

Frontex cooperation with third countries: examining the human rights implications

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While Frontex is currently under unprecedented examination for human rights violations at the EU's borders, its work beyond EU borders remains barely scrutinised.

Since its establishment in 2004, Frontex (the European Border and Coast Guard – EBCG – Agency) has become an important vehicle for implementing the EU's externalisation policies. Its arrangements with States of origin and transit are designed to prevent onwards movement towards the EU, and facilitate return and readmission. Using case-studies from Albania and Niger, we explore the different human rights risks, and draw out lessons relevant for protection-oriented practitioners and policymakers interested in the EU's adherence to the rule of law.¹

Frontex in the Balkans

Following growing numbers of arrivals in 2015, and pressure to 'close' the Balkan route, the Western Balkans has been a priority region for Frontex. The EU has concluded five Status Agreements with Albania, Bosnia-Herzegovina, Montenegro, North Macedonia and Serbia, allowing Frontex to carry out joint surveillance operations or rapid border interventions on their territories. (A Frontex operation in Albania in 2019 was the first to be hosted outside EU borders.)

In the case of Albania, regrettably, the Status Agreement does not provide the necessary human rights safeguards, and migrants have reported routine abuse by law enforcement officials, including violent pushbacks.² Firstly, it does not oblige Frontex or Albania to suspend or terminate an operation if there are fundamental rights violations. Secondly, although it requires both parties to have a mechanism to deal with complaints of fundamental rights violations by staff during operations, it is not clear if the mechanism covers complaints about any stage of the process or only appeals concerning unsuccessful applications; furthermore, the complaints mechanism lacks accessibility,

effectiveness and independence. It is not often used and to date has not responded with tangible results to any complaints. The mechanism is now subject to an inquiry by the EU Ombudsman. Thirdly, the Status Agreement gives Frontex staff executive powers, including the use of force and weapons, while awarding them immunity from civil and criminal prosecution. And, finally, there is a lack of transparency surrounding Frontex's operational plans with non-EU States, leaving few opportunities for scrutiny of the agency's actions or of its investigations into complaints.

Frontex in West Africa

The West African route through the Sahel region, a historical transit zone, is another main priority for Frontex, whose presence in the region was strengthened in 2010 with the launching of the Africa-Frontex Intelligence Community (AFIC). AFIC – a framework for cooperation with 31 African States – aims to enhance the effectiveness of border management by establishing and improving information sharing and communication channels, and by improving the operational capabilities of the beneficiary African States and their capacity to share strategic and operational risk analyses on migration flows, border security and cross-border criminality. In one such case within the framework of AFIC, Frontex cooperates with Niger by sharing information regarding border management, providing training and capacity building, and setting up integrated border management systems, including ensuring the interoperability of West-African databases and their accessibility by EU authorities.³

Migrants travelling through West Africa risk racketeering, arbitrary arrest and detention, deportation, and torture by State

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and non-State actors. Many of them die or are abandoned in Niger's desert region. The situation in Niger has worsened in the wake of structural changes in national legislation made in the name of EU cooperation. In particular, Niger, a traditional transit country, was the first sub-Saharan country to amend its national legislation to criminalise smuggling in 2015 and has adopted repressive measures of containment of migrants. Criminalisation of migration and closing of borders have led to an increase in smugglers' fees, and enhanced risks to individuals' safety as many are forced to take more dangerous 'underground' routes.⁴

A look into the future

Frontex occupies a central place in implementing the EU's externalisation policies and we can expect to see further expansion of the territorial scope of its activities in the Balkan and West African regions, including through joint operations. In addition, the new EU Pact on Migration and Asylum calls for further engagement with third countries to achieve their cooperation regarding readmissions. It envisages a much deeper involvement of Frontex in forming and supporting new partnerships with third countries.

A specific challenge we have identified in the course of our research is the lack of transparency regarding the work of the agency on the ground. The concealment of operational plans, combined with the narrow right of access to information in third countries, poses a considerable challenge; this challenge is even more acute in West Africa where the presence and activities of Frontex are barely known. This prevents local civil society from monitoring the agency, with the consequence that they cannot advocate effectively in favour of human rights and the interests of local economies and communities.

The cooperation of Frontex with third countries is tailored to the region. For Balkan countries, the road towards their accession to the EU is inextricably linked to cooperation in preventing migrant movements. This incentive makes them particularly receptive

to EU securitisation concerns, and is likely to encourage more direct operational cooperation as their geographical location allows reduced operational costs for Frontex.

