STATEWATCH

Submission

Externalisation of migration and the impact on the human rights of migrants

10 June 2025

Please find below a submission from *Statewatch* to the Special Rapporteur's 'Call for inputs: Externalization of Migration and the Impact on the Human Rights of Migrants'.[1] Due to the short deadline, we are unable to provide a more extensive response. Questions that we have not had time to compile responses to are indicated in ~~strikethrough~~.

1. Examples of externalisation measures

Please share examples of externalisation policies or measures, including prevention of leaving, push back or pull back practices, interdiction at sea, joint border controls or interceptions, readmission arrangements, safe country concepts, third country and offshore processing, extraterritorial detention/reception centres (including "return hubs").

If available, please provide information in relation to these examples on the following:

a) What is the (legal) basis for these measures, specifically, are they based on formal or informal agreements?

There are both informal and formal agreements and arrangements in place, to the best of our knowledge.

For example, EU border agency Frontex cooperates with Morocco informally with no specific agreement in place. Similarly, it cooperates with dozens of countries through the Africa Frontex Intelligence Community.[2] With the vast majority of those states, it has no formal agreements.

[1] https://www.ohchr.org/en/calls-for-input/2025/call-inputs-externalization-migration-and-impact-human-rights-migrants

[2] https://www.statewatch.org/news/2022/september/africa-frontex-intelligence-community-participating-agencies-named/

States, or entities representing states, also strike informal "deals". The best-known example is the EU-Turkey deal, which was based on a press release and thus not subject to judicial scrutiny, according to the Court of Justice of the EU.[3]

The EU's deal with Tunisia is based on a memorandum of understanding which, while not binding in itself, sets out political commitments that should shape future formal agreements or contracts. The European Parliament's lawyers have argued that despite it not being a formal international agreement, its implications mean it should be subject to parliamentary scrutiny.[4]

Formal cooperation may take place on the basis of various types of agreement. For example, the EU has proposed using the "partnership dialogues" set up under the Samoa Agreement "can be used to facilitate collaboration on various areas… including migration."[5] Frontex has formal working arrangements and status agreements with multiple states that facilitate various types of cooperation.[6] Security sector missions can also be used to promote changes in immigration policy enforcement.[7]

Legal sanctions also now make up part of the EU's externalisation agenda – specifically, "visa sanctions." These allow restrictions on the issuance of visas to nationals of states deemed insufficiently cooperative with deportation operations.[8] The UK and USA have both engaged in or considered similar measures.

Finally, externalisation policies may be based in formal legislation without referring to any specific agreement or form of cooperation. The Asylum and Migration Management Regulation allows EU member states to fund "actions in third countries" as part of their "solidarity" with each other.[9]

b) Which entities are responsible for negotiating, concluding and implementing these arrangements (executives/parliaments/agencies e.g. border agencies, police forces or equivalent)?

This depends upon the particular form of agreement. Noteworthy in the EU context is the preference for secrecy and a total denial of any form of parliamentary scrutiny.

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[3] https://verfassungsblog.de/taking-the-eu-turkey-deal-to-court/
[4] https://www.statewatch.org/news/2024/march/parliamentary-lawyers-democratic-oversight-needed-for-eu-tunisia-migration-agreement/
[5] https://www.statewatch.org/news/2025/june/how-the-eu-coordinates-the-outsourcing-of-migration-control/
[6] https://www.statewatch.org/analyses/2021/frontex-cooperation-with-third-countries-examining-the-human-rights-implications/
[7] https://www.statewatch.org/news/2022/september/72-million-for-eu-security-and-immigration-mission-in-niger/
[8] https://www.statewatch.org/outsourcing-borders-monitoring-eu-externalisation-policy/bulletin-2/visa-sanctions-to-increase-deportations/
[9] https://www.statewatch.org/news/2024/april/hardwiring-the-externalisation-of-border-control-into-eu-law/

The Council of the EU has argued that the European Parliament has no legal right to scrutinise the work of a body set up by EU governments specifically to coordinate border externalisation policies and projects.[10]

c) To what extent are these measures practical to implement in practice?

Practicality appears to be less of a concern than efficacy (measured by the number of people arriving on EU territory by irregular means, or filing asylum claims).

2. Transparency and monitoring

a) Is the legal basis for externalisation measures (such as Memoranda of Understanding) publicly available?

Formal legal agreements will generally be available. Other documents – operational plans, activity reports, "action files" – that reveal more detailed information on policy goals, objectives and actions, tend to be kept secret.

b) Is the information on externalisation measures (including implementing measures and technical cooperation) made available under freedom of information/access to documents laws, when requested?

