Title:

Input to the Special Rapporteur on the Human Rights of Migrants:

The Externalisation of EU Migration Policy and Its Impacts on the Human Rights of Migrants

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Disclaimer:

This submission reflects my personal views and academic research. It does not represent the position of, nor is it affiliated with, any organization or institution I am currently employed by. All opinions and analyses expressed herein are solely my own.

Introduction

This contribution is based on my Bachelor's thesis titled "Navigating the Borders: Implications of EU Migration Externalisation on Regular and Irregular Migration Channels", complemented by field observations from my administrative work at an asylum reception centre in Brussels[1]. It aims to critically assess how the European Union's externalisation measures affect the human rights of migrants, particularly in relation to irregular migration pathways, access to asylum, and compliance with the principle of non-refoulement.

I analyse formal and informal cooperation mechanisms between the EU and third countries such as Libya, Turkey, and Tunisia. By addressing the seven thematic areas set by the Special Rapporteur, this input seeks to contribute to a more rights-based understanding of externalisation practices.

1. Examples of Externalisation Measures

a. Policy Examples:

The EU has implemented several externalisation measures, including:

1. The EU-Turkey Statement (2016): A deal designed to reduce arrivals via the Aegean Sea in exchange for financial aid and political concessions[2].
2. Italy-Libya Memorandum of Understanding (2017, renewed in 2020): Cooperation to intercept migrants at sea and return them to Libya[3].

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[1] Shumi, B. (2025). *Navigating the borders: Implications of EU migration externalization on regular and irregular migration channels* (Bachelor's thesis, Eötvös Loránd University). EDIT. SZD2411080831264826E3MYR4

[2] European Council. (2016, March 18). *EU-Turkey statement.* https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

[3] Palm, A. (2021). The Italy–Libya Memorandum of Understanding: A contested example of EU migration externalization. *European Journal of Migration and Law, 23*(1), 105–132. https://doi.org/10.1163/15718166-12340102

3. Readmission Agreements and Safe Country Designations: Used across the EU to facilitate returns to North African or Balkan countries[4].
4. Frontex Operations: Coordinated joint patrols and border operations with third countries[5].
5. Offshore Detention and Return Hubs: Proposed (e.g., in Rwanda) or de facto implemented (e.g., Libya's detention centres funded by EU resources)[6].

b. Legal Basis and Implementation:

Most of these measures are based on informal agreements (MoUs and political declarations) that escape full parliamentary scrutiny. In Italy and Germany, executive branches primarily negotiate these deals, while in Libya, implementation occurs through the Interior Ministry and coastguard (actors that are not democratically accountable and often implicated in abuses).

c. Practical Implications:

Although framed as necessary for migration management, these measures are hard to monitor and filled with legal and ethical challenges, especially regarding implementation in countries with poor human rights records.

2. Transparency and Monitoring

a. Public Accessibility of Legal Bases:

Many key documents such as the 'Italy-Libya MoU' were initially not public and remain only partially accessible. The lack of transparency hinders democratic oversight[7].

b. Freedom of Information:

Freedom of information requests regarding migration cooperation often face bureaucratic barriers or are denied on security grounds. This raises concerns about accountability[8].

c. Monitoring Mechanisms:

While the EU has committed to human rights clauses in external agreements, independent monitoring is minimal. Mechanisms are either delegated to the same agencies implementing the policies or not funded adequately. Libya, in particular, lacks any robust external oversight of detention facilities or coastguard actions[9].

d. Human Rights Impact Assessments (HRIAs):

HRIAs are rarely conducted before such agreements are signed. If conducted, their findings are not publicized. For instance, there is no published assessment of the Libya MoU's impact on migrant safety.

e. Complaint Mechanisms:

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[4] European Commission. (2023). *Readmission agreements: Managing returns of irregular migrants*. https://home-affairs.ec.europa.eu/policies/migration-and-asylum/return-and-readmission_en

[5] European Court of Auditors. (2021). *Frontex's support to external border management: Not sufficiently effective to date* (Special Report No. 08/2021). https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58674

[6] Amnesty International. (2023). *Libya: "No one will look for you" – Forced returns from sea to abuse in detention*. https://www.amnesty.org/en/documents/mde19/4569/2023/en/

