Submission to the UN Special Rapporteur on the Human Rights of Migrants: Externalization of Migration and Its Impact on the Human Rights of Migrants

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Summary

The European Union (EU) has intensified migration control through interceptions, pushbacks, and pullbacks, significantly limiting asylum seekers' access to safe, legal entry pathways. These practices, aimed at stemming migratory flows, fail to uphold EU commitments to international refugee and human rights law. Shifting border control responsibilities to third countries such as Libya, Tunisia, and Morocco has introduced a transactional approach that disregards sustainable and humane asylum management. Many of these third countries have weak human rights records and fragile democratic institutions, leading to inhumane treatment, forced returns, and dangerous conditions for migrants, especially in locations like North Africa and Eastern Europe. This submission underscores six major gaps in EU externalisation policies, including the lack of legal asylum pathways, overreliance on partners with poor rights records, insufficient accountability, neglect of irregular migration's root causes, imbalanced power dynamics in agreements, and the rise of pullback practices. Addressing these gaps requires the EU to shift from containment-focused strategies to policies based on shared responsibility, transparent oversight, and effective long-term migration management. Research emphasize that such responsibility cannot be evaded by outsourcing border control, as EU states remain accountable to international obligations. Therefore, this submission implores the EU to adopt concrete measures and/ policies to ensure accountability and adherence to international and European law.

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Introduction

Since the early 2000s, the European Union has progressively intensified its externalization policies, increasingly delegating border control responsibilities to non-EU countries.[2] Funding initiatives such as interceptions, pushbacks, and pullbacks in third countries—often those with weaker human rights protections—prioritize stemming migratory flows over establishing sustainable, humane migration management systems.

This submission underscores the urgent need for EU decision-makers to reassess externalization policies that have increasingly restricted safe and legal pathways to asylum, significantly limiting asylum seekers' access to fair procedures. Such externalisation policies weaken the EU own position as it becomes dependent on third countries thus restricting the pursuit of its strategic foreign priorities, and susceptible to migration blackmail.[3] The submission further highlights critical gaps within the EU asylum framework and calls for a shift from containment-focused externalization to policies founded on shared responsibility, transparency, and robust protection for those seeking asylum, supported by strategic, long-term migration management.

The following significant policy gaps in EU externalisation practices underscores the urgent need for EU decision-makers to reassess externalization policies.

- Lack of safe and legal pathways for asylum seekers heightening irregular migration and undermining the EU's commitments under international refugee and human rights law.
- Overreliance on third countries with weak human rights records thus leading to inhumane treatment of migrants, including arbitrary detention, violence, and unsafe living conditions.
- Insufficient accountability and oversight mechanisms that enable cycles of forced returns and creating precarious conditions for migrants.

[2] Cantor, D., Tan, N. F., Gkliati, M., Mavropoulou, E., Allinson, K., Chakrabarty, S., Grundler, M., Hillary, L., McDonnell, E., Moodley, R., Phillips, S., Pijnenburg, A., Reyhani, A.-N., Soares, S., & Yacoub, N. (2022). Externalisation, access to territorial asylum, and international law. International Journal of Refugee Law, 34(1), 120–156. https://doi.org/10.1093/ijrl/eeac023; Martins, B. O., & Strange, M. (2019). Rethinking EU external migration policy: Contestation and critique. Global Affairs, 5(3), 195–202. https://doi.org/10.1080/23340460.2019.1641128; Gaibazzi, P. (2024). Indirect migration management: Entangled histories of (externalized) repatriation in and beyond the Gambia's colonial legacy. Geoforum, 155, 103707. https://doi.org/10.1016/j.geoforum.2023.103707

[3] Sharp, D. (2025). Can states resist migration blackmail while protecting migrants? Journal of Ethics and Social Philosophy, 30(2). https://doi.org/10.26556/jesp.v30i2.3519

- Failure to address root causes, structural migration factors and emerging forms of displacement outside the ambit of international refugee law.
- Asymmetrical power dynamics in third-country agreements that are transactional in nature and compromise democratic accountability.[4]
- Emerging "pullback" practices enabling third countries to adopt restrictive, often inhumane practices that escape EU scrutiny.

This submission emphasizes that the identified gaps cannot be effectively addressed by the EU's delegation of responsibility to third countries. As outlined in the Refugee Law Initiative's research, states implementing externalised controls remain obligated to uphold international human rights and refugee law.[5] In light of this, the submission provides six targeted recommendations to address the gaps in EU externalisation practices.

Current trends and challenges

Pushbacks are occurring at EU land borders, such as those between Greece and Turkey or Hungary and Serbia. Also, EU-funded authorities in Algeria, Libya, and Tunisia have blocked the trans-Saharan migrant routes resulting in the abandonment of sub-Saharan African migrants in North Africa.[6] Tied to this, is a new trend in the form of pullbacks. Third countries, such as Türkiye, are intercepting Syrian and Afghan migrants within their own waters or territory to prevent them from advancing to the EU. These measures not only undermine EU Treaties and international law obligations but are also creating a cycle of forced returns and precarious conditions with limited international oversight.

With over 130 million people expected to be displaced by the end of 2024, the EU should view migration as a long-term structural phenomenon rather than a crisis.[7] Shifting border control responsibilities to non-EU States such as Libya, Tunisia, Morocco, Mauritania, and Lebanon is transactional and offsets a rights-based and collaborative approach to asylum management. The

[4] This a contested area as observers are of the view that third countries are actually using their geographical position to leverage their bargaining with the EU on migration policy: Faist, T. (2019). Contested externalisation: Responses to global inequalities. Comparative Migration Studies, 7, Article 45. https://doi.org/10.1186/s40878-019-0158-y. I rather explore this power axis on the basis of the EU economic muscle power and its collective ability to garner both cognitive and normative consensus on migration policy and governance.