This depends on the type of information requested. However, exceptions – in particular those concerning national/public security, international relations, or protection of decision-making procedures – are frequently invoked to deny the release of information.[11]

It can also be observed that the immigration control agenda, including policies on externalisation, are driving general limitations and exemptions on transparency. The UK and Italy provide relevant examples.[12]

c) What monitoring mechanisms are foreseen and how do they function in practice?

This depends on the type of agreement. Given the trend towards secrecy, monitoring is often internal, if it takes place at all. The deliberate denial of parliamentary scrutiny is a particularly egregious development in this respect.

[10] https://www.statewatch.org/outsourcing-borders-monitoring-eu-externalisation-policy/bulletin-2/editorial/
[11] https://www.statewatch.org/access-denied-secrecy-and-the-externalisation-of-eu-migration-control/
[12] https://www.statewatch.org/analyses/2023/migration-policy-overspill-access-to-information-in-peril/

d) Are human rights impact assessments carried out, especially prior to agreement, and if so, what are their modalities, including findings being public?

With regard to some of the EU's cooperation "partners", in particular in North Africa, it can be observed that even if human rights impact assessments are carried out, they are either insufficient or ignored.

e) Are there complaint mechanisms in place?

Again, this depends upon the type of agreement. The EU's attempts to exclude officials deployed abroad as part of Frontex missions from criminal and civil liability are particularly concerning.[13]

3. Cooperating States

a) How do cooperating States benefit from these arrangements?

Agreements on migration and border control are frequently tied by the EU to broader financial support arrangements.

For example, the Memorandum of Understanding included an array of political commitments on economics, trade, energy, etc. alongside proposals related to migration. The "partnership" with Egypt includes a financial support package worth a total of €7.4 billion in loans and grants, with €200 million of the total going towards border, immigration and asylum policies.

There is thus the possibility of direct financial support, loans at reduced repayment rates, and so on. As well as bolstering the legitimacy of governments, there are no doubt multiple opportunities for cronyism and corruption related to these agreements.

[13] https://www.statewatch.org/news/2017/april/eu-deploying-armed-frontex-teams-on-the-balkan-route-agreements-with-serbia-and-macedonia-on-the-way/

At the same time, recipient or 'target' governments for European states and EU institutions can use the immigration issue as a lever to extract concessions or benefits, as has been seen with Egypt,[14] Libya,[15] Morocco[16] and Turkey.[17]

Support from entities such as the EU, or its member states, may also be seen as an endorsement for authoritarian, racist and discriminatory policies that are currently being enacted in many states, such as Tunisia, Libya and Algeria.

~~**b) What is offered in exchange for cooperation?**~~

~~**c) Are the arrangements subject to democratic scrutiny and oversight (e.g. by parliamentary committees)?**~~

~~**d) Are the measures made public and/or announced by the authorities in cooperating States?**~~

~~**e) Did the agreements trigger changes in national laws or policies?**~~

4. Non-State actors

a) What is the role of non-State entities in the development and implementation of externalisation measures? These entities may include international/regional/intergovernmental organisations, private companies (including Private Military and Security Companies (PMSCs) and technology companies), armed groups, or NGOs

International entities or organisations such as the International Centre for Migration Policy Development (ICMPD) and International Organization for Migration (IOM) act as contractors for states. They are dependent on states for funds, and thus will carry out the policies and projects for which there is funding. There is an added benefit for states in outsourcing their projects to such entities: they are not subject to freedom of information laws or parliamentary scrutiny.

Militias and para-state actors are also well-known partners of the EU and its member states, notably in Libya. The human rights abuses carried out by these groups are by now well-known and widely-reported. The EU is also well-aware of them. A recent

[14] "The Egyptian authorities are, nevertheless, keen to portray Egypt as burdened by the provision of services to non-citizens—contrary to the truth—to show that Egypt needs additional support." See: https://www.statewatch.org/analyses/2025/european-support-for-egypt-billions-of-euros-for-a-dictatorial-partner-in-migration-control/

[15] https://www.statewatch.org/news/2025/february/italian-ministers-should-face-justice-for-freeing-fugitive-war-criminal-says-legal-complaint/

[16] https://www.statewatch.org/analyses/2022/the-melilla-border-deaths-represent-a-new-phase-in-the-bloody-story-of-fortress-europe/

[17] https://www.statewatch.org/news/2020/march/eu-greece-turkey-crisis-not-averted-security-policies-cannot-solve-a-humanitarian-problem-now-or-in-the-long-term/

Council of the EU document refers to Italy's EU-funded cooperation projects with Libya, and notes: "The EU indirectly supports these efforts through training and equipment for Libyan authorities, despite documented human rights abuses in detention centres."[18]

~~**b) What are the implications of the involvement of non-State entities with regard to transparency, accountability, and human rights protections?**~~

5. Use of technology

a) In what ways is technology, including specific tools or systems, employed to facilitate or support externalisation measures?

