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Cooperation on Readmission in the Euro-Mediterranean Area and Beyond: Lessons Learned and Unlearned

Jean-Pierre Cassarino, Lorenzo Gabrielli, Delphine Perrin

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COOPERATION ON READMISSION IN THE EURO-MEDITERRANEAN AREA AND BEYOND: LESSONS LEARNED AND UNLEARNED

Jean-Pierre Cassarino
Coordinator

Lorenzo Gabrielli
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**COOPERATION ON
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EuroMeSCo has become a benchmark for policy-oriented research on issues related to Euro-Mediterranean cooperation, in particular economic development, security and migration. With 116 affiliated think tanks and institutions and about 500 experts from 30 different countries, the network has developed impactful tools for the benefit of its members and a larger community of stakeholders in the Euro-Mediterranean region.

Through a wide range of publications, surveys, events, training activities, audio-visual materials and a strong footprint on social media, the network reaches thousands of experts, think tankers, researchers, policy-makers and civil society and business stakeholders every year. While doing so, EuroMeSCo is strongly engaged in streamlining genuine joint research involving both European and Southern Mediterranean experts, encouraging exchanges between them and ultimately promoting Euro-Mediterranean integration. All the activities share an overall commitment to fostering youth participation and ensuring gender equality in the Euro-Mediterranean experts' community.

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Policy Study

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Executive Summary

This study investigates the working of the European Union (EU) readmission system in the Euro-Mediterranean and Euro-African contexts, as well as its implications for interstate cooperation, human rights observance and migrants' conditions. The three contributions interrogate the various consequences of cooperation on readmission as well as the factors that have fed into the expansion of a web of bilateral agreements. Informalisation – namely the adoption or stipulation of agreements, regardless of their typologies, which are outside formal regulatory channels and beyond parliamentary scrutiny – has widely affected patterns of cooperation while having detrimental consequences on migrants' rights and states' accountability, as well as unintended effects on international cooperation.

The common denominator shared by the authors lies in questioning the disproportionate policy attention to leverage, operability and effectiveness when addressing cooperation on readmission with non-EU countries. They propose rethinking the boundaries of the problem by emphasising that asymmetrical patterns of cooperation on readmission do not only result from unequal costs and benefits. Despite their asymmetry, they also remain meaningful for the state actors involved. This is a fact that has significantly shaped the relations between Southern Mediterranean countries and their European counterparts as well as between Southern Mediterranean countries and their African counterparts. The contributions show that the drive for informalisation can be conducive to human rights violations impacting the safety of individuals. Moreover, at a state level, unintended consequences and challenges can emerge from reinforced patterns of interdependence with illiberal state actors.

Having analysed the expansion of the web of bilateral agreements with non-EU countries located in the Mediterranean and in Africa, Jean-Pierre Cassarino shows that cooperation on readmission, in this specific geopolitical context, has been conducive to altered patterns of interdependence and interactions that extend well beyond the governance of migration. In this multi-layered readmission system, cooperation has been fraught with uncertainties. Informalisation has been presented by various European policy-makers as a solution to overcome such uncertainties. However, experience has shown that informal patterns do not address the zero-sum game that characterises cooperation on readmission. Moreover, decades of consultations on migration issues and iterative learning processes have allowed various non-EU countries in the Mediterranean and Africa to talk the talk of migration governance. Some of them also learned that their strategic position would strengthen their claims and preferences (be they related to migration or not) in their interactions with the EU and its member states. As a result of their re-

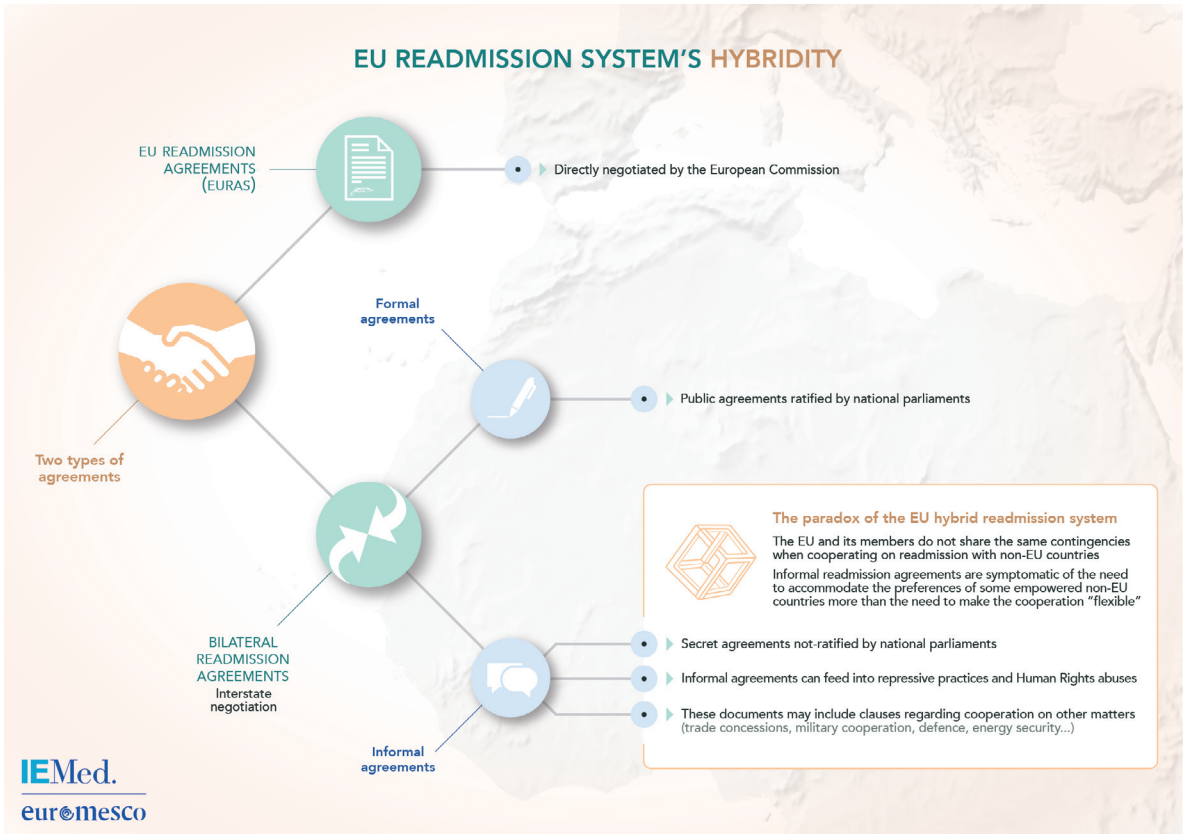
positioning and empowerment, some non-EU countries have been prone to express their own reverse conditionalities. The perceptible drive for informalisation is arguably symptomatic of the need to accommodate the claims of some empowered non-EU countries. Moreover, the pervasiveness of informal instruments, added to their controversial ordinariness in EU policy-making, reveals the limits of international cooperation on readmission.

In the second chapter, Lorenzo Gabrielli focuses on the Western Mediterranean route while explaining how Morocco has become a key player in the control of borders and migration, between Europe and Africa. Morocco epitomises the difficulties that the EU and its member states may encounter, at a certain stage, in their attempt to exert more leverage on non-EU countries. Actually, Morocco has skilfully capitalised on its engagement in the reinforced control of migration with the EU and its member states. More emblematically, it has managed to defend its own priorities while maximising the benefits of its engagement to achieve other goals of high politics. Lorenzo Gabrielli points out the need for Europe to abandon the current crisis-based approach to migration management. He calls for a more balanced approach able to pay due diligence to human rights observance and to the possibility of creating formal pathways for migration. Finally, his chapter provides ample evidence that cooperation on readmission barely constitutes a deterrent against irregular migration. Rather, cooperation on readmission has so far been used as a punitive instrument against migrants.

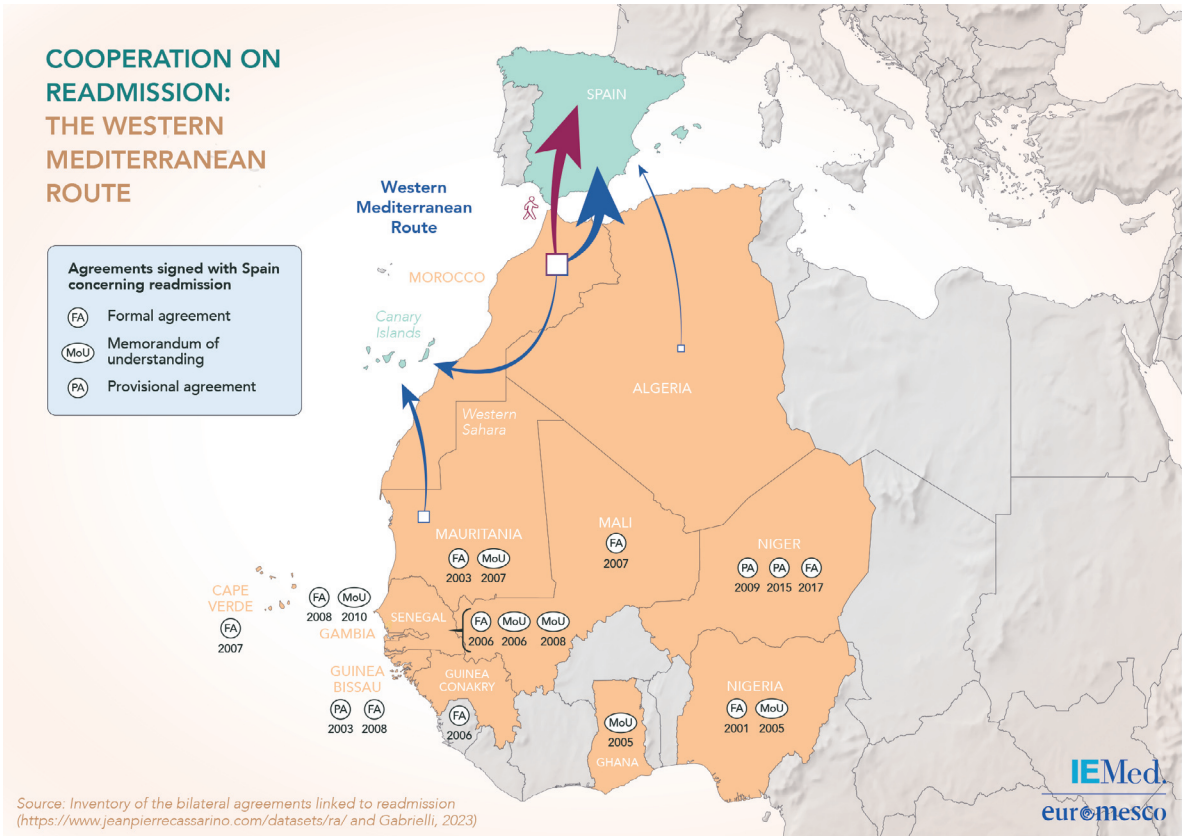
In the third chapter, Delphine Perrin tackles intra-African expulsions while exposing their working and detrimental effects on law-abidance, migrants' human rights, and the safety of people on the move. Not only have various African states' policies in the field of readmission been glaringly abusive and legally problematic, but they have also turned out to be intimately connected with the transfer of law-enforcement practices from the EU and its member states. She argues that such externalities have had indirect but fundamental implications for human rights violations and abuses in the region. Indeed, the EU and its member states are responsible for the multiplication of obstacles to migration in the Western and Central "Mediterranean routes" on the African continent. They feed into the consolidation of mechanisms aimed at controlling the movement of people while resulting in violence and social instability. There is no question that physical obstacles to mobility have become widespread in Northern and Western Africa, and even beyond. The constraints they generate throughout this geographical space have a double-edged effect. On the one hand, they have been conducive to lucrative lawless and immoral activities, at the expense of migrants' safety and dignity. On the other, the multiplicity of obstacles to mobility, with the financial and technical support of the EU and its member states, generates, in the short and long term, more suffering, and less safe, less orderly and less regular migration within Africa.

Each chapter provides policy recommendations addressed to stakeholders and policy-makers in Africa and Europe.