[5] Refugee Law Initiative, 'Refugee Law Initiative Declaration on Externalisation and Asylum' (2022) 34 International Journal of Refugee Law 114; Cantor and others (n 2)

[6] ECRE, 'EU EXTERNAL PARTNERS: EU Denies Complicity in Dumping Black Migrants in North African Desert' (ECREWeekly, 28 June 2024) <https://ecre.org/eu-external-partners-eu-denies-complicity-in-dumping-black-migrants-in-north-african-desert-%e2%80%95-human-rights-organisations-call-for-human-rights-benchmarks-for-egypt-amid-reports-of-forced-retu/> accessed 2 November 2024.

[7] Giulia Fabrizi, 'Migration Beyond the EU: Externalisation of Borders and Raising Concerns' (*Global Human Rights Defence (GHRD)*, 15 August 2024) <https://ghrd.org/article/migration-beyond-the-eu-externalisation-of-borders-and-raising-concerns/> accessed 2 November 2024.

outsourcing of migration management is not only built on asymmetrical power relations but also with conflict-ridden countries built on weak democratic foundations.

Research shows that externalizing migration controls has become a common practice not only within Europe but also beyond.[8] This shift coincides with a trend among some EU Member States toward implementing strict measures that, in effect, limit access to asylum.[9] Such an approach fails to consider the realities of new and complex factors driving people to flee their countries, such as climate change, economic hardship, and social instability. Ignoring these emerging causes of displacement risks creating policies that do not adequately address the needs of those forced to migrate. Therefore, to address the above-mentioned gaps in protection and the short-sightedness of current externalization practices, this submission recommends the following:

1. Establish and Expand Safe and Legal Pathways for Asylum Seekers

Recommendation: Expand safe and legal pathways for asylum, including family reunification programs, humanitarian visas, and resettlement options.
Rationale: Providing structured avenues for asylum protects the rights of asylum seekers, upholds the EU's commitments under international law, and decreases the risks associated with dangerous, irregular migration routes.

2. Strengthen Human Rights Standards in Third-Country Agreements

Recommendation: Include binding human rights conditions, with specific monitoring and enforcement mechanisms in all externalization agreements, to protect migrants from inhumane treatment and ensure that member states do the same in bilateral negotiations.
Rationale: Setting and enforcing minimum standards within third-country partnerships protects migrants from arbitrary detention, violence, and abuse, reducing the EU's risk of complicity in human rights violations.

3. Implement Independent Oversight and Accountability Mechanisms

Recommendation: Establish independent bodies to monitor EU-funded border activities and intercept practices, with transparent reporting on the conditions migrants face under third-country arrangements.
Rationale: Independent oversight enhances accountability in externalisation practices, preventing rights abuses, ensuring compliance with legal standards, and offering asylum seekers access to justice if violations occur.

[8] Nicolosi, S. F. (2024). Externalisation of migration controls: A taxonomy of practices and their implications in international and European law. Netherlands International Law Review, 71(1), https://doi.org/10.1007/s40802-024-00256-6

[9] Bureau Woordvoering Kabinetsformatie, 'Hoofdlijnenakkoord tussen de fracties van PVV, VVD, NSC en BBB - Publicatie - Kabinetsformatie' (16 May 2024) <https://www.kabinetsformatie2023.nl/documenten/publicaties/2024/05/16/hoofdlijnenakkoord-tussen-de-fracties-van-pvv-vvd-nsc-en-bbb> accessed 4 August 2024.

4. Adopt a Long-Term, Holistic Approach to Addressing Migration Drivers

Recommendation: Prioritize diplomatic and development efforts to address root causes of migration, such as conflict, economic hardship, and environmental displacement, within source and transit countries.
Rationale: Addressing the underlying causes of forced migration and emerging displacement drivers fosters stability and reduces migratory pressures, aligning with the EU's long-term migration management goals.

5. Pursue Equitable Partnerships in Migration Agreements

Recommendation: Shift from transactional, power-imbalanced agreements to collaborative, equitable partnerships that promote democratic accountability and shared responsibility for migration management.
Rationale: Agreements based on equal partnership and mutual respect create more sustainable and ethical migration management frameworks, preventing dependency on unstable states and enhancing regional stability.

6. Prohibit "Pullback" Practices and Reinforce International Protection Standards

Recommendation: Prohibit practices that involve third countries intercepting migrants to prevent EU entry, and ensure that any migration management activities are subject to EU and international protection standards.
Rationale: Limiting the use of pullbacks that escape EU oversight prevents rights abuses and guarantees that all migrants retain access to fair and just asylum procedures, in line with European and international law.

Conclusion

This submission emphasizes the urgent need for the EU to reform its externalisation policies, which have increasingly restricted access to safe, legal pathways for asylum seekers. Current practices—relying on interceptions, pushbacks, and pullbacks—undermine the EU's obligations under international law, leading to human rights violations and precarious conditions for asylum seekers. Transactional agreements with countries lacking robust human rights protections further complicate ethical migration management and often result in inhumane treatment. To address these critical issues, the EU must adopt a rights-based approach, focusing on shared responsibility, equitable partnerships, and sustainable, long-term migration management. The six recommendations offered—including establishing safe legal pathways, strengthening oversight, and addressing migration's root causes—provide a pathway toward a fair and humane migration framework that aligns with international obligations and ethical standards. By implementing these reforms, the EU can better manage migration while upholding its commitment to human rights.