With regard to the EU, the export and provision of various technologies supports the externalisation agenda:

- surveillance technology, such as drones, has been provided to states such as Morocco through the International Centre for Migration Policy Development;[19]
- boats and other equipment have been supplied to states such as Italy and Tunisia, often via Italy as an intermediary state but using EU funds;[20]
- specific techniques and modes of governance are also exported and encouraged by the EU and its member states through a variety of different means. Relevant here in particular are the concepts of "integrated border management" and forms of risk analysis that frame migration and irregular border crossing as a "threat" to be neutralised or eliminated.[21]

b) If technology enabling the collection and processing of personal data is provided to or acquired by cooperating States, where is that data stored and by whom?

To the best of our knowledge, personal data is generally held by (and presumably within) the state that collects and processes the data. However, this does not mean that personal data will not be made accessible to EU member states or agencies.

[18] https://www.statewatch.org/media/4953/eu-scifa-migration-partnerships-discussion-paper-7569-25.pdf
[19] https://www.icmpd.org/our-work/projects/border-management-programme-for-the-maghreb-region-bmp-maghreb
[20] https://www.statewatch.org/news/2023/february/eu-preparing-new-efforts-to-increase-libyan-border-controls/
[21] https://www.statewatch.org/outsourcing-borders-monitoring-eu-externalisation-policy/bulletin-5/analysis-violence-at-a-distance-frontex-s-increasing-role-outside-the-eu/

A good example of this is the EU's encouragement of biometric civil registration systems in countries such as Senegal, where the data – from the EU's perspective – will also support identification of people facing deportation.[22]

Access to this data is increasingly facilitated through the use of Readmission Case Management Systems (RCMSs), which have been supported directly by the EU or through intermediaries such as the International Organization for Migration.

Furthermore, non-personal data certainly *is* shared with EU member states and agencies by their 'partners', and this can be used to design interventions, operations and actions that violate the rights of people crossing borders. For example, data gathered by Frontex-sponsored Risk Analysis Cells in African states share information with Frontex, intended to inform the agencies risk analyses and subsequent operational activities.[23]

c) In which ways does the use of technology contribute to or exacerbate the risk of violations of the human rights of migrants and to what extent are there avenues for justice?

There is no need for states to make use of digital technologies, in particular, to commit rights violations. However, digital technologies can enable and underpin both 'traditional' and 'novel' violations.

For example, the use of surveillance drones or other surveillance technologies can make it easier to locate people approaching a state's border, and to submit them to summary expulsion ('pushback'). This is generally accompanied by physical violence, and often the theft and/or destruction of property.[24]

Digital technologies also facilitate violations of privacy and data protection rights: for example, with state agents taking photos without permission; extracting vast quantities of sensitive data from people crossing borders; and enabling the long-term registration and sharing of personal data between different agencies within and amongst states, for example to enforce entry bans.[25]

What should be emphasised is that rights traditionally seen as 'digital rights' (in particular, privacy and data protection) are now inherently linked to immigration enforcement, border control and asylum proceedings.[26,27]

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[22] https://www.statewatch.org/news/2021/april/senegal-biometric-population-database-will-facilitate-deportations-restricted-eu-document-confirms/
[23] Statewatch/Transnational Institute, forthcoming.
[24] https://borderviolence.eu/app/uploads/BVMN-Monthly-Report-October-2024.pdf
[25] https://www.statewatch.org/publications/reports-and-books/europe-s-techno-borders/
[26] https://www.statewatch.org/analyses/2023/digital-rights-and-the-protection-of-the-right-to-asylum-in-the-charter-of-the-european-union/
[27] https://www.statewatch.org/projects/data-exchange-exclusion-and-denial-at-the-borders/

It is therefore vital that immigration and asylum practitioners increase their understanding of privacy and data protection laws and policies. This will also aid an increased understanding of the digital and data aspects of externalisation policies.

6. Human rights implications

~~**a) What is the (practical and/or legal) situation of individuals once they are transferred or taken to the cooperating States, irrespective of their nationality and migration status?;**~~

~~**b) What human rights risks arise in connection with specific externalisation measures or particular phases of their implementation—such as prevention of departure, interception, detention, or return/transfer?;**~~

~~**c) To what extent do migrants and their families have access to justice for human rights violations that occurred as a result of externalisation practices throughout their migration journey?**~~

7. Responsibility and jurisdiction

~~**a) How can the responsibility of the externalising State be established in cases of human rights violations?**~~

~~**b) What jurisdictional approaches may be invoked to assess the extraterritorial application of human rights obligations in the context of externalisation practices involving migrants?;**~~

~~**c) Please provide examples of rulings by international or national courts related to externalisation measures, including addressing migrants who have not yet reached the territory of destination countries.**~~