EU Readmissions System's Hybridity



Cooperation on Readmission: The Western Mediterranean Route



Source: Inventory of the bilateral agreements linked to readmission (<https://www.jeanpierrecassarino.com/datasets/ra/> and Gabrielli, 2023)

Introduction

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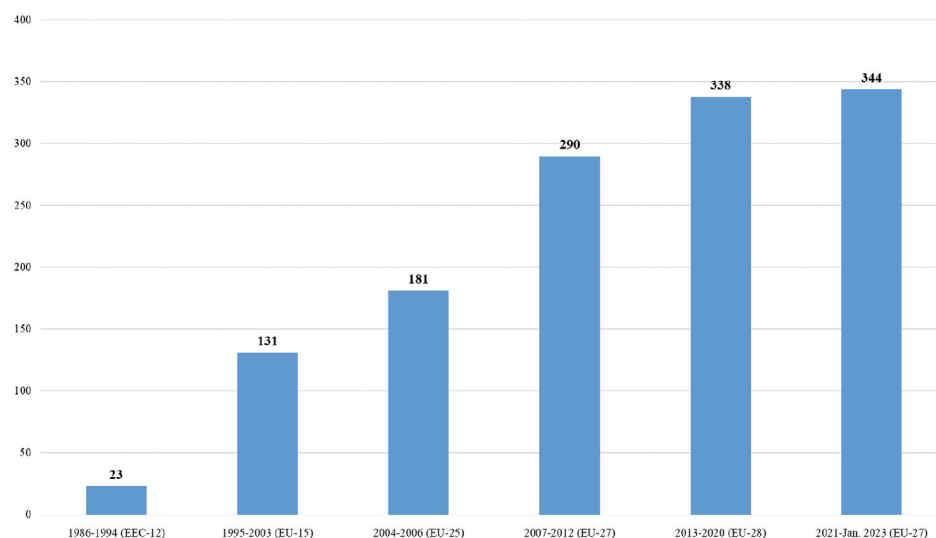
Research associate (IRMC, Tunis)



In European policy circles, effectiveness, leverage, operational objectives, sustainable return and practical arrangements are perhaps the most recurrent words that have been used, over the last two decades or so, to address cooperation on readmission with non-European Union (EU) countries. Readmission has powerfully pervaded migration talks in all countries of migration, be they European or not. Statewatch (2020) and EuroMed Rights (2021) have produced important collective research reports that demonstrate how the drive for readmission has affected migrants' fundamental rights and human dignity by

enhancing their exposure to social and economic vulnerability in destination countries. These effects have been documented by various scholars across disciplines and in various regional settings (De Genova, 2002; Walters, 2002; Fekete, 2005; Cassarino, 2007; Kanstroom, 2007; De Genova & Peutz, 2010; Carrera, 2016). To be sure, readmission has been for many years an issue of high politics in the EU. Numerous bilateral agreements have been stipulated between the EU member states and non-EU countries, across all continents. Today, they number 344 (see Figure 1).

Figure 1. Number of bilateral agreements linked to readmission concluded by the EU member states with non-EU countries, from the EEC-12 to the EU-27, January 2023



Source: Data compiled by the author. Inventory of the bilateral agreements linked to readmission. <https://www.jeanpierrecassarino.com/datasets/ra/> (Harvard Dataverse, <https://doi.org/10.7910/DVN/VKBCBR>).

Yet, despite the sharp increase in the number of bilateral agreements, the proliferation of regional consultations on migration management and border control, the (re)definition of indicators to assess the responsiveness of non-EU countries to cooperation on readmission, especially following the

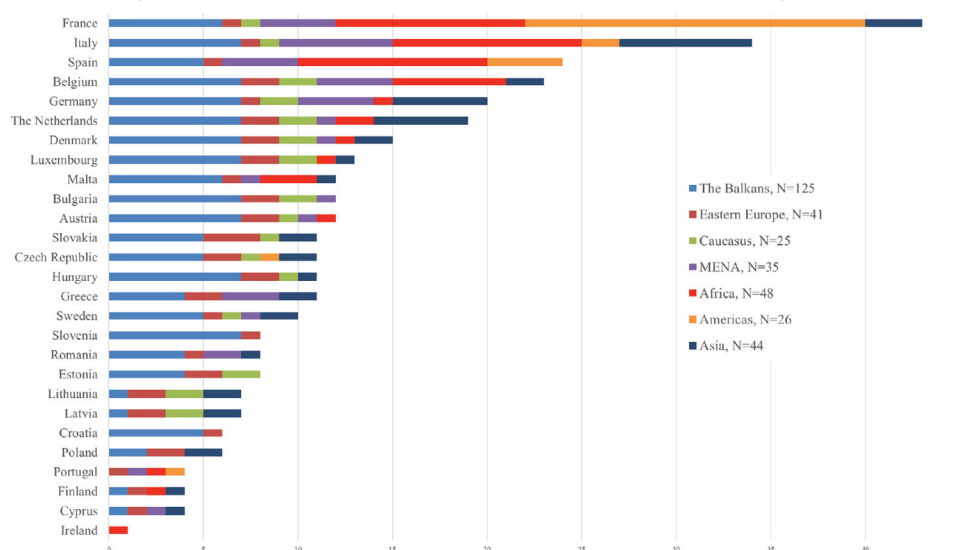
July 2029 recast of Visa Code, the adoption of Regulation 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI), which crystallised the leverage-based approach to migration of the Union, and the informalisation of cooperation on readmis-

sion at both supranational and intergovernmental levels, the overall number of readmitted foreigners has remained quite constant.

Stating that 344 agreements have been stipulated by the EU member states would never suffice to grasp and analyse the working of the EU readmission system. When disaggregating data (see Figure 2), we realise that more than half of the total number of bilateral agreements involve seven EU member states (namely, France, Italy, Spain, Belgium, Germany, the Netherlands and Denmark). In a similar vein,

France, Italy, Spain and Belgium account for up to 65% of the bilateral agreements stipulated with countries located in the Middle East and North Africa (MENA) region and in the rest of the African continent (N=83). Clearly, not all the EU member states are engaged on an equal basis in the expansion of the EU readmission system. Moreover, various transactions and cooperative patterns in international relations have contributed to structuring a broader domain of interactions whose implications go well beyond the migration management remit.

Figure 2. Geographical distribution of the bilateral agreements linked to readmission stipulated by the EU-27 member states with non-EU countries, January 2023, N=344



Source: Data compiled by the author. Inventory of the bilateral agreements linked to readmission. <https://www.jeanpierrecassarino.com/datasets/ra/> (Harvard Dataverse, <https://doi.org/10.7910/DVN/VKBCBR>).

Moreover, cooperation on readmission can be presented by a state actor as an end in itself, on the one hand, whereas cooperation on readmission may be viewed by another state actor as a means to reach other ends often unrelated to migration matters, on the other. This discrepancy is highly relevant when analysing the uncertainties affecting patterns of cooperation on read-

mission. In other words, Figure 2 only shows that numerous bilateral agreements have been stipulated by the EU member states with non-EU countries, at a global level, not that such agreements are being fully implemented.

At the EU level, evidence-based policy-making (EBPM) has been supplied with a view to informing policy-makers about “what

works and what does not" (European Commission, 2023, p. 5). EBPM has been mobilised to optimise "effectiveness", an elusive, if not undefined, notion par excellence. Attempts to draw on the bilateral experiences of some member states have even been explored in the past to broker a new deal with non-EU countries (European Commission, 2006, p. 9), without considering whether the EU and its member states share the same contingencies and strategic priorities in cooperating with non-EU countries. Think tanks and experts have been mobilised to produce evidence-based expertise on how to enhance cooperation on readmission. Last but not least, the Court of Auditors (2019) produced a special report focusing exclusively on the EU's readmission cooperation with non-EU countries. The report relies heavily on data and indicators provided by the International Organization for Migration (IOM), the European Border and Coast Guard Agency (Frontex), Eurostat, and on interviews with European stakeholders as well as contacts with "the embassies of three third countries to obtain their views on readmission cooperation with the EU" (Court of Auditors, 2019, p. 15). No visit to any non-EU country was organised. The special report concludes by supporting the adoption of EU-wide informal agreements on readmission with non-EU countries. The authors even assert that "EU actions to facilitate readmission were relevant, but results were uneven and *the impact could not be assessed [emphasis mine]*" (Court of Auditors, 2019, p. 38). Actually, such conclusions echo the decision made in 2016 by the European Commission (EC) to promote the stipulation of EU-wide informal agreements on readmission with non-EU countries, following the adoption of the New Partnership Framework (European Commission, 2016a).

Indicators of performance and ratios have been frequently used in the hierarchy of evidence. This is not surprising. Indicators,

including their purported objectivity, give the false illusion that EBPM can be protected from propaganda. They allow the consistency of a system to be erected as a major objective to be achieved, while defying any form of interrogation and doubt. It is no accident that, over the last 20 years, the objectives of the EU readmission policies – justified by such slogans as "we need readmission agreements to fight irregular migration" and "readmission should serve as a deterrent to help reduce unsafe and irregular migration" – have remained the same, unimpaired by the reality on the ground. More importantly, the reliance on indicators and ratios contributes to depoliticising the priorities and interests of non-EU countries, as well as their agency, irrespective of their level of cooperation. The latter are just expected to be responsive. Otherwise, they are deemed "reluctant" or simply uncooperative.

The three contributions contained in this study have opted to go beyond the recurrent reference to reluctance and uncooperativeness by shedding light on the agency of non-EU countries located in the Southern Mediterranean and in Africa. They interrogate the various consequences of cooperation on readmission as well as the factors that have fed into the expansion of a system having detrimental implications for human rights observance and states' accountability, as well as unintended effects on international cooperation.

The common denominator shared by the authors lies in questioning the disproportionate policy attention to leverage, operability and effectiveness when addressing cooperation on readmission with non-EU countries. They propose rethinking the boundaries of the problem by emphasising that asymmetrical patterns of cooperation on readmission are not only based on unequal costs and benefits. Despite their asymmetry, they also remain meaningful for the state actors involved. This is a fact that has significantly shaped the relations

between Southern Mediterranean countries and their European counterparts as well as between Southern Mediterranean countries and their African counterparts. Consequently, we need to bear in mind this grammar. Sometimes, interactions can be

conducive to reinforced interdependence, which, in turn, can lead to new unintended consequences and challenges. As shown in this study, cooperation on readmission in the Mediterranean and African contexts is a case in point.

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Multi-layered Cooperation on Readmission in the Euro-Mediterranean and Euro-African Areas

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Introduction

Over the last three decades, the academic literature on the readmission of irregular migrants and rejected asylum seekers has grown substantially across disciplines. Readmission has become a major crossover issue, weaving its way through various bilateral talks ranging from the fight against terrorism to energy security, visa policies, development aid, social protection, and other diplomatic and strategic matters.

Predictably, given the normative approach which initially shaped academic debates about whether or not the re-acceptance of irregular nationals constitutes an obligation under customary international law, European lawyers became the most prominent commentators on readmission (Goodwin-Gill, 1975; Hailbronner, 1997; Noll, 1999; Strik, 2010; Coleman, 2009; Peers et al., 2012; Carrera, 2016; Chetail, 2016; Giuffrè, 2020; Basilien-Gainche, 2020; Majcher, 2020; Vitiello, 2020; Algostino, 2023). A powerful normative narrative was a prerequisite to guiding scientific debates and policy talks on readmission at a time when the securitisation of migration and asylum policies was gaining momentum. It also coincided with the desire of the European Union (EU) to technically legitimise the rules and administrative procedures aimed at facilitating the expulsion of irregular migrants and rejected asylum seekers from its territory.

As the web of bilateral agreements stipulated by the EU member states was expanding across all continents, while involving highly heterogeneous countries, political scientists and international relations scholars started to address state actors' motivations to cooperate on readmission as well as their respective contingencies and vested interests, unequal costs and benefits and uncertainties in transactions (Cassarino, 2007; Lavenex & Wichmann, 2009; Trauner, 2014; El Qadim, 2015; Adam et al., 2020; Stutz, 2022). More recently, anthropologists and

sociologists (Schuster & Majidi, 2013, 2015; Fekete, 2011; Kleist & Thorsen, 2017; Alpes et al., 2017; Khosravi, 2018) have analysed the consequences of readmission policies on migrants' safety and psychosocial conditions, in the broadest sense, after their expulsion.

The vast academic literature on readmission that has developed across various disciplines demonstrates that cooperation in international systems, power, human rights observance as enshrined in EU and international laws, geopolitics and, last but not least, migrants' conditions and aspirations closely interact when it comes to understanding the working of the EU readmission system. To be sure, adopting a legalistic approach to readmission would be a poor guide to why states sometimes cooperate on readmission and other times they do not. In a similar vein, focusing exclusively on interstate relations would never suffice to explain why some patterns of cooperation appear to be more performant than others. This study sets out to demonstrate that cooperation on readmission is multi-layered. Also, its implications go well beyond the mere definition of legal commitments, let alone mutual interests and incentives to cooperate. In sum, cooperation on readmission, be it bilateral or EU-wide, is embedded in a broader context fraught with uncertainties that need to be captured. Decades of research on readmission have been crucial for identifying such uncertainties and their implications while drawing some lessons from the past.