In contrast, the agency's cooperation with West African countries is more indirect and practical. It focuses on capacity building, information sharing, and cooperation regarding the readmission into the country of those denied asylum in the EU. It is, nevertheless, of vital importance for the realisation of the EU's objective of deterring entry to EU States. This cooperation is extremely sensitive politically as it tends to go against the national interests of West African countries, which is why the EU employs visa liberalisation and development aid as incentives.

It is important to realise that different regional characteristics lead to different externalisation strategies and different forms of cooperation. Therefore, our policy, legal and advocacy solutions cannot be one-size-fits-all: they need to be region-specific.

Call for robust safeguards

In outsourcing border control, the EU aims also to outsource its responsibilities vis-à-vis refugee law and human rights protection. However, we can identify two types of risks in this approach. Firstly, there is the risk of violation of the civil-political and socio-economic rights of vulnerable people on the move and residents of third States. Secondly, the EU risks being held liable for rights violations, attributed to Frontex either directly or indirectly for its complicity in violations committed by third States. Therefore, any cooperation should be conditional upon an assessment of the human rights situation on the ground. This requires clear situational awareness and continuous monitoring and reporting. Here, the role of the European Parliament in the oversight and approval of such cooperation should be central. Finally, status and working agreements should be underpinned by the necessary human rights safeguards in ways that can be enforced and reviewed by the competent authorities, including courts, and by civil society in the EU and third countries.

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1. Our research is partially supported by the Transnational Institute and Statewatch, and includes interviews with national authorities, civil society and Western missions in Mali and Niger.

2. Border Violence Monitoring Network *Black Book of Pushbacks* www.borderviolence.eu/launch-event-the-black-book-of-pushbacks/

See also article on 'Pushbacks on the Balkan route: a hallmark of EU border externalisation' in this issue.

3. Zandonini, G (2020) 'Biometrics: The new frontier of EU migration policy in Niger', *Proceedings of the Conference, Externalisation of borders; detention practices and denial of the right to asylum*, Lagos

4. ARCI (2018) 'The dangerous link between migration, development and security for the externalisation of borders in Africa. Case studies on Sudan, Niger and Tunisia' www.statewatch.org/news/2018/jul/report-frontiere-2018-english-.pdf

Extraterritorial asylum processing: the Libya-Niger Emergency Transit Mechanism

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The Libya-Niger Emergency Transit Mechanism launched in 2017 successfully evacuated a large number of asylum seekers detained in Libya. However, the outcomes for many of the asylum seekers, and indeed for the three main partners (UNHCR, the EU and Niger), were far from what they had hoped for.

In late 2017, UNHCR, the European Union (EU) and Niger attracted international attention by presenting the Emergency Transit Mechanism (ETM) as a humanitarian solution to the well-documented torture and exploitation of asylum seekers and refugees in Libya. Implemented with funding from the EU Trust Fund for Africa, this programme proposed flying 3,800 vulnerable people from Libyan detention centres to Niger, Libya's southern neighbour. In Niger, their asylum claims would be determined before refugees could access resettlement or complementary pathways to Europe and North America. However, a significant number of evacuees received negative asylum decisions in Niger, which undermined the initial depiction of Niger as a space of 'transit'.

Rejections represent a core issue of the ETM and extraterritorial asylum processing at large, though it has not been widely discussed. Although Niger was declared a transit state, its role in filtering evacuees before their arrival in the Global North and the conflicting selection criteria between evacuation, refugee status determination and resettlement made rejections likely. Nigerien officials and ETM asylum seekers opposed to Niger's role as a holding country have called

on UNHCR and resettlement countries to live up to their international responsibilities.¹

A buffer state between Libya and Europe

The creation of the ETM was integral to European attempts to keep refugees and migrants at bay in Libya. With European funding and support, the Libyan coast guard intercepted refugees and migrants and detained them. UNHCR had partial access to the detention centres but its refugee protection and resettlement procedures were constrained by the civil war and limitations imposed by the government. The central idea of the ETM was thus to 'deterritorialise' these procedures – that is, to move them to a third State – in order to provide immediate protection and to select asylum seekers before their physical arrival in Europe or North America. In this sense, Niger also played the role of a buffer state that allowed for a selection process before migrants arrived at Europe's borders.

At the same time, the ETM made access to asylum for refugees in Libya partially possible. It was partial because only a certain proportion of those in detention and among the 50,000 registered with UNHCR in Libya were offered evacuation. Many