[7] Palm, A. (2021). The Italy–Libya Memorandum of Understanding: A contested example of EU migration externalization. *European Journal of Migration and Law, 23*(1), 105–132. https://doi.org/10.1163/15718166-12340102

[8] European Ombudsman. (2021). *Decision in case 735/2020/MAS on the European Commission's failure to ensure transparency of negotiations with Tunisia on migration cooperation*. https://www.ombudsman.europa.eu/en/decision/en/140242

[9] European Court of Auditors. (2021). *Frontex's support to external border management: Not sufficiently effective to date* (Special Report No. 08/2021). https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58674

There are no viable complaint systems accessible to migrants in Libya or Turkey. Detained or intercepted migrants have no formal recourse mechanisms, and civil society actors report significant restrictions on access to legal support[10].

3. Cooperating States

a. Benefits for Cooperating States:

Countries like Turkey, Libya, and Tunisia receive financial support, political legitimacy, and migration-related infrastructure investment. For example, Turkey received €6 billion in aid following the 2016 deal[11].

b. Incentives Provided:

Besides financial aid, incentives include relaxed visa policies (Turkey), border surveillance equipment, training programs, and political support in international forums[12].

c. Democratic Oversight:

In many cooperating states, migration deals are managed through executive discretion, often bypassing legislative bodies. Tunisia's 2023 MoU with the EU, for instance, was negotiated without parliamentary consultation[13].

d. Public Awareness:

While EU press releases often celebrate these deals, cooperating governments may downplay or distort their terms to avoid domestic backlash. Tunisian authorities, for example, denied accepting funds for migrant reception despite signing agreements that include such provisions.

e. Domestic Policy Changes:

In Turkey, cooperation with the EU led to the institutionalisation of temporary protection status for Syrians. In Libya and Tunisia, cooperation strengthened border militarisation, sometimes leading to new legal frameworks criminalizing irregular movement[14].

4. Non-State Actors

a. Role and Influence:

Non-state actors include:

- International Organisations: IOM and UNHCR manage voluntary returns and some shelter provisions.
- Private Companies: European firms provide surveillance technology (e.g., biometric scanners in Tunisia and Libya).

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[10] Amnesty International. (2023). *"No one will look for you": Forced returns and lack of access to justice for migrants in Libya*. https://www.amnesty.org/en/documents/mde19/4569/2023/en/

[11] European Commission. (2019). *EU-Turkey Statement: Two years on*. https://ec.europa.eu/home-affairs/news/eu-turkey-statement-two-years_en

[12] Lavenex, S., & Križić, E. (2021). The externalisation of EU migration policies: The role of third countries. *Swiss Political Science Review, 27*(4), 730–750. https://doi.org/10.1111/spsr.12471

[13] European Ombudsman. (2021). *Decision in case 735/2020/MAS on transparency in migration negotiations*. https://www.ombudsman.europa.eu/en/decision/en/140242

[14] European Commission. (2022). *Support to asylum and migration management in Tunisia and Libya*. https://neighbourhood-enlargement.ec.europa.eu

- NGOs and Civil Society: Often tasked with humanitarian support but face restrictions in Libya and parts of Turkey.
- Armed Groups (Libya): Some detention centres are run by militia with de facto state backing.

b. Implications for Accountability:

Delegation to non-state actors creates significant ambiguity. NGOs are often powerless to alter policy impacts, while private companies are shielded from liability. In Libya, private contractors involved in training coastguards remain beyond legal scrutiny[15].

5. Use of Technology

a. Technological Tools:

Drones, biometric registration systems, and border surveillance software have been supplied to cooperating states. The EU Trust Fund for Africa has funded projects deploying such technology in Tunisia and Libya.

b. Data Storage and Control:

There is limited transparency about where personal migrant data is stored. NGOs report that biometric data collected in Libya may be accessed by EU authorities, raising GDPR compliance concerns[16].

c. Risks and Justice:

Technological externalisation facilitates racial profiling, automatic denial of entry, and prevents individuals from reaching EU territory to claim asylum. Remedies are unavailable, particularly for migrants intercepted before reaching the EU[17].

