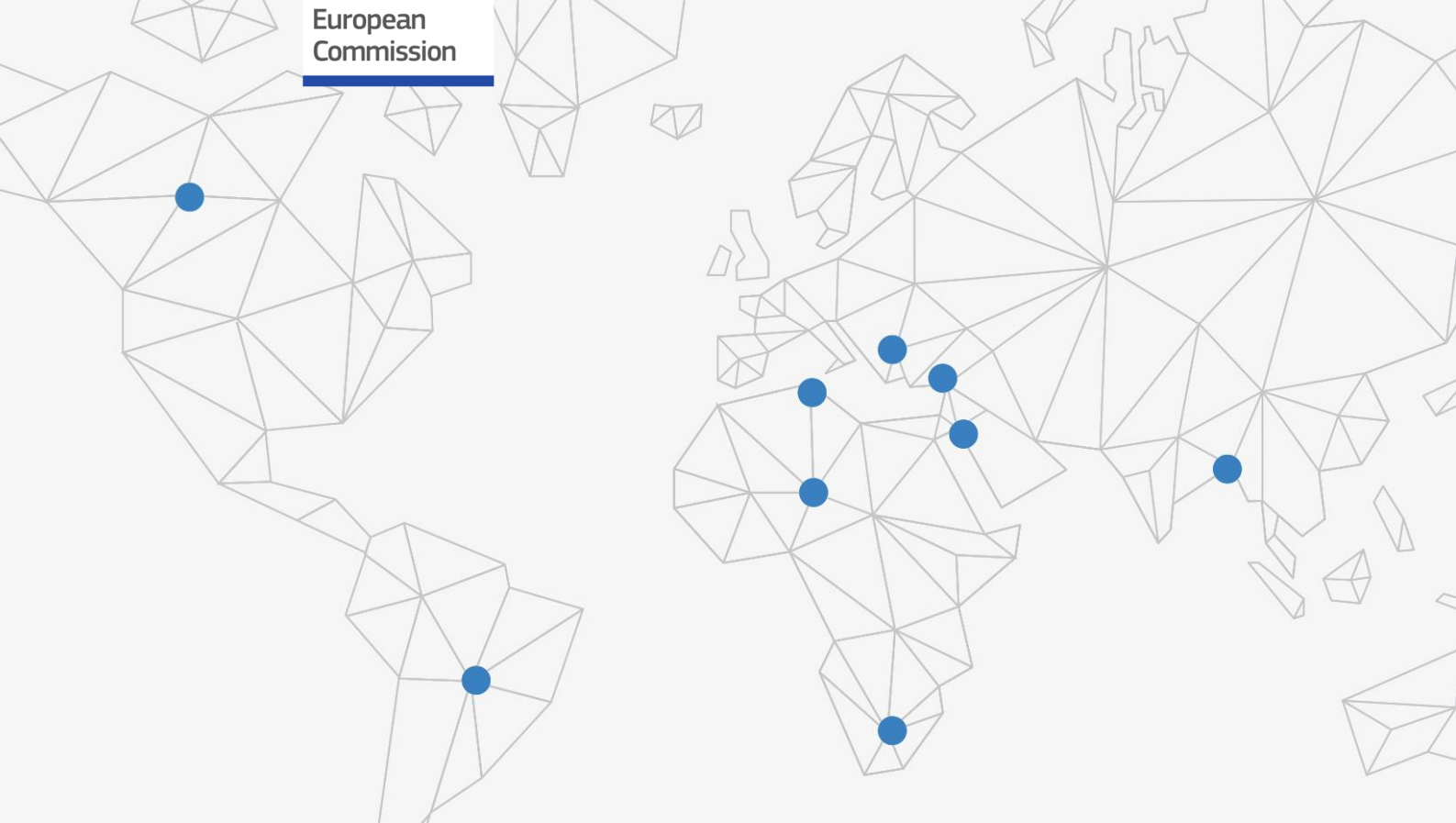




EUROPEAN POLICYBRIEF



Tunisia-EU cooperation in migration management: From Mobility Partnership to containment



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ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