Attributes of the EU readmission system

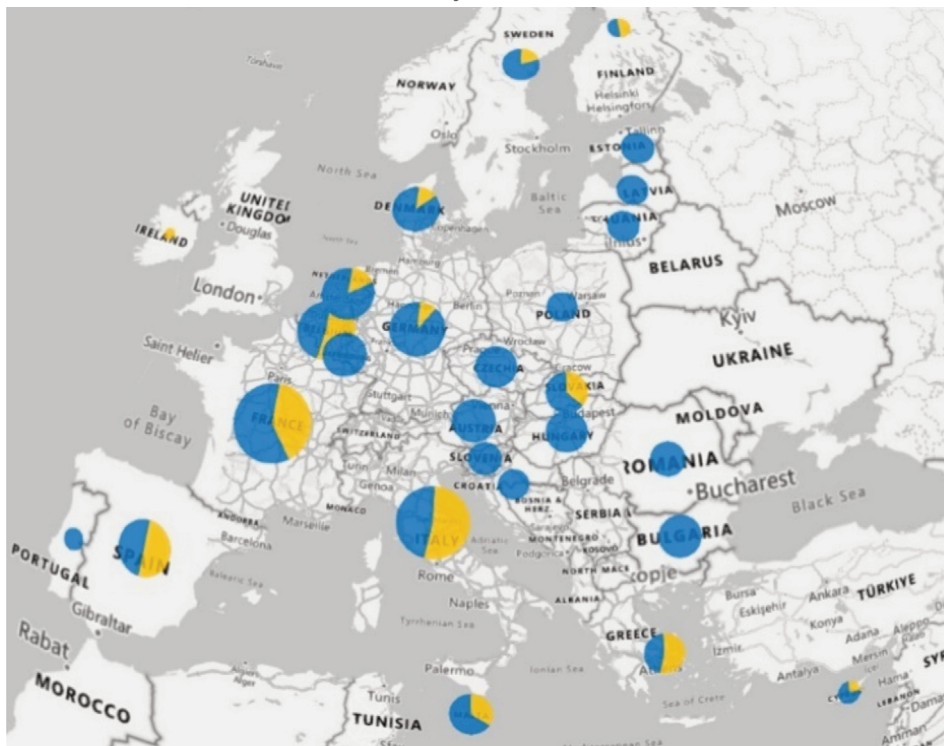
The uniqueness of the EU readmission system lies in its double hybridity. Since the entry into force of the 1999 Treaty of Amsterdam, it is at once supranational and intergovernmental given the competence shared by the EU with its member states

in the field of readmission. At a supranational level, the Council grants the European Commission (EC) the exclusive mandate to negotiate a European (or supranational) readmission agreement (EURA) with a given non-EU country. Once the Council has granted a mandate to the Commission to negotiate a EURA, this mandate takes precedence. The mandate of negotiation granted to the Commission thus supersedes any future bilateral attempt by a member state to conclude an agreement on readmission with the non-EU country. It does not, however, supersede earlier bilateral agreements concluded by the member states with the non-EU country as long as such agreements are deemed compatible with

the terms of the new EURA concluded with the given non-EU country. These preliminary remarks are critical for understanding the conditions under which the Commission shares its competence with the member states in the field of readmission and exercises its exclusive power to negotiate EURAs.

This system is also hybrid because its expansion across all continents has been supported by agreements which are standard and nonstandard. Standard agreements are formally stipulated and ratified by the contracting parties with a view to defining the latter's reciprocal obligations in dealing with readmission procedures. Nonstandard agreements are informal agreements aimed at dealing,

Figure 3. Agreements linked to readmission stipulated by the 27 EU member states with non-EU countries worldwide. January 2023, N=344



Note: The larger the circle the more intense the country's engagement in the EU readmission system. Blue colour=Standard readmission agreements. Yellow colour=Nonstandard agreements linked to readmission.

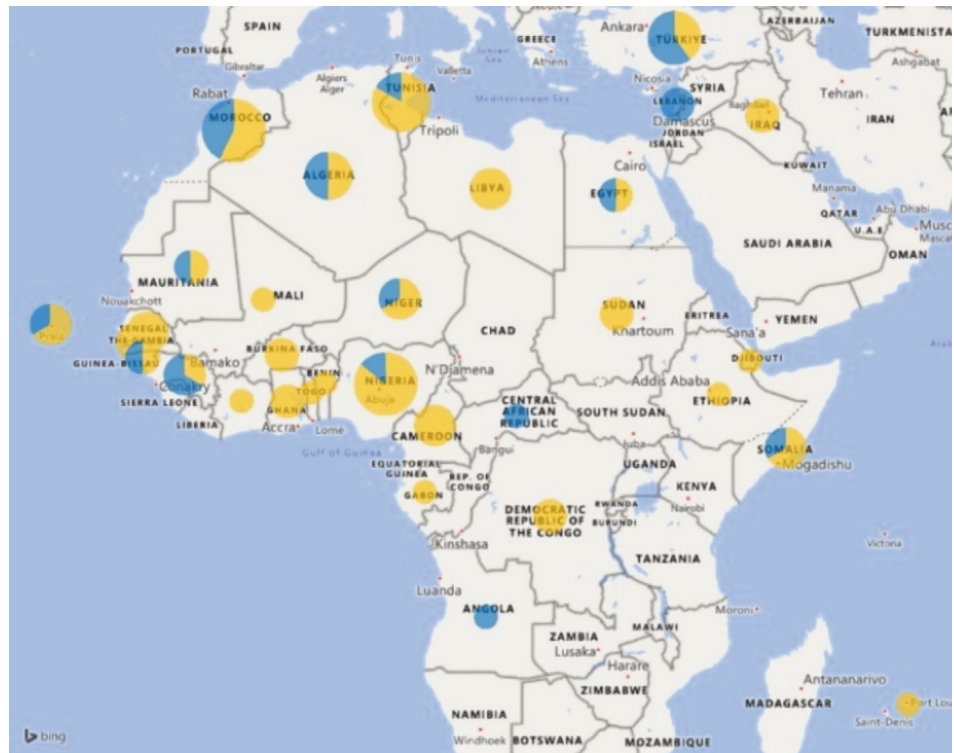
Source: Data compiled by the author. Inventory of the bilateral agreements linked to readmission. <https://www.jeanpierrecassarino.com/datasets/ra/> (Harvard Dataverse, <https://doi.org/10.7910/DVN/VKBCBR>).

among many others, with readmission matters. They are often beyond public purview. They are applicable upon signature and require no ratification. Agreements *linked to* readmission include both standard and nonstandard agreements.

At the outset, it is important to underline that various EU member states have excelled in the conclusion of nonstandard

agreements in the field of readmission (see Map 1), especially with countries located in the Southern Mediterranean and in Africa. Nonstandard agreements predominate their cooperative patterns (see Map 2), be they based on administrative arrangements, memoranda of understanding (MoU), exchanges of letters, or police cooperation agreements, including a clause on readmission.

Figure 4. Agreements linked to readmission stipulated by countries in the Southern the Mediterranean and in Africa with the 27 EU member states. January 2023, N=83



Note: The larger the circle the more intense the country's engagement in the EU readmission system. Blue colour=Standard readmission agreements. Yellow colour=Nonstandard agreements linked to readmission.

Source: Data compiled by the author. Inventory of the bilateral agreements linked to readmission. <https://www.jeanpierrecassaino.com/datasets/ra/> (Harvard Dataverse, <https://doi.org/10.7910/DVN/VKBCBR>).

The drive for informalisation: Implications and democratic challenges

Informal instruments are often justified in official discourses by the need for “more ef-

fectiveness” and “practical cooperation”. The conventional wisdom is that they are designed to sustain a modicum of international cooperation despite uncertainties. While being outside formal regulatory channels, they avoid ratification procedures

and, consequently, bypass parliamentary oversight.

By all accounts, the lack of parliamentary oversight in the field of readmission constitutes a key democratic challenge to ensure the rule of law and due process (Carrera, 2019; Strik, 2019; Giuffré, 2020; Ott, 2020), especially when it comes to complying with rules of identification and redocumentation of migrants, interagency cooperation, the protection of personal data, responsibility sharing (Roman, 2022), exchange of information between each member state and a non-EU country and, last but not least, with procedural safeguards (Basilien-Gainche, 2020; Algostino, 2023). Lack of parliamentary oversight is tantamount to informalisation (Cassarino, 2022), be it at a national or EU level, just as informalisation is tantamount to lack of information about the factors that motivated the cooperation and determined its rationale. Actually, information about the signatories' intentions is crucial for identifying the latter's priorities lying behind the stipulation of an informal deal. Experience has shown that informal deals result from a broader domain of cooperation including other elements often unrelated to migration matters, such as trade concessions, energy security, defence and military cooperation, to mention but a few. Such elements have implications for citizens' civil, economic and political rights in the broadest sense. For example, the text of an informal deal on readmission may include clauses on the provision of military equipment or technologies of mass surveillance (Cassarino, 2022, p. 5). Incentives are clustered together to stimulate the cooperation of a given state in the field of readmission.

However, such a clustering raises a host of concerns regarding the broader implications of an informal deal for the protection of human rights in a given state and for the prevention of injustice and human rights abuses. Crucially, these considerations acquire a strong democratic significance that

no one can dismiss offhand, especially when realising that various informal deals linked to readmission have been stipulated to date with a number of non-EU countries in the Southern Mediterranean and in Africa having poor human rights records. As the European Ombudsman cogently argued in a recent decision, the provision of surveillance technologies and military equipment to non-EU countries with major governance issues generates "a risk for human rights of individuals in these countries, as well as for the ability of the EU to fulfil or realise its human rights obligations" (European Ombudsman, 2022, p. 5). Incidentally, informalisation obscures an array of repressive practices and human rights abuses that are outwardly disguised as "the fight against irregular migration". Such practices and abuses may paradoxically feed into the factors that prompt migrants to leave. More problematically, when no information or solid evidence about the signatories' intentions and reciprocal commitments can be brought to light, no accountability mechanism can be properly identified.

Does the drive for informalisation lead to higher numbers of readmitted persons? Are informal readmission agreements more "effective" in absolute terms than formal ones? Recent comprehensive research carried out by Philipp Stutz (2022) has evidenced that informal agreements do not add much "effectiveness" compared with formal readmission agreements. Arguably, informal agreements do not solve the ubiquitous problem of unequal costs and benefits that invariably characterises cooperation on readmission. Nor do they tackle the uncertainties that hinder the full implementation of the signatories' commitments. Such uncertainties are detailed in the following section.

Uncertainties

Firstly, two states may express their interest in cooperating on readmission without hav-

The lack of parliamentary oversight in the field of readmission constitutes a key democratic challenge to ensure the rule of law and due process

ing, however, the same goals. Cooperation on readmission is often grafted onto a broader framework of interactions that will determine its scope. None of the agreements reported on Map 2, be they formal or informal, has been immune to the gap between reciprocal commitments and implementation. Cooperation on readmission is rarely an end in itself. Rather, it constitutes a means to achieve other goals of high politics. This explains why, all too often, an agreement may be stipulated and ratified without being fully implemented. Conversely, an agreement may not be ratified and be conducive to higher numbers of readmitted persons, arguably because its stipulation took place as a result of transactions that responded to the goals sought *at the time* by a signatory country. Finally, an agreement may be hailed as a great achievement by the signatories and subsequently be, the next year, totally impractical because the conditions needed to achieve specific goals have not been met. Consequently, grafting readmission onto a broader framework of cooperation, including other strategic matters unrelated to migration (e.g., trade concessions, international recognition, visa facilitation, process of bilateral reconciliation), has often been viewed as a possible solution to offset the aforementioned unequal costs and benefits linked with cooperation on readmission.

Secondly, cooperation on migration governance, especially on readmission, has been conducive to reinforced patterns of interdependence, which expand well beyond the migration domain. This aspect is now well documented by various scholars across disciplines (Cassarino, 2007; Greenhill, 2010; Paoletti, 2011; İçduygu & Aksel, 2014; Wolff, 2014; El Qadim, 2015; Tsourapas, 2018; Del Sarto, 2021).

Studying interdependence is one thing. Analysing the “consequences of interdependence” (Baldwin, 1980, p. 488) in politics is another. Two actors may decide to continue their cooperation despite its

ineffectiveness or because there is no likely alternative. Interrupting the cooperation on readmission might bring more losses (both internationally and domestically) that European political leaders would prefer to avoid. Loss avoidance, as analysed by Janice Gross Stein (1990), is a useful concept to explain why cooperation continues regardless of whether or not it is conducive to the expected outcomes. The issues at stake justifying cooperation may be framed differently by the actors involved. It is also useful to understand that the intentions of the contracting parties may vary over time as they learn from each other or as a result of new (unpredicted) circumstances.

Cooperation on readmission with Mediterranean non-EU countries is a case in point. Mutual interests never stimulated their responsiveness to bilateral cooperation on readmission. Nor has the prescriptive duty of countries of origin to re-accept their own nationals been a solid explanatory variable. Rather, cooperation on readmission has occurred because it has been embedded into a broader framework of interactions that has affected patterns of cooperation. Mediterranean non-EU countries quickly realised that the strong emphasis put by European leaders on the fight against irregular migration and on border controls would potentially reinforce their leverage on their European counterparts. There is no question that the abovementioned embeddedness of migration governance coupled with Mediterranean non-EU countries’ growing awareness of their empowered strategic position have jointly shaped the scope and intensity of the cooperation on readmission and, more broadly, on the management of international migration (Cassarino, 2007; Trauner, 2014; El Qadim, 2015; Adam et al., 2020). Both awareness and embeddedness can be analytically treated as consequences of interdependence.

An additional consequence closely linked with the consequences of interdependence lies in the manifestation of reverse con-

Cooperation on migration governance, especially on readmission, has been conducive to reinforced patterns of interdependence

ditionalities (Cassarino, 2007, 2018a; Gazzotti, 2022). Reverse conditionalities result from a highly interconnected system of relations where international actors (be they state or non-state actors) are empowered enough to: 1) produce and set the conditions of their responsiveness to cooperation; 2) make such conditions possible and acceptable by other actors; and 3) reverse the flow of diffusion. Reverse conditionalities become so contingent that the other actors have no option but to accommodate them with a view to ensuring a modicum of cooperation. Consequently, they result from a process that shifts the focus away from the centre to the periphery. Reverse conditionalities shed light on the exposure of a state actor (Actor A) to the collateral demands and conditions of another one (Actor B). This exposure is not the outcome of interdependence alone. Rather, it results from a learning process whereby Actor B realises (or becomes aware of) her strategic and unparalleled position in the bilateral cooperation with Actor A. What needs to be achieved through the bilateral cooperation between Actors A and B (namely, cooperation on readmission through the stipulation of an agreement) turns out to be so paramount for Actor A that the latter will gradually agree to accommodate the exigencies of the former, at the cost of contradicting her values or principles. Moreover, given its asymmetric costs and benefits, cooperation will be ensured thanks to incentives (be they material or immaterial). For exerting pressure to bear on Actor B would be unrealistic, if not counterproductive, given Actor B's strategic and empowered position. Often, irrespective of the full implementation of the cooperation, the stakes at play lie in acting, politically speaking. Indeed, for the sake of loss avoidance, a modicum of cooperation needs to be achieved with a view to showing to Actor A's constituencies that something is being done to protect them from externalities. Such developments

stem from a social and political context marked by rising populism and the ascent of radical political parties.

Arguably, the drive for informalisation that has gained momentum, over the last 20 years, in the field of readmission constitutes a good indicator of how the EU and its member states have, as it were, accommodated, if not internalised the preferences and subjectivities of some strategic non-EU countries, especially those located in North Africa. Both the EU and its member states have realised that they have had to recalibrate their cooperative patterns and framework of interactions with the demands of some empowered non-EU countries in order to ensure a modicum of cooperation on the containment of irregular migration flows (Cassarino, 2018a; Lemberg-Pedersen, 2019).

Against this background, European governments (and by the same token the EU) have been urged to act with a view to showing to their electorates that something is being done to respond to external shocks, whether or not their response has been adequate. The entanglement of domestic and international politics reflects a two-level-games logic (Putnam, 1988) that adds much to our findings. To be sure, informalisation in the field of readmission is an old practice that is gaining momentum in the external relations of the EU and its member states. At the same time, however, the pervasiveness of informal instruments, added to their controversial ordinariness in EU policy-making, reveals the limits of international cooperation on readmission. Thirdly, uncertainties also pertain to foreigners' fundamental right to legally challenge a removal order, thereby leading to the suspension of the expulsion procedure. This right is enshrined in a number of major international instruments, including the EU Return Directive and the Asylum Procedure Directive. Accordingly, a judge may consider that the readmission procedure was illegal or at variance with the international obliga-

tions of the requesting state. These factors go beyond the parties' willingness to cooperate. Nonetheless, they have consequences on the scope of the cooperation. Fourthly, uncertainties relate to exogenous and unexpected factors that oblige the contracting parties to temporarily suspend their cooperation on readmission. Emblematically, this happened in 2020-2021 when, as a result of the COVID-19 pandemic, various planned expulsions from Europe had to be suspended for sanitary reasons. The abovementioned four elements shed light on the reasons for which cooperation on readmission is ripe with uncertainties. Note that such uncertainties apply to both formal and informal agreements. Various member states have been familiar with these uncertainties, especially in their interactions with countries located in the Southern Mediterranean and in Africa. It is for this reason that a readmission agreement, be it formal or not, is seldom fully implemented in the long term, unless the costs of the agreement are offset by the perspective of the would-be accession to the EU bloc, as in the case of the Balkan countries.

In this complex international system, informal patterns of cooperation have been normalised with a view to responding to heightened uncertainties. Concomitantly, they have been designed to address the empowerment of some non-EU countries by accommodating their claims and preferences. In sum, empowerment, interdependence, accommodation and reverse conditionalities all intersect to delimit a complex international system where leverage is far from being unidirectional.

In search of a coherent and unified EU readmission policy

Yet, despite its inherent uncertainties and often problematic implementation, coop-

eration on readmission appears firmly high on the agenda of the EU, being considered as a desirable and strategic tool for migration management.

Readmission constitutes a core aspect of various international and bilateral talks on migration with Mediterranean and African non-EU countries. Conditionalities, whether hard or soft, and incentives have been introduced. Strategic programmes and action plans have been adopted. For many years, various Council meetings repeatedly mentioned the need for “leverage, by using all relevant EU policies, instruments and tools, including development and trade” (see, for example, European Council, 2016, p. 2; 2017, p. 2; 2018, p. 1) as well as “positive and negative incentives for improving cooperation on return and readmission” (Council of the European Union, 2016, p. 2; 2016a, p. 2). More recently, in June 2021, the adoption of Regulation 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI) called for a leverage-based approach to migration by the Union, especially in its external relations with third countries. Their “effective cooperation” is presented in the Regulation as an integral element of the NDICI, which is designed to “maximise synergies and to apply the necessary leverage [emphasis mine]” (OJEU 2021, L 209/9). In a similar vein, a whole chapter is devoted to cooperation on readmission in the Pact on Migration and Asylum (PMA), dated September 2020, as well as in the Post-Cotonou Partnership Agreement between the EU and the Organisation of African, Caribbean and Pacific States (OACPS) negotiated in April 2021 (Carbone, 2022), to mention but a few recent examples. In January 2022, the *Mécanisme opérationnel de coordination des actions pour la dimension externe des migrations* (MOCADDEM) called for a political and diplomatic approach to the governance of migration able to reinforce the coordination of its external dimension, especially in the

field of readmission. MOCADDEM is also deemed to propose any kind of leverage to respond to this core objective.

The issue of “flexibility”

Beyond the plethora of mechanisms, policies, programmes, action plans and strategies that have been put forward, over the last 20 years, to strengthen cooperation on readmission with non-EU countries (especially those located in the Southern Mediterranean and in Africa), informalising cooperation on readmission has been the new mantra. A recent non-paper on a “Strategic Approach on Readmission Agreements and Arrangements,” issued by the Commission Services in April 2022, repeatedly called for more flexibility “to incorporate political commitments”, to negotiate and strengthen incentives. The non-paper even suggested that “it could be beneficial to include in the mandate [granted by the Council to the Commission to negotiate and conclude EURAs] a review clause to assess, after a certain number of years, the opportunity to continue the negotiations or review elements of the mandate [granted to the Commission]” (Council of the European Union, 2022, p. 7). This statement reflects a reconsideration of the EU approach to a common readmission policy which has progressively veered from a normative approach towards a flexible one (Cassarino, 2018; Carrera, 2019; Strik, 2019; Santos Vara, 2019; Casolari, 2019; Wessel, 2021). What is going on? To use a musical metaphor, there has been a transition from a monophonic texture whereby the EU was expected to speak about readmission with one dominant voice in its external relations to a polyphonic texture with simultaneous lines of independent melodies. Under these circumstances, achieving harmony is a daunting challenge. Actually, this unprecedented variation, at the EU level, has been conducive to dissonant vibrations jeopardising the

initial project of consolidating a European common readmission policy in line with the EU treaties and international law (Cassarino, 2022). As Sergio Carrera rightly remarked, such a reconsideration may “increase the inconsistencies and, arguably, further undermine the credibility of the EU’s readmission policy” (2016, p. 47) in its claim to build common and harmonised procedures. All the more so when realising that the drive for flexibility turns the EU into a facilitator (not a conductor) that lays the groundwork for variegated bilateral cooperative patterns (Vitiello, 2020, p. 159-160).

Against this backdrop, one is entitled to wonder how flexibility is compatible with the recurrent objective to build a coherent and unified EU readmission policy. Also, as mentioned earlier, the extent to which the drive for flexibility will overcome the ubiquitous problem of unequal costs and benefits that invariably characterises cooperation on readmission remains highly questionable.

Leverage: lessons learned and unlearned

With the recent creation of MOCADDEM, the mobilisation of “any available leverage” (financial support, visa policy) seems to be viewed as the core solution for ensuring the full implementation of existing readmission agreements. Exerting more leverage on non-EU countries to induce their cooperation is a clear priority. This aspect was central in Chapter 6 of the new Pact on Migration and Asylum, which also proposed to create a conditionality between cooperation on readmission with non-EU countries and the issuance of visas to their nationals (Cassarino & Marin, 2022). This conditionality was legally established in the 2019 revision of the Visa Code Regulation together with a series of provisions. The text of the 2019 revision of the Visa Code stressed their “politically sensitive nature

With the recent creation of MOCADDEM, the mobilisation of “any available leverage” (financial support, visa policy) seems to be viewed as the core solution for ensuring the full implementation of existing readmission agreements

and their horizontal implications for the member states and the Union" (OJEU, 2019, p. 27).

Moreover, the revision of the Visa Code Regulation mentions that the Union will strike a balance between "migration and security concerns, economic considerations and general external relations." Consequently, measures (be they restrictive or not) will result from an assessment that goes well beyond migration management issues. The assessment will not be based exclusively on the so-called "return rate" that has been presented as a compass used to reward or blame non-EU countries' cooperation on readmission. Other indicators or criteria, based on data provided by the member states, will be equally examined by the Commission (OJEU, 2019, p. 37). These other indicators pertain to "the overall relations" between the Union and its member states, on the one hand, and a given non-EU country, on the other. This broad category is not defined in the 2019 revision of the Visa Code, nor do we know what it precisely refers to.

Linking cooperation on readmission with visa policy is not new. It was first introduced at a bilateral level by some member states. For example, cooperation on redocumentation, including the swift delivery of laissez-passers by the consular authorities of countries of origin, was at the centre of bilateral talks between France and North African countries. In September 2005, the French Ministry of the Interior proposed to "sanction uncooperative countries [especially Morocco, Tunisia and Algeria] by limiting the number of short-term visas that France delivers to their nationals."¹ Sanctions turned out to be unsuccessful not only because of the diplomatic tensions they generated – they were met with strong criticisms and reaction on the part of North African countries – but also because the ratio be-

tween the number of laissez-passers requested by the French authorities and the number of laissez-passers delivered by North African countries' authorities remained unchanged.

At the EU level, linking cooperation on readmission with visa policy has been in the pipeline for many years. Twenty years ago, in its Community Return Policy, the EC reflected on the positive incentives that could be used in order to ensure non-EU countries' constant cooperation on readmission. The Commission observed in the abovementioned communication that, actually, "there is little that can be offered in return. In particular, visa concessions or the lifting of visa requirements can be a realistic option in exceptional cases only; in most cases it is not" (European Commission, 2002, p. 24). Therefore, the Commission set out to propose additional incentives (e.g., trade concessions, technical/financial assistance, and additional development aid).