6. Human Rights Implications

a. Legal and Practical Status of Migrants:

Transferred individuals often find themselves in arbitrary detention, without access to asylum procedures. Libya is not a party to the 1951 Refugee Convention and lacks domestic asylum legislation[18].

b. Specific Risks:

- Prevention of Departure: Enhanced border policing has led to inland raids and deportations, notably in Tunisia and Libya.
- Interception: EU-supported Libyan coastguards forcibly return migrants to unsafe zones.
- Detention: Migrants in Libya face inhumane conditions, overcrowding, torture, and extortion.
- Transfer/Return: Many are deported without due process. UN agencies have reported mass expulsions into desert zones.

c. Access to Justice: Access to legal aid or complaints procedures is virtually non-existent in cooperating states. Attempts to file suits in European courts are blocked by jurisdictional hurdles[19].

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[15] Baird, T. (2022). Buying border security: Frontex, externalisation, and private migration control. *International Political Sociology, 16*(1), 82–100. https://doi.org/10.1093/ips/olab027

[16] European Data Protection Supervisor (EDPS). (2022). *Opinion on interoperability and data protection in EU migration systems*. https://edps.europa.eu/data-protection/our-work/publications/opinions_en

[17] Tazzioli, M. (2022). Biometric borders: Governing mobilities through identification. *Security Dialogue, 53*(2), 106–124. https://doi.org/10.1177/09670106211040596

[18] Global Detention Project. (2023). *Libya immigration detention profile*. https://www.globaldetentionproject.org/countries/africa/libya

[19] OHCHR. (2023). *Pushbacks and deprivation of liberty at sea: Legal implications*. https://www.ohchr.org/en/documents/thematic-reports/pushbacks-and-deprivation-liberty-sea

7. Responsibility and Jurisdiction

a. Legal Responsibility of EU Member States:

Despite geographic distance, EU actors can be held responsible under extraterritorial jurisdiction principles when they fund, direct, or materially contribute to abusive practices abroad[20].

b. Jurisdictional Approaches:

Cases such as Hirsi Jamaa v. Italy have confirmed that intercepting states maintain jurisdiction over migrants even when operations occur outside their territorial waters[21].

c. Judicial Precedents:

In N.D. and N.T. v. Spain (2020), the ECtHR ruled on pushbacks in Melilla[22]. While the judgment created space for restrictive state practices, it acknowledged the need for individualized procedures. However, many externalized actions (e.g., in Libya) are harder to litigate due to informal frameworks[23].

Conclusion and Recommendations

The EU's externalisation of migration control has significantly undermined the rights of migrants and asylum seekers. By outsourcing border control to third countries with poor human rights records, and by employing informal, opaque agreements, the EU distances itself legally while continuing to exert operational control. The current trajectory of EU migration governance, if left uncorrected, threatens to further erode the Union's commitment to human rights, particularly the rights of migrants and asylum seekers. A recalibration toward transparent, rights-based partnerships is urgently required to restore legal accountability and moral leadership.

Key Recommendations:

- **Formalize Agreements:** All migration cooperation should be subjected to full parliamentary scrutiny and made publicly available.
- **Conduct HRIAs:** Mandatory, independent human rights impact assessments must precede any migration cooperation.
- **Establish Monitoring and Redress:** Mechanisms must be created to monitor implementation and offer redress to affected migrants.
- **Ban Cooperation with Abusive Actors:** The EU should cease funding or operational coordination with actors implicated in systemic abuses (e.g., Libyan coastguards).
- **Respect Non-Refoulement:** All migration control measures must ensure access to asylum and comply with international human rights and refugee law.
- **Limit Use of Surveillance Tech:** Technological tools used for migration governance must be subject to robust privacy safeguards and legal review.

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[20] Moreno-Lax, V. (2017). *Accessing asylum in Europe: Extraterritorial border controls and refugee rights under EU law*. Oxford University Press.

[21] European Court of Human Rights. (2012). *Hirsi Jamaa and Others v. Italy* (Application no. 27765/09). https://hudoc.echr.coe.int/eng?i=001-109231

[22] European Court of Human Rights. (2020). *N.D. and N.T. v. Spain* (Applications nos. 8675/15 and 8697/15). https://hudoc.echr.coe.int/eng?i=001-200052

[23] Spijkerboer, T. (2021). *Pushbacks and legal grey zones in the European Court of Human Rights' jurisprudence*. *European Papers, 6*(1), 33–52. https://doi.org/10.15166/2499-8249/431