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Abstract

The particularity characterizing Tunisia-EU cooperation in migration management is the complexity of the instruments and agreements governing different issues. These instruments cover aspects related to migration, asylum, borders, and mobility. The main arrangements are related to the financing of projects (through the EU Trust Fund for Africa – EUTF) or the so-called ‘Mobility Partnership’ concluded in 2014 within the framework of the EU-Tunisia Action Plan (2013 – 2017). Furthermore, EU countries have bilateral agreements with Tunisia that cover topics such as readmission or visa facilitation for Tunisian nationals. The use of a multitude of instruments mixing both the binational dimension and the dimension involving the European Union, only complicates the landscape and makes transparent management of migration with Tunisia difficult. Furthermore, it's important to emphasize that the terminology used in EU documents (draft action plan for Tunisia prepared by the Commission Services) to designate cooperation with third countries deserves to be criticized. Indeed, the concept of "migration partnership"¹ does not reflect the reality of the relationships and the imbalance in relations between the EU and third countries. Although this word may suggest that cooperation is balanced, in reality it only promotes a means of liberal management aimed at involving the countries of transit and/or departure to be proactive and to align themselves with the objectives of the countries of the destination.

¹ About this concept, see KUNZ (RAHEL), “Governing International Migration through Partnership”, Third World Quarterly, Vol. 34, No. 7 (2013), pp. 1227-1246.

1. Introduction

Migration governance cooperation between the EU and its member states and Tunisia is not a recent matter. Since the Tunisian revolution and war in Libya, the number of the unauthorized arrivals of asylum seekers including Tunisian nationals and asylum seekers/refugees from other countries arriving to Italy by boat increased. The political instability and the war in Libya led to mass displacement of Libyan and Sub-Saharan nationals to Tunisia. These factors are at the origin of the intensification of the EU's focus on migration cooperation in the country. The variety of the political, legal, and financial instruments consolidates this approach.

This Policy Brief highlights the main findings of research conducted for the project ASILE 2. Our approach was based on the evaluation of the instruments concluded between the EU and some of its member states and Tunisia related to asylum and mobility in order to determine if they are in line with international legal standards and international refugee law, and to determine the extent to which they lead to effective protection of refugees and other vulnerable populations in Tunisia. The analysis of these instruments led to a main conclusion which shows that EU instruments contribute to the containment of refugees' and asylum seekers and undermine their access to protection.

When examining alignment with the Global Compact of Refugees (GCR), the conclusion was that the instruments do not align with the global compact even though they refer to it. The EUTF-funded projects launched after 2018 make reference to the Global Compact for Refugees, but their alignment with it remains limited.

2. Methodology

The methodology adopted was based on a mixed method which combine a legal analysis of all instruments, and a qualitative analysis relying on interviews with experts, activists, and practitioners in the fields of migration and asylum in Tunisia.

The legal instruments analyzed consist mainly on the bilateral agreements between Tunisia and EU member states (Italy in particular, but also France, Switzerland, Germany, and Belgium) through which provisions on readmission, security cooperation in relation to border management and also on visa facilitation. Despite the bilateral character of these instruments, it was interesting to take them into account to be able to analyze the wider EU-Tunisia context for migration cooperation. The interviews³ were

2 Country Report, TUNISIA, Fatma Raach, Hiba Sha'ath, Thomas Spijkerboer, https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Tunisia-Country-Report-Final.pdf

3 The interviews were conducted with 11 participants from different profiles: Government/Ministry official, NGOs/activists, IOs/UN, Academics & Researchers, EU/CoE. See Country report, pp. 17-18, https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Tunisia-Country-Report-Final.pdf

complementary to the legal analysis of the various instruments concluded between Tunisia, EU Member States and the EU.

3. Key Research Findings

The evaluation of the Tunisia-EU cooperation in migration management was based on multiple evaluation criteria, such as the transparency of the preparation and implementation process, accountability and compatibility with human rights and refugee law.

Key Finding #1: Transparency

The assessment of the instruments' transparency was based on the examination of the negotiation and adoption processes. We questioned if the preparation, and the implementation of the instruments were conducted in a clear, accessible, and transparent manner. A common theme characterizing bilateral cooperation between Tunisia and EU member-states is the informal character, non-publication of the agreements/arrangements and the opacity of the conditions governing their practical implementation. The executive branch of the Tunisian government treats the topic as a security matter in order to avoid any public debate and only focus on the different areas of cooperation mentioned in the relevant instruments.

Security cooperation agreements and projects funded through financial instruments, were prepared with a higher level of secrecy. Those are usually designed by the Ministry of Interior in direct communication with its foreign counterparts.