In a similar vein, in September 2015, after years of negotiations and failed attempts to cooperate on readmission with countries in the Southern Mediterranean, the Commission remarked that the possibility to use Visa Facilitation Agreements as an incentive to cooperate on readmission is limited in the South "as the EU is unlikely to offer visa facilitation to certain third countries which generate many irregular migrants and thus pose a migratory risk. And even when the EU does offer the parallel negotiation of a visa facilitation agreement, this may not be sufficient if the facilitations offered are not sufficiently attractive" (European Commission, 2015, p. 14).

More recently, in March 2018, in its impact assessment accompanying the proposal for an amendment of the Common Visa Code, the Commission itself recognised that "better cooperation on readmission with reluctant third countries cannot be

¹ Excerpt from the discourse of former Minister of the Interior, Nicolas Sarkozy, addressed to French regional governors, dated Friday 9 September 2005.

obtained through visa policy measures alone" (European Commission, 2018, p. 26). It also added that "there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission" (European Commission, 2018, p. 31).

The abovementioned statements starkly contrast with the reinforced leverage that the EU is trying to mobilise in its external relations. Have past lessons been unlearned or just ignored? Have conditions changed so much that today "any available leverage" can acquire its political significance in the EU's external dimension of migration governance? To be sure, if we consider (1) that patterns of interdependence have been reinforced well beyond the migration domain with some non-EU countries in the south of the Mediterranean, (2) that the latter have become aware of their empowered strategic position in their interactions with some EU member states, (3) readmission (irrespective of its effectiveness) has been embedded into a broader framework of interactions that codifies and affects patterns of cooperation, and (4) the manifest exposure of some EU member states to reverse conditionalities, then policy measures aimed at reinforcing the EU's leverage in the external dimension of migration will necessarily have to be defined and adopted à la carte lest other issue-areas of strategic importance be jeopardised.

As argued before, in the Euro-Mediterranean and Euro-Africa contexts, mutual interests do not motivate state actors to cooperate on readmission, even if they express their commitments to reinforcing their cooperation. Interests and goals differ substantially. Moreover, if we try to adopt the perspective of former colonies in the Middle East and North Africa (MENA) region and in Africa, lack of compliance does not always lead to a loss of reputation in international

politics. Cooperation on the control of migration flows, including its unequal costs and benefits, may be negatively laden with the colonial past. Against this background, renege or lack of compliance is rarely conducive to loss of reputation in international relations. Rather, it may be presented as a form of "postcolonial resentment" (Acharya & Buzan, 2019, p. 283; Adebajo, 2023), or be motivated by emancipation (Grovgui, 1996, p. 196) from the former colonial power.

In sum, an array of transactions, be they secret or not, determines the scope of the cooperation on readmission. If mutual interests were at the core of the cooperation, reintegration mechanisms addressed to readmitted persons would logically be created and administered by the public authorities of non-EU countries with a view to mitigating the effects of their policies. To date, no reintegration initiative (regardless of its policy relevance), generously funded by the EU or by national development agencies in the EU and delegated to international or non-governmental organizations, has been conducive to any sustainable form of ownership by local institutions in the Southern Mediterranean, let alone in Africa. Readmission not only has asymmetric costs and benefits in international relations, it also has social and economic implications for readmitted individuals. Apart from being unpopular in many non-EU countries, readmission is humiliating, stigmatising, violent and traumatic for human beings while exposing them to enhanced vulnerabilities (Von Lersner et al., 2008; Schuster & Majidi, 2015; Alpes et al., 2017; Khosravi, 2018; Alpes & Majcher, 2020; Deridder et al., 2020). Reintegration is extremely difficult, if not impossible, especially when countries of origin have often no interest in supporting it because emigration, be it regular or irregular, con-

tinues to be viewed as a safety valve to relieve pressure on domestic unemployment and poverty, or as a source of foreign currencies through remittances.

Conclusions and policy recommendations

This chapter has shown that cooperation on readmission, in real-world systems, lies at the intersection of altered patterns of interdependence, power, norms and mechanisms that extend well beyond the governance of migration. In this multi-layered readmission system, cooperation in the Euro-Mediterranean and Euro-African contexts has been fraught with uncertainties. Informalisation has been presented as a solution to overcome such uncertainties. However, experience has shown that informal patterns do not address the zero-sum game that characterises cooperation on readmission. Decades of consultations on migration issues and iterative learning processes have allowed various non-EU countries in the Mediterranean and Africa to talk the talk of migration governance. Some of them also learned that their strategic position would strengthen their claims and preferences (be they related to migration or not) in their interactions with the EU and its member states. As a result of their repositioning and empowerment, some non-EU countries have been prone to express their own reverse conditionalities. More than the conviction that informal deals will foster more cooperation on readmission, the perceptible drive for informalisation is arguably symptomatic of the need to accommodate the claims of some empowered non-EU countries, in a context marked by altered patterns of interdependence. Against this background, the various mechanisms and bodies that have been created to reinforce the leverage of the EU and its member

states in their interactions with some empowered non-EU countries will be confronted, at a certain stage, with the “consequences of interdependence” analysed in this chapter.

Policy recommendations

To the European Commission (especially DG Home)

- The best added value that the EC can provide in the field of readmission is to ensure that human rights standards and the EU member states' obligations under EU and international laws are respected. In this connection, readmission agreements only apply to individuals whose asylum application was rejected, not to those seeking asylum.
- It is recommended not to follow the *modus operandi* of some EU member states in the field of readmission. There is no evidence that informal deals are conducive to more cooperation on readmission with non-EU countries. Informalisation is, by definition, antithetical to transparency and human rights observance.
- The stipulation of bilateral agreements linked to readmission with non-EU countries having poor human rights records may generate political risks, especially when some non-EU countries are today in a position to express their own conditionalities. At a time when the EU institutions have proven to be potentially vulnerable to the external influence of some illiberal states, safeguards and transparency mechanisms must be ensured.
- Draft a public list of non-EU countries, having no asylum system and/or dismal human rights records, with which negotiations on readmission must be subjected to reinforced democratic scrutiny and legal safeguards in line with EU and international laws.

More than the conviction that informal deals will foster more cooperation on readmission, the perceptible drive for informalisation is arguably symptomatic of the need to accommodate the claims of some empowered non-EU countries, in a context marked by altered patterns of interdependence

To national parliaments and the European Parliament

- In the field of readmission, informalisation and lack of parliamentary oversight have unacceptably gone hand in hand. Reinforced parliamentary oversight fosters broader and more informed legislative debates about the utility of an informal agreement and its compliance with human rights standards. National parliaments and the European Parliament should request a duty of notification and justification from the executive. This double-edged duty would challenge the executive to explain why and how an informal agreement was stipulated with a non-EU country, its policy-making rationale, as well as its financial costs and legal implications. Note that, in the United States (US), congressional oversight of informal agreements has been ensured since 1972 with the adoption of the Case Act, which became Public Law 92-403.²

To the newly appointed EU Return Coordinator

- Demand that each EU member state communicates the texts of its bilateral agreements linked to readmission (be they formal or not). Examine their compliance with EU law and assess their concrete legal and political implications.

After more than two decades of shared competence in the field of readmission, this essential step has never been undertaken at the EU level. Coordination of the EU readmission policy logically requires such a step.

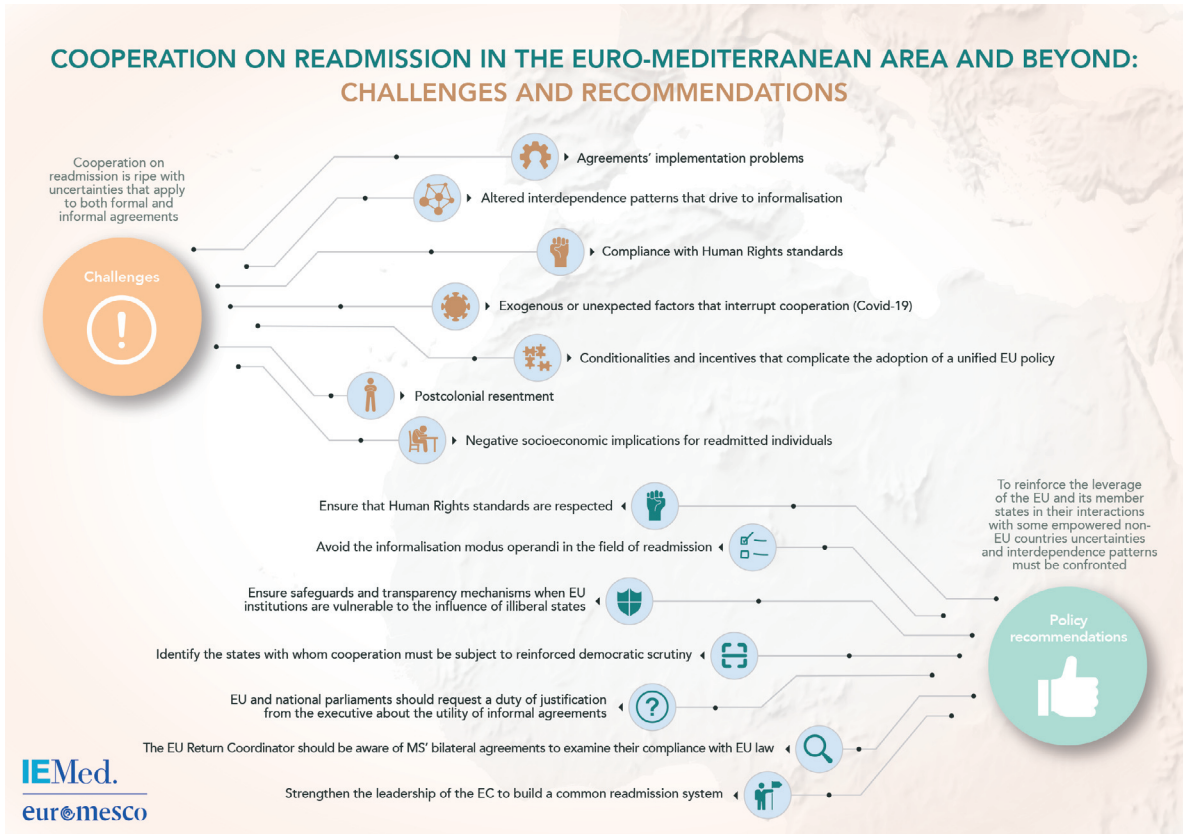
- Strengthen the leadership of the Commission, not by emulating the bilateral practices of some EU member states in the field of readmission but rather by building a common readmission system solidly anchored in the core principles of the EU treaties, human rights observance, and transparency. This is the only way of acquiring authoritative and legitimacy.

To NGOs and research centres

- Denouncing human rights violations alone no longer suffices to counter the powerful normalisation of readmission. Rather, pool your resources in the framework of a coalition. Such a coalition is a prerequisite to creating your own channels of communication with decision-makers so that you interact with them on an equal basis.
- Once the coalition is structured, confront decision-makers with your evidence and counterarguments with a view to demanding justification. Instil in their mind a sense of doubt and confront them with their duty to substantially justify their policy options.

² Further details in Aust (1986, p. 797) and Lipson (1991, p. 517).

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Cooperation on Readmission in the Western Mediterranean Migration Route. Learning from Past Experiences and Recent Evolutions

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Introduction

This study covers the patterns of cooperation on readmission along the Western Mediterranean migration route, linking West Africa and Morocco with Spain and Europe.

It constitutes a case study but also a prism of analysis to illustrate general trends on readmission cooperation. Since 1992 – when Spain and Morocco signed their first readmission agreement – the history of this bilateral cooperation on migration issues, with its encounters and disagreements, is possibly one of the most paradigmatic cases of externalisation and has been largely analysed (i.e., Casas et al., 2014; El Qadim, 2015a, 2015b; Ferrer-Gallardo, 2008; Ferrer-Gallardo & Gabrielli, 2018, 2022; Gabrielli, 2011a, 2011b, 2016; 2017, 2021 Mrabet, 2003; Scott et al., 2018; Serón & Gabrielli 2021; Wolff, 2014; Zaragoza-Cristiani, 2016).

The methodology used here is a combination of long-term desk research and policy analysis (based on official documents, policy statements, press information, grey literature, etc.) with in-depth interviews with policy-makers, stakeholders, civil society actors, and experts. Building on existing theoretical and empirical literature (Cassarino, 2021, 2020, 2018, 2014, 2007; Carrera et al., 2016; Coleman, 2009; Gabrielli, 2023, 2017) and data on readmission agreements – Cassarino (n.d.), Gabrielli (2011a., 2023) and national sources –, the study firstly maps existing formal and informal agreements on readmission along this route. Secondly, it analyses three main elements influencing cooperation on readmission in different ways: 1) uncertainty associated with unequal costs and benefits; 2) large interdependence; and 3) com-

pliance with human and fundamental rights and legal standards.

Mapping cooperation on readmission in the Western Mediterranean migration route

This study will take a closer look at Spain and the European Union (EU), the main actors fostering formal and informal frameworks of cooperation on readmission along the Western Mediterranean corridor. However, Morocco and other African countries are also key actors in this field, with their own geopolitical interests and internal agendas (Buehler et al., 2022; Cassarino, 2018a; Gazzotti et al., 2022; Roman et al., 2017). Moreover, third countries are capitalising on their strategic position along migration routes (Cassarino 2007; El Qadim, 2015; Greenhill, 2010; Ferrer-Gallardo & Gabrielli, 2022; Zaragoza-Cristiani, 2016). In the following subsections, the study looks at the bilateral and multilateral frames of cooperation on readmission.

Existing bilateral readmission agreements

Cooperation on readmission starts in the Western Mediterranean under the initiative of Spain, concluding a readmission agreement with Morocco in 1992.³ However, after the signing, Morocco did not implement the provisions of the agreement, allowing readmissions of its own but also of third country citizens that allegedly transited through the territory. El Qadim (2015) explains how Morocco applied partially the agree-

³ Just one year before, Spain signed the Schengen Agreement and implemented a visa obligation for Moroccan, Tunisian and Algerian citizens (Gabrielli, 2011a).

ment after 2004 (concerning Moroccan citizens) and how the agreement formally entered into force in 2012. Previously, it had been applied provisionally, if at all. However, other sources and declarations of Spanish officers (Serón & Gabrielli 2021; Gazzotti, 2021; Iridia, 2021: 80) suggest that the agreement was activated only in August 2018 and applied just on a couple of occasions during this year (Iridia, 2021, p. 80; Ferrer-Gallardo & Gabrielli, 2022). In practice, readmission to Morocco has been carried out during the last decades case-by-case, informally and based on obscure deals (Zaragoza-Cristiani, 2016; Gazzotti, 2021; Iridia, 2021).

Spain and Morocco also signed a Memorandum of Understanding (MoU) on 23 December 2003, later replaced by an agreement signed on 6 March 2007 on “Prevention of illegal emigration of unaccompanied minors, their protection and their coordinated return”, as well as a police cooperation agreement including a clause on readmission/removal, entering in force on 20 May 2012.⁴ In 2010, a bilateral agreement on cross-border police cooperation was signed, where informal quotas of readmissions of nationals were introduced by Morocco: 10 to 20 per day from Ceuta and Melilla, and 20 to 30 by ferry from Spanish mainland to Tangier (EuroMed Rights, 2021, p. 10). On 7 December 2020, a new agreement between the Spanish General Police Unit for Borders and Foreigners (CGEF) and Royal Air Maroc increased to 20 the number of readmitted people per flight, with a maximum of 80 people per week (EuroMed Rights, 2021, p. 13; Statewatch, 2021).

Since the early 2000s, and particularly

after the 2005-06 “crisis” of pirogues’ arrival in the Canary Islands (also known as *crisis de los cayucos*), cooperation on readmission spread significantly towards sub-Saharan countries. Since then, the external dimension of Spanish immigration policy, including readmissions, advanced very quickly, alongside the Africa Plan.⁵ It further developed on a case-by-case basis, depending on the evolution of migration routes and changing demands to third countries: readmission, control of border crossings, boat departures and “transit migrations”, operational cooperation, exchange of information, liaison officers and joint patrol operations (Gabrielli, 2008, 2011a; Andersson, 2014; Casas-Cortés et al., 2016). Spain negotiated bilateral formal and informal agreements with several countries covering departure points to Spain, mainland migration routes and also main countries of origin in West Africa (see Table 1). Spain’s variable geometry of cooperation deployed a buffer zone to prevent African mobility while trying at the same time to increase cooperation on readmissions.

Already in pandemic times, on 22 November 2020, the Spanish Minister of Foreign Affairs signed an informal pact with Senegal to repatriate any Senegalese person who had arrived in the Canary Islands during the 2020s “crisis” (Iridia, 2021, p. 78). Moreover, on the occasion of the Spanish Prime Minister’s visit to Dakar in April 2021, two other bilateral MoUs were signed: one in the field of “migration management and governance” – including return issues – and another one on “safe, orderly and regular migratory movements.”⁶

⁴ Acuerdo entre el Gobierno del Reino de España y el Gobierno del Reino de Marruecos en materia de cooperación policial transfronteriza, hecho “ad referendum” en Madrid el 16 de noviembre de 2010, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-6365

⁵ The Africa Plan of 2006-2008, launched in May 2006, constitutes an attempt to refuel diplomatic activity towards sub-Saharan Africa.

⁶ See: <https://www.mites.gob.es/es/mundo/consejerias/senegal/novedades/archivos/memorandos.htm>

Table 1. Migration agreements (readmission or broader issues) between Spain and sub-Saharan African countries

Countries	Typology of the agreement and date
Cape Verde	FA on immigration (including development issues), signed 3/2007 and entered into force 19/01/2008
Guinea Bissau	FA on immigration (including development issues), signed 1/2008 and entered into force 08/11/2008. IA on readmission (PA signed 01/03/2003)
Gambia	MoU on migration cooperation, signed 10/2010. FA on immigration (including development issues), into force since 08/11/2008
Guinea-Conakry	FA on immigration (including development issues), agreed on 10/2006, into force since 07/01/2007
Ghana	MoU signed 7/12/2005
Mali	FA on immigration (including development issues) signed on 21/1/ 2007, into force 11/3/2009
Mauritania	MoU on migratory cooperation agreed 7/ 2007. FA on readmission of signature and third-country citizens, entered into force 03/08/2003
Niger	PA signed 09/06/2008. PA signed 14/05/2015. Tripartite agreement on irregular migration, signed 13/03/2017
Nigeria	MoU on migration control, agreed 12/2005. Immigration agreement, signed on 12/11/2001
Senegal	MoU on readmissions + larger IA on migratory cooperation, agreed 8/12/2006. MoU signed 01/07/2008. FA on unaccompanied minors, signed 5/12/2006, into force 1/7/2018

Source: Inventory of the bilateral agreements (Cassarino, n.d.) and Gabrielli (2023).

FA: formal agreement; IA: informal agreement; MoU: memorandum of understanding; PA: provisional agreement.

No formal bilateral agreements on readmission exist between Morocco and other sub-Saharan African countries, or with sub-Saharan countries beyond existing international obligations. This would mean that when chain readmissions⁷ are performed by Morocco towards its southern neighbours, this is done on a case-by-case basis. This also suggests that this issue is not a priority for African countries. Moreover, it has to be considered that Morocco and other African countries in the region have a very different visa policy from the EU, as well as different strategic and economic interests (see paragraph 3.2).

Existing supranational readmission agreements

At a supranational level, the only European Union Readmission Agreement (EURA) signed with a country along the Eastern Mediterranean migration route, until now, has been with Cape Verde⁸ – a country that is not crucial in terms of immigration flows to the EU, or in terms of transit. Looking at the negotiations of an EURA with Morocco, for which the Commission received a mandate in 2000 – it has been the first one, testifying the importance of this collaboration –, talks started in 2003,

⁷ We refer to the readmission of a migrant previously readmitted from Spain to Morocco.

⁸ Entered into force on 01/12/2014, 5 years after the mandate received by the European Commission in June 2009.

and until 2010 15 rounds of negotiations took place; then the negotiations officially stalled (El Qadim, 2015).

A Mobility Partnership, a non-binding instrument, was signed in June 2013 between the EU and Morocco,⁹ and since the same year Morocco has received support from the EU for the implementation of its new National Strategy on Migration and Asylum. Following the signing of the Mobility Partnership, the Commission has also received a mandate to negotiate a visa facilitation agreement, related to the EURA. A single round of negotiations on both issues – readmission and visa – took place in January 2015 but thereafter negotiations were stopped again until 2019. In 2016, EU-Morocco relations became more complicated – and the political dialogue was suspended – due to the Moroccan reaction to the European Court of Justice judgment (C-266/16) considering that the fishing and agriculture agreements signed with Morocco had to be interpreted, in accordance with international law, meaning that they were not applicable to the territory of Western Sahara (Abderahim, 2019).

The dialogue was formally relaunched in 2019 – on the occasion of the Association Council of 27 June 2019 (Council of the EU, 2022a) – but apparently with no major results. In December 2020, EU Migration Commissioner Ylva Johansson travelled to Rabat to foster the EURA negotiations, but after the bilateral meeting the Moroccan counterpart rejected the request. The Director of Migration and Border Surveillance of the Ministry of the Interior of Morocco, Wali Khalid Zerouali, explained to the press that “Morocco is

not into the logic of subcontracting and insists that each country accepts its responsibility towards its nationals” (Reuters, 2020). In a letter sent in January 2022 to the Head of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament, Monique Pariat, DG of Migration and Home Affairs at the EU Commission,¹⁰ explained that no progress has been made and that “suitable dates are being sought” to relaunch the dialogue.

Elements hindering cooperation

Several elements may hinder cooperation on readmission, at least as it is currently framed by the main European actors. Inspired by the framework developed by Cassarino (in this volume), attention would be paid to three main dimensions of cooperation: 1) uncertainty associated with unequal costs and benefits; 2) large interdependence; and 3) compliance with fundamental rights and legal standards.

Uncertainty associated with unequal costs and benefits

Costs

A main element of uncertainty of readmission cooperation is related to its different costs and benefits among partners. In particular, the issue of the readmission of third country nationals (TCNs) represents a crucial element of unequal costs and benefits at bilateral level. In Spain-Morocco relations, this issue has appeared problematic since the beginning, generating difficulties in im-

⁹ Council of the European Union, Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States, 6139/13, Brussels, 3 June 2013.

¹⁰ European Commission (2022), DG for Migration and Home Affairs. Letter to Mr. Lopez Aguilar Subject: EU readmission cooperation with partner countries - state of play, Ref. Ares(2022)656813 – 28/01/2022. <https://www.statewatch.org/media/3155/eu-com-readmission-cooperation-overview-letter-to-libe-28-1-22.pdf>

There is a broad consensus about the fact that the main obstacle is the issue of readmission of TCNs

plementing the 1992 agreement, even if this does not prevent readmissions from taking place on a case-by-case basis. However, it is at the level of the EURA negotiation with Morocco that this issue has proved to be particularly challenging. Among scholars analysing the issue of EURA there is a broad consensus about the fact that the main obstacle is the issue of readmission of TCNs (Carrera et al., 2016; Abderrahim, 2019; Kaiser, 2019; Wolff, 2014). Abderrahim (2019, p. 16-17) clearly explains that cooperation is complex “because it does not entail any benefits for them. On the contrary, it could run counter to their domestic and external interests.” The costs of the TCNs clause seems to be important both at a financial and diplomatic level. From a Moroccan perspective, this clause represents an unfair sharing of responsibility in which the EU delegates unwanted tasks – directly readmitting migrants in their countries of origin– and affects sovereignty of the country (Carrera et al., 2016). At a domestic level, Moroccan civil society has also shown its opposition to the readmission of TCNs (Abderrahim, 2019, p. 17). Nevertheless, El Qadim (2015) suggests that different Moroccan actors involved in migration negotiations may have different stances on cooperation. The Ministry of Foreign Affairs and Cooperation has been persistently opposed to the conclusion of a EURA, while the Ministry of the Interior has developed a more open position in the negotiations, also owing to financial compensations in the security sector. Certainly, the consequences at a diplomatic level can be more difficult to mitigate. At a technical level, there are also reasons to hamper the signing of the agree-

ment, in particular the complex issue of what evidence of transit in Morocco to use for TCNs arriving in Spain (Abderrahim, 2019).

Benefits: financial incentives, visa policies and IOM support

Morocco has on various occasions denounced financial and diplomatic costs associated with the readmission of TCNs. In September 2022, Wali Khalid Zerouali, the Director of Migration and Border Surveillance of Morocco, explained that “in the framework of good cooperation and good neighbourliness and shared responsibility, we consider that what was earmarked is below what we want to achieve” (EuroEFE, 2022). He referred to the 500 million euros allocated in the EU budget for the period 2021-2027,¹¹ and declared that Morocco spent 427 million euros each year to cover the costs of its cooperation (Vargas Martin, 2022).

During the last decades, Morocco had received important funding from Spain and the EU to support its action in the fields of readmission and of border and migration controls, as well as substantial funds from the EU Trust Fund for Africa (EUTF), part of which was directly channelled into the state budget as capacity building support (Serón & Gabrielli, 2021). Morocco also received fundings through the European Instrument for Democracy and Human Rights (EIDHR) and the European Neighbourhood and Partnership Instrument (ENPI)¹² (Gazzotti, 2021; Gazzotti et al., 2023).

Moreover, the EU has largely funded the International Organization for Migration (IOM) and other international organisations and non-governmental organization (NGO) activities in the field of “voluntary” or “as-

¹¹ To these, 346 million euros must be added from the previous EU budget, launched in 2019.

¹² €1.4 billion during the period 2007-2014, and €232 million during the period 2014-2018 (Kaiser 2019, pp. 9-10); €807.5 million through the 2005-2010 EU/Morocco Action Plan and the ENI-SSF (2014-2917) to development assistance including migration-related issues (Gazzotti, 2021, p. 45).

sisted” return from Morocco, such as the EUTF-IOM Facility for Migrant Protection and Reintegration in North Africa (2019-2021) with a budget of 58 million euros. As Gazzotti et al. (2023) remark, expansion of IOM activity in “voluntary return” since the mid early-2000s is a response to Moroccan complaints concerning the burden of TCN readmission. Maâ (2020, p. 8) and Tittel-Mosser (2018) observe that the IOM's intervention – even if often considered symbolic (Gazzotti et al., 2023) – allows third countries to avoid complaints of subordination to EU interests and national public debate.

At EU level, after the signing of the Mobility Partnership in 2013, the negotiation of the EURA has been linked with visa facilitation (Abderrahim, 2019). However, the EU's reluctance to use this instrument as a positive conditionality did not allow its potential to be exploited in the negotiation (Tittel-Mosser, 2018). On 20 June 2019, the EU adopted an amendment to the visa regulation establishing a clear connection between a lack of an effective cooperation in readmissions from third countries and visa policy¹³ (Sundberg Diez, 2020), echoing the 2016 Partnership Framework with third countries.¹⁴ This use of visa policy as a sanction explicitly introduces the use of negative conditionality (Gabrielli, 2016) and reaffirmed the desire to adopt more restrictive visa policies, as is the recent case of Gambia (Council of the EU, 2022c).

Funding from Spain related to migration issues, including readmission, has been quite constant over the last two decades (Serón & Gabrielli, 2019, 2021). Since 2019, Morocco has received at least 123 million euros from Spain earmarked

for the fight against irregular immigration (Vargas Martin, 2022). In October 2022, once again, the Spanish Council of Ministers allocated 30 million euros to finance Morocco's migration control operations through the *Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas* (FIIAPP) (Vargas Martin, 2002).

To foster involvement and cooperation of sub-Saharan African countries, which would otherwise be very unfavourable for them, Spain has deployed several incentives such as trade concessions, boosting foreign investment, diplomatic support, visa quotas, formal recruitment channels (in the case of Senegal, as well as of Morocco) and, mainly, development aid (Gabrielli, 2011a, 2017, 2022). In some cases, the creation of formal recruitment channels for seasonal workers was also used, as in the case of Senegal and Morocco.

Interdependence and issue linkages

A second main element influencing cooperation on readmission to be considered is the interdependence with other issues of international relations. This allows the agendas and interests of Morocco and other African partners, as well as their use of migration cooperation, to be understood.

At a multilateral level, scholars underline that third countries position on cooperation is defined in a specific moment both by international pressures and domestic agendas (Adam et al., 2020), and that “EU demands for readmission are not necessarily deemed the most important”

¹³ Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code).

¹⁴ EU Commission (2016), “Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration”, COM(2016) 385 final, Strasbourg, 7 June.

(Carrera et al., 2016, p. 13). For instance, the long-standing refusal of Morocco to conclude the EURA indicates its ability “to prioritise its geopolitical priorities over European border externalisation pressure, and to formulate a selective involvement in migration control cooperation” (Gazzotti 2021, p. 35). From another angle, Morocco also plays “to leverage border relations to advance other foreign policy interests” (Gross-Wyrzten & Gazzotti, 2021, p. 831). This explains the reason for a “strategically intermittent” collaboration of Morocco with Spain and the EU on readmission – they may proceed more smoothly or be completely frozen – and on border and migration control (El Qadim 2015; Zaragoza-Christiani, 2016; Ferrer-Gallardo & Gabrielli, 2018, 2022).

At a bilateral level, Spain has different tools to facilitate cooperation on readmission: the use of financial and diplomatic support, in the case of Morocco, but also of development aid and investment pledges in the case of sub-Saharan countries (El Qadim, 2015; Gabrielli, 2011a, 2011b, 2017, 2022). However, these leverage tools have not prevented cooperation from going through some major moments of deadlock. In the case of sub-Saharan countries, internal pressures from opposition parties and civil society related to the readmission of nationals have at times hindered cooperation (Gabrielli, 2011a).

At the Moroccan-Spanish level, three main diplomatic issues seem to interfere with the readmission issue: 1) cyclic territorial disputes about the sovereignty of Ceuta and Melilla; 2) the status of Western Sahara, impacting bilateral relations with both Spain and other European countries; and 3) inter-African relations.

Cyclical tensions related to the sovereignty of Ceuta and Melilla, as well as other Spanish islands in the north of Africa – with the paradoxical case of the Perejil Island accident of 11 July 2002 –, are a stable feature, which impacts other aspects

of the bilateral relationship, including cooperation on migration issues (Ferrer-Gallardo & Gabrielli, 2018, 2022).

In recent times, Moroccan-Spanish relations, which were already quite tense since Pedro Sánchez took office, due to the stance of Podemos’ government partners on the status of Western Sahara (Serón and Gabrielli, 2021), worsened after the Trump Administration’s recognition of Moroccan sovereignty over the Spanish former colony of Western Sahara in December 2020 (Ferrer-Gallardo & Gabrielli, 2022). The situation worsened further in April 2021, when Spain hosted the Secretary-General of the Saharawi Polisario Front Brahim Ghali to receive medical treatment without any public notification. Readmission cooperation has been directly hit by these events. However, diplomatic bilateral tensions suddenly faded following Pedro Sánchez’s declarations on Western Sahara in June 2022, closer to Rabat’s position, as did readmissions to Morocco, which became smoother again (Ferrer-Gallardo & Gabrielli, 2022; Irdia & Novact, 2022).

Concerning the Moroccan strategic interests in sub-Saharan Africa, they can be related to a recent Pan-Africanist stance of the Kingdom, as well as pursuing its economic interests (Abdulrahim, 2019; Teevan, 2019). In recent decades, Morocco has invested heavily in improving its relations with African countries, as well as in diversifying its economy and benefiting from the high growth rates in African countries (Kaiser, 2019, p. 8). An overly visible cooperation on readmission with the EU, by accepting an agreement including readmissions of TCNs, may be harmful for the Moroccan image and interests in the region. IOM involvement in return can also be regarded as a way to discharge the Moroccan government of a part of diplomatic costs of TCN readmissions and has probably been the only tool offered by the EU in this respect.

These interdependence issues also interact with a policy approach issue related to the multilevel political structure in Europe: the possible tensions between supranational and national prerogatives in the field of readmission. As Cassarino (2010) explains, the great initial expectation about EURA was due to the key-stone assumption that the EU as a whole would enjoy more leverage power in negotiating with third countries than individual EU member states. However, the multilevel system of EU governance and the existence of bilateral alternatives have been very tricky for the EU (Kaiser, 2019). According to El Qadim (2017a, p. 142), “Moroccan negotiators have used the multiplicity of their interlocutors to continue avoiding the signing of a very visible EU-wide readmission agreement.”

Finally, an exogenous and conjunctural phenomenon such as the rise of the COVID-19 pandemic since March 2020, has had a strong but time-limited impact on readmission cooperation. Due to the closure of Moroccan borders and the impossibility of carrying out readmission, the Spanish government decided to temporarily close its centres for the internment of foreigners by May 2020 (Gabrielli, 2021). However, faced with the growth of irregular crossings to the Canary Islands during the second half of 2020 – around 23,000 people during the year – Mauritania then emerged as a growingly attractive alternative destination of readmissions from Spain.¹⁵ After a first period of closure of borders at the beginning of the pandemic, the Mauritanian government showed willingness to cooperate on readmission of TCNs – without worrying about the justification of their crossing through the country – in exchange for other benefits

and, during the second half of 2020, became the leading country to receive deportation flights from Spain (CEAR, 2022).

Compliance with human rights standards

A third main element that may influence readmission cooperation is the compliance with human rights standards. However, the analysis shows that at this stage it is more a key issue to take into account and improve. In this regard, we identify several black spots related to readmission processes and practices: a) informality and accelerated procedures; b) pushbacks; c) readmission of unaccompanied minors; d) readmission in cascade (chain deportations); and e) fundamental rights of people on the move in transit spaces.

Informality and accelerated procedures

Informalisation of agreements related to readmission and externalisation of migration control have been addressed by scholars and civil society organizations (CSOs) (i.e., Cassarino, 2007, 2018; Gabrielli, 2016, 2017, 2023; Iridia, 2021). As EuroMed Rights (2021) underlines, “informality, flexibility and lack of transparency” are the main features of the return system from Spain to Morocco. Informalisation facilitates cooperation because of lack of transparency and difficulties to monitor readmissions, but at the same time involves serious limitations of the rights of people on the move, as well as accountability of governments towards their societies. EuroMed Rights (2021) also underlines that Spain and Morocco do not provide public data on the number of readmitted persons, and that the only available information, coming from Spain, does not mention the nationality of the persons readmitted, their gender or

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¹⁵ However, the readmission route was already open, as in 2019 six joint operations with Frontex readmitted 146 people to Mauritania (CEAR, 2022).

Chain readmission

Readmission of TCNs from Spain to Morocco may imply, sometimes, their ensuing readmission to their countries of origin, or to their alleged previous countries of transit, where they might be exposed to ill-treatment, detention, and human rights violations. For instance, migrants returned from Ceuta and Melilla, or Chafarinas Islands in 2020, were reportedly facing detention in Morocco, or deportation to the Algerian border, or a readmission to their countries of origin or a forced dispersion towards the south of the country (EuroMed Rights, 2021, p. 12). Around 3,000 persons were readmitted from Morocco to Guinea Conakry, Mali, and Cameroon.²¹ In 2020, deportation flights from Morocco to Senegal, Mali and Guinea Conakry were reported. These practices may constitute a form of indirect refoulement, and also deflecting accountability. A critical example is the case of a Malian national who arrived in 2018 in Melilla to seek asylum and who was subsequently deported to Morocco, where he was detained in a centre in Nador and then taken to Casablanca to be finally readmitted to Mali (Iridia, 2021, p. 80).

Condition of migrants in Morocco

It is important to understand how readmission practices may affect the conditions of migrants in Morocco. The Moroccan immigration law (Law No. 02-03) foresees sanctions for illegal entry and stay, as well as provisions to detain and deport immigrants in an irregular situation. CSOs remark on the violation of the right to freedom of movement related to identifications based on ethnic-racial profiling. In their opinion, this is a “common practice, especially in ports and airports”, as well as “in the vicinity of centres and access points to basic services or community support, such as community soup kitchens” (Iridia & Novact,

2022: 17). Gazzotti et al., (2023) have documented the existence, at least until 2013, of “vast and frequent arbitrary arrest campaigns, often complemented by deportation to the no man’s land at the border with Algeria” targeting black people, mainly from West and Central Africa. Moreover, CSOs underline the existence of informal detention centres in Morocco (youth centre of Arkame, in Nador), where black migrants are detained until their deportation to their country of origin, or to cities in southern Morocco, or to the desert border with Algeria (EuroMed Rights, 2021, p. 14). At times, removals from the territory have even affected persons with a refugee status, holding a valid visa or seeking asylum (Lo Coco & González Hidalgo, 2021; Bachelet, 2018).

Conclusions and policy recommendations

Conclusions

What may we learn from past experiences and recent evolutions of cooperation on readmission? The analysis underlines how unequal costs and benefits and large interdependence may affect such cooperation. As underlined by the analysis, costs related to readmission, both monetary and diplomatic, are unequal, and incentives offered to Morocco in the framework of EURA negotiations have not been enough. The European Court of Auditors clearly recognises “insufficient EU incentives to support the negotiations” (ECA, 2021, p. 20-21). Moreover, the possibility of linking the visa regime and legal migration channels, as a positive conditionality, with collaboration at EURA level, seems stranded. An overly strict and negative conditionality on readmission may impact other key areas of co-

²¹ US Department of State (2021) “2020 Country Reports on Human Rights Practices: Morocco”. Retrieved from <https://www.state.gov/reports/2020-Country-reports-on-human-rights-practices/morocco/>

operation with Morocco, including migration and border control.

Bilateral cooperation between Spain and Morocco is clearly more fluid than between the EU and Rabat. This is due to the difficulties of EU institutions to conclude the EURA with Morocco, on the one hand, and to the informality of Spanish-Moroccan cooperation and responsiveness to interlinkages with other areas of relations, on the other. In this respect, we may read the position of the Council in April 2022, underlying the need to flexibilise and informalise readmission agreements and arrangements on readmission with third countries (Council of the EU, 2022b). This growing flexibility and informality of existing bilateral cooperation allows ample room for Morocco on a case-by-case negotiation, in particular when high-mediatised arrivals at Spanish borders enables greater economic and diplomatic benefits to be reaped. Informalisation of the cooperation on readmission “was appropriated by Morocco as a way of imposing new terms of negotiation to the EU” (Maâ, 2020, p. 8).

Moreover, the study underlines the numerous black spots related with the compliance with human rights and legal standards, a matter that may constitute a constraint on readmission cooperation. The growing informalisation of readmissions, as well as the related lack of data and transparency, creates increasing insecurity for people on the move, linked to violation of their human rights and a worsening of their living conditions in transit spaces.

More generally, there is a need for Europe to escape to the current crisis-based approach of migration issues, generating an endless loop of emergencies, switching to a view of migration flows as a structural issue. A more balanced – and less reactive – approach giving due weight to human rights issues, and the opening of formal channels of migrations vis-à-vis the securitarian and repressive drives of Mediterranean

migrations will also allow a closer approach to third countries’ interests and agendas and the facilitation of new forms of cooperation. Finally, it is also necessary to reconsider one of the main rationales of readmission policy: if readmissions actually serve as a deterrent, or if it just represents punitive and suffering-producing mechanisms for migrants.

Policy recommendations

In **general terms**, the EU and its member states – and particularly national and EU actors in the field of Justice and Home Affairs – should:

- rethink the excessive priority given to readmissions, both as a practical tool to remove TCN with an irregular legal status and as a symbolic tool to discourage new irregular entries or stays.

In particular, it is necessary to take more into account the impact of readmissions on people on the move and on their human rights – as well as on the European external image and interests in Africa – and balance it with its supposedly dissuasive effects – a current belief that deserves an urgent evidence-based assessment.

This change of perspective has to be related to a more balanced perception of migration flows in the Mediterranean and the Euro-African area, as a long-standing structural feature of this space that can be managed with a plethora of tools, including formal migration labour channels. This would also allow avoidance of a crisis-based framing of the phenomenon, disproportionately securitising the issue, and would permit immigration to be managed in a more effective way, also moving closer to third countries’ interests and agendas.

Considering **differential costs of readmission**, it is necessary to:

- adapt incentives to Morocco and African countries, and reconsider the use of

The growing informalisation of readmissions, as well as the related lack of data and transparency, creates increasing insecurity for people on the move, linked to violation of their human rights and a worsening of their living conditions in transit spaces

the visa regime and other leverage instruments, firstly development aid, as a tool of negative conditionality.

Moreover, this change of paradigm will decrease dependency on Morocco and other third countries concerning readmissions and migration control. Considering strong existing **interlinkages** between readmission and other dimensions of international relations:

- readmissions should not be the main element of relations with Morocco, or with other sub-Saharan Africa countries;
- diplomatic costs of TCN readmission may with difficulty being covered by OIM action on “voluntary returns”. It is necessary to better understand and consider diplomatic costs and identify innovative tools to overcome them.

Considering immigration in the Mediterranean as a structural feature and de-securitising will also allow avoidance of agreements and concessions that can seriously undermine the respect for human and constitutional rights in third countries, European

legitimacy and the principles of democratic conditionality.

Considering the main issue emerging from the study, the **failures related with compliance with human rights and principles**, there is a strong need to:

- bring the bilateral agreements and arrangements between Spain and Morocco, as well as readmission practices, in accordance with the respect for human rights and European principles.

This will be enabled firstly by reducing informality and the lack of data, and then favouring accountability vis-à-vis civil societies in the North and South. Secondly, it is necessary to revise illegitimate and legally contested practices related to readmission of adults, as well as of minors. To do so, the European Court of Human Rights, the national Ombudsman, NGOs and CSOs are central actors whose voices may be seriously considered in evaluating and reforming policies and practices in this area through consultative processes and beyond them.

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Intra-African Expulsions

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Introduction

Alongside calls for foreign African labour (as in Libya in the 1990s), bilateral labour conventions, free movement agreements (particularly on the Economic Community of West African States [ECOWAS]) and tolerance of mobility, expulsions have always been common place between African countries, including within the ECOWAS region (Adepoju, 1984; Bredeloup, 1995). As a counterpart to a certain laissez-faire in administrative and legal matters, these expulsions, often collective, are generally carried out in an arbitrary manner, without legal basis, without respect for the procedures or for the fundamental rights of the persons concerned. They occur in the framework of diplomatic bilateral agendas and to respond to specific national situations, such as economic difficulties. At the same time, however, the expelling state frequently invokes reasons associated with foreign nationals' presence and status (criminality, insecurity, irregularity) without providing any evidence. These official discourses depreciate the image of people returned to their country, increasing their difficulties and increasing the risk of stigmatisation. Changing the terminology around expulsions does little to change this reality. The vocabulary has indeed evolved under the action of institutions, particularly in connection with the situation in Libya. After 2011 in

Mali, for instance, the figure of the repatriated replaced that of the expelled.²² More recently, in Niger or Burkina Faso, "returnees" has been euphemistically used to refer to expelled persons, a terminology inspired by the so-called "voluntary return" programmes promoted by the European Union (EU) and the International Organization for Migration (IOM). In this chapter, deportation, readmission, and expulsion, as well as return, are used interchangeably to characterise the fact that a person is obliged to leave a country of stay or transit.²³

Three recent developments can be observed as far as intra-African expulsions are concerned: 1) expulsions used to be directed to countries of origin but are now also made to transit countries (called "transit return"), without the prior transit being necessarily proven. Both types of expulsions have significantly increased, and the conditions of expulsion have deteriorated; 2) while state expulsions continue, returns organised by the IOM have expanded, particularly in Africa;²⁴ and 3) as a result of these increasingly "assisted" expulsions, a "market" has emerged around the issue of expellees, including international and non-governmental organizations (NGOs), with a substantial impact on the configuration of relations between actors and on economies. These three developments are closely linked to the EU's action, influence and funding in Africa. The

²² A "repatriated" is a national whose country of origin has legally ensured their return to its territory, generally following a crisis or war situation. But in Mali, as in other sub-Saharan countries, an emic category of "repatriates" has emerged. The latter is broader than the strictly legal one and includes all Malians returning to Mali after a stay in Libya, whether or not their return has been supported by the Malian state (Sylla, 2020).

²³ Following a similar position of the Special Rapporteur in his second report on the expulsion of aliens, 2006.

²⁴ "Initially developed in Europe in the late 1970s, assisted return practices have gradually expanded to all regions of the world and are increasingly being carried out from transit countries and along precarious migration routes, particularly in Africa and the Middle East. Combined with efforts to impose strict border controls, expand surveillance and detection of cross-border movement, and criminalize both the facilitation of migrant smuggling as well as the act of irregular migration itself, some states are now funding or supporting the implementation of assisted return programmes as a central component of their migration management aims and as part of an overall approach which seeks to prevent irregular migration" (OHCHR, 2022).

first part of this chapter presents the evolutions in South-South expulsion practices and mechanisms, with a focus on Niger, which is an eloquent illustration of these evolutions. The second part focuses on some legal aspects, and the third part draws conclusions and policy recommendations. This chapter stems from a research based on academic literature, as well as various interviews and exchanges with researchers and local actors²⁵ and from investigations carried out in the region.

Evolutions in intra-African expulsion practices and mechanisms

Collective expulsions are a relatively old phenomenon, which marks both the relationship between Mediterranean Africa and sub-Saharan Africa and areas of free movement such as ECOWAS. The practices of collective expulsions from Libya in the 1970s, 1980s and 1990s have been widely documented (Pliez, 2004), and this is also the case of similar practices in the 1980s within ECOWAS (e.g., between Ghana and Nigeria) (Adepoju, 1984; Bredeloup, 1995; Albert 2003), which could still be observed in 2019.

They are often part of diplomatic tensions and/or asymmetrical relations. For example, reciprocal expulsions between Ghana and Nigeria have been recurrent since independence in the 1960s (Albert, 2003). Expulsions from Libya in 1995, 2000 and 2004 affected other financially dependent states (Ghana, Nigeria, Niger), to which development aid and annual quotas of workers were promised in re-

turn for silence discontent (Pliez, 2004). Even if they are often based on an act of the executive (Expulsion Order), these expulsions to countries of origin are not respectful of the law and do not allow for appeal. Those affected usually lose everything they owned, and face unpaid wages. Expulsions are sometimes accompanied by ill-treatment, violence, detention or robbery by the security forces. In addition to possible deaths, injuries are commonplace. These situations affect men, women and children alike, as Algerian practices in recent years reveal (see below). The status and profiles of the foreign nationals concerned are also varied. The fact that most foreign nationals are in an irregular or precariously regular situation makes the risk of expulsion very high – a situation that is due both to individuals who do not bother with formalities and to states that have very insufficiently provided for possibilities to grant stay and work permits, with a discouraging bureaucracy and a deterring legislation.

People are not always repatriated to their country, by plane or bus, but may be abandoned at the borders. A relatively old practice is the “wild” return to the border, long practised by Morocco, Algeria and Tunisia, including for refugees holding a certificate of the UN High Commissioner for Refugees (UNHCR). Diplomatic tensions can play a role, between host or transit states. A particularly visible situation is the one between Morocco and Algeria whose reciprocal deportations at the border have been part of a game of tensions linked to their political conflicts. Since 2013, Morocco had put an end to the practice of pushbacks at the border; a general moratorium on all pushbacks was actually in place from December

Even if they are often based on an act of the executive (Expulsion Order), these expulsions to countries of origin are not respectful of the law and do not allow for appeal

²⁵ Researchers from diverse North and West African countries, particularly Morocco, Tunisia, Niger and Senegal; NGOs, lawyers, civil servants from ministries and international organisations from or based in the same countries. The interviews and investigations used were conducted recently but also over the longer term.

2013 to February 2015 (Khrouz 2019). However, in a context marked by new migratory pressure at the Mediterranean border, added to a crisis of confidence in the certificates issued by the UNHCR offices,²⁶ there have been new waves of arrests of people holding UNHCR documents, leading to deportations at the Algerian border.²⁷ This practice enables the authorities to expel without the procedural framework, and without the diplomatic and financial cost of expulsion.

In 2021, a resurgence of abandonment of migrants in the desert by authorities was observed in Libya,²⁸ as well as in Tunisia.²⁹ Over the last five years, Algeria has been denounced for the regular abandonment of foreign nationals from sub-Saharan Africa in the middle of the desert, at the “zero point” of its border with Niger, from where people must walk to the first Nigerien town, Assamaka, where they can find assistance.

Niger is at the heart of new deportation dynamics, which affect West and North Africa, and are linked to the EU’s policies and mechanisms related to migration control. Like many countries in the region, Niger is a country of emigration, which has also become a transit country in recent decades (Boyer et al., 2020). Below, we explore three deportation dynamics, which affect Niger and reflect particularly worrying situations visible in

a broader West and North African region.

Collective expulsions from Algeria to Niger

Nigerien nationals practice circular migration to different countries, which has evolved under the impact of insecurity and changing work and income opportunities. Many Nigeriens have been travelling temporarily to Algeria and Libya for decades. The treatment reserved for them in these two countries contrasts with the political will expressed in bilateral agreements concluded to frame and ease this labour migration.³⁰ Besides, Nigeriens are very little inclined to the “adventure” towards Europe, but they bear the brunt of both the deterioration of the security situation in Libya and the obstacles on the roads to get there since the implementation, in 2016, of Nigerien Law 2015-036 to combat migrant smuggling (Perrin, 2020). Indeed, Niger has tackled activities related to migration, especially transportation and accommodation through unprecedented judicial activity around the offences of smuggling of migrants, as well as extended policy controls (Perrin, 2021).

Niger also suffers from migration for begging, which is the source of several problems. They are mainly women leaving the

²⁶ Interviews with UNHCR officers 2018 and 2021.

²⁷ Morocco-Algeria: abandonment in a “no man’s land” (Gadem report, 