookings.edu/blog/order-from-chaos/2018/10/15/in-another-first-tunisia-criminalizes-racism/>; and M. Mercier. (2019). *Tunisie : contre le racisme, une loi vraiment révolutionnaire ?* TV5LeMonde. <https://information.tv5monde.com/afrique/tunisie-contre-le-racisme-une-loi-vraiment-revolutionnaire-289874>

- 59 F. Mskani. (2019). *From sub-Saharan African states to Tunisia: A quantitative study on the situation of migrants in Tunisia: general aspects, pathways and aspirations*. FTDES. <http://ftdes.net/rapports/subsahrianstates.en.pdf>; also interviews conducted in Tunis, February 2020.
- 60 Just a few months after this law was passed, the head of the Association of Ivorians in Tunisia, Falikou Koulibaly, was savagely murdered during what was described as a 'robbery turned bad' but was seen by the migrant community as having strong racist undertones. See Le Point Afrique. (2018). *Tunisie – Racisme : pour les ressortissants subsahariens, « trop c'est trop »*. https://www.lepoint.fr/afrique/tunisie-racisme-pour-les-ressortissants-subsahariens-trop-c-est-trop-26-12-2018-2281900_3826.php#. The perpetrators of this attack have since been identified, tried and sentenced.
- 61 For an analysis of inequality in Morocco and its implication for the local population, see Oxfam. (2019). *Un Maroc égalitaire, une taxation juste*. <https://www.oxfam.org/fr/publications/un-maroc-egalitaire-une-taxation-juste>.

OXFAM

Oxfam is an international confederation of 20 organizations networked together in 67 countries, as part of a global movement for change, to build a future free from the injustice of poverty. Please write to any of the agencies for further information, or visit www.oxfam.org

Oxfam America (www.oxfamamerica.org)

Oxfam Australia (www.oxfam.org.au)

Oxfam-in-Belgium (www.oxfamsol.be)

Oxfam Brasil (www.oxfam.org.br)

Oxfam Canada (www.oxfam.ca)

Oxfam France (www.oxfamfrance.org)

Oxfam Germany (www.oxfam.de)

Oxfam GB (www.oxfam.org.uk)

Oxfam Hong Kong (www.oxfam.org.hk)

Oxfam IBIS (Denmark) (www.oxfamibis.dk)

Oxfam India (www.oxfamindia.org)

Oxfam Intermón (Spain) (www.oxfamintermon.org)

Oxfam Ireland (www.oxfamireland.org)

Oxfam Italy (www.oxfamitalia.org)

Oxfam Mexico (www.oxfammexico.org)

Oxfam New Zealand (www.oxfam.org.nz)

Oxfam Novib (Netherlands) (www.oxfamnovib.nl)

Oxfam Québec (www.oxfam.qc.ca)

Oxfam South Africa (www.oxfam.org.za)

KEDV (www.kedv.org.tr/)