With regards to the Action Plan and the Mobility Partnership⁴, civil society representatives we spoke to noted that although public consultations were held formally, these were carried out in order to *inform* rather than seek inputs from civil society representatives. The texts had already been prepared ahead of time and the most significant decisions were already in place.

Furthermore, according to our interviews and publicly available documents, the implementation process of all instruments, including the Action Plan, the Mobility Partnership, projects financed by the EUTF, and bilateral agreements, is not transparent.

While the Tunisia-France treaty was *negotiated* with a high degree of transparency, the implementation of mobility-related provisions within the treaty is far from transparent. For example, the visa allocation to Tunisian nationals is politicized and appears to be arbitrarily determined, with opaque decision-making processes regarding visa rejections

⁴ The press release about the establishment of the Mobility Partnership available in this link: file:///C:/Users/ASUS/Downloads/EU_and_Tunisia_establish_their_Mobility_Partnership.pdf

for Tunisian nationals, along with geopolitical considerations (such as Tunisia's purported unwillingness to readmit its own nationals) influencing the number of visas allocated to Tunisia (Le Monde 2021).

Key Finding #2: Accountability

In the ASILE Country Report on Tunisia examined whether there were *organizational*, *national*, and *international* mechanisms available into the instruments to make actors responsible in the cases of human rights violations committed within the framework of the instruments.

At the national level, some pathways to pursue accountability and enforce international human rights and refugee law do exist, but they are limited due to the fact that the country's legal framework lacks a specific asylum governance legislation. In cases related to the violation of asylum seekers' and refugees' rights or to detention, the judiciary instead refers to international or other sources of domestic law.

The national parliament does not play any role as an accountability mechanism. This is particularly so since the constitutional changes enacted in August 2022 by the Tunisian President to limit its powers. Prior to that, the parliamentarians' role as an accountability mechanism was very limited due the lack of a national legislation and experience in the application of international refugee law and human rights norms. In addition, their limited access to the texts of the instruments have reduced its contribution, given that parliament had a limited role in approving Tunisian cooperation arrangements that were prepared in the forms of Memorandum of Understanding (MoUs).

Key Finding #3: Compatibility with international law

The migration governance instruments make reference to international refugee and human rights law where applicable. But when implemented, such as for instance the EU-funded projects, they don't offer effective human rights and refugee protection. Civil society respondents interviewed for the purposes of the ASILE Country Report on Tunisia underlined how the EU's policy approach to migration, which has predominantly been security-focused, has mainly put emphasizes on strengthening border management, , deterrence measures and the expulsions of 'irregular migrants' often at the expense of refugee protection and human rights. Several practices show this incompatibility with international and regional legal standards, in particular those related to: Detention; readmission; and border management.

Detention

Immigration detention is widely practiced in Tunisia. Detention centers under the Ministry of Interior's authority are to be distinguished from the reception centers run by the Tunisian Red Crescent, IOM, and UNHCR in Zarzis and Medenine, where migrants returned from sea are accommodated on a temporary and short-term basis. As far as we could determine, the situation in these centers does not always amount to detention.

However, according to interview respondents and other public sources, immigration detention is practiced in several “retention” centers across the country, most notably Ouardia and Ben Guerdane centers (TN2; Bisiaux, 2020, p. 54; Middle East eye, 2020; OMCT et al., 2021). The centers are under the authority of the National Guard, which falls under the Ministry of Interior (Veron, 2020, p. 8) and they do not have a clear legal status in Tunisia.

Readmission of Tunisian nationals from Italy

According to respondents in civil society organizations, the repatriation of the Tunisian nationals from Italy, which occurred under the Tunisia-Italy readmission agreement, are violating international law and the refugee law. The repatriation procedure is merely violating the migrants’ rights. According to an organization that has worked on legal support for repatriated Tunisians, Tunisian nationals are subject to simplified repatriation procedures from Italy. This procedure do not allow for the possibility of effectively seeking asylum and do not provide for the chance for individual interviews and individual assessments, and therefore do not take personal circumstances into account before enforcing the expulsion procedures.

Border management: Search and Rescue (SAR), pullbacks and unlawful interceptions at sea

Under international maritime law, states have the obligation to protect the right to life. When the intercepted persons are in a situation of distress, these cases involve positive obligations of states to protect the right to life, which are operationalized in international maritime law in the obligation of search and rescue (SAR).

EU Member States are instrumentalizing this international obligation for migration management objectives. In fact, EU states fund North-African states so as to unlawfully intercept boats with Tunisians and third country nationals departing from their shores and expel them back to, in our case, Tunisia. EU funded operations have been considered as indirect pushbacks and therefore have been labelled as pullbacks (Nováky, 2018, pp. 197-209 and Cusumano, 2019, pp. 3-24). In the case of Libya, EU involvement in these interceptions/SAR operations/pullbacks has been criticized by UN institutions⁵ because Libya is not considered to be a safe place of disembarkation as required by international maritime law.

5 UNHCR position on the designations of Libya as a safe third country and as a place of safety for the purpose of disembarkation following rescue at sea, September 2020, <https://www.refworld.org/docid/5f1edee24.html>; IOM Statement: Protecting Migrants in Libya Must be Our Primary Focus, 2 April 2019, <https://www.iom.int/news/iomstatement-protecting-migrants-libya-must-be-our-primary-focus>; IOM and UNHCR Condemn the Return of Migrants and Refugees to Libya, Joint Statement IOM-UNHCR, 17 June 2021, <https://www.iom.int/news/iom-and-unhcr-condemnreturn-migrants-and-refugees-libya>.

In the ASILE Country Report covering Tunisia, our analysis of the distribution of EU funding related to migration shows that 57.8% of the EU's total expenditure in Tunisia for this theme is targeted towards enhancing border management capabilities, giving an indication that the containment of migrants and refugees to Tunisia is the EU's priority. At the same time, only 20% of EU migration funding for Tunisia is earmarked towards the protection of vulnerable migrants, refugees, and asylum-seekers and towards socio-economic integration (Veron, 2020, p. 14).

The EU-Tunisia cooperation impacted the Tunisian legal framework and made it more repressive in order to respond to the EU needs and priorities. A law ratified in 2004 amended the law on passports and foreign documents⁶, criminalizing irregular entry and exit from the country and any act of assistance to irregular migrants and asylum seekers. This law, one was passed soon after the conclusion of bilateral agreements between Italy and Tunisia, turning Tunisia into "EU's policeman".

This correlation between the national management of migration and the EU-centric objectives of reducing the number of unauthorized arrivals by sea is clear. After the Tunisian President hate speech of February 2023⁷ and the violence targeting sub-Saharan migrants, an MoU was concluded between Tunisia and the European Commission together with the Italian and Dutch governments. After that, the suspicion of irregular migration and the harassment by security actors through routine identity checks, and limitation of the freedom of mobility increased (Blaise, 2023). The civil society criticized the EU approach due to his support for the violation of the migrants' rights.

4. Recommendations:

The country report' recommendations⁸ focused already on these recommendations cited below:

The policy based on the strengthening of border control and containment at all costs has been counterproductive since it has not reduced the number of people who want to cross the Mediterranean. It has instead reinforced the Tunisian authorities' fear of playing the role of policeman of the external borders of the EU.

The EU should abandon the approach focusing on security and containment.

The Tunisian government's concern that EU pressures – which is already high with regards to securing Tunisia's cooperation for the readmission of Tunisians from the EU – would

⁶ Organic Law No. 2004-6 of February 3, 2004, amending and supplementing Law No. 75-40 of May 14, 1975, relating to passports and travel documents. JORT n°11 of February 6, 2004, pages 252 et seq.

⁷ See, Comité pour l'élimination de la discrimination raciale, Déclaration sur le discours de haine à l'encontre de migrants africains sub-sahariens en Tunisie, Déclaration 1 (2023).

⁸ https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Tunisia-Country-Report-Final.pdf

increase even more. Policymakers worry that the adoption of an asylum law – making Tunisia in theory a ‘safe country for return’ - would be instrumentalized pushing for the (re)admission of third-country nationals who departed Tunisia, along with the installation of offshore processing centers on Tunisian soil.

The EU should abandon its policy approach focusing on conditionality and issue-linkage.

The economic crisis and the fragility of political situation in Tunisia is already impacting the negotiation and with the EU and transforming the migration management to a pillar component of the deal with EU. The migration partnership should be considered as a cooperation in respect with the rule of law, democracy and human rights and not as a deal in order to reduce the number of migrants crossing the sea.

The EU should abandon the pressure and use of funds and development aid in order to impact Tunisia’s national management of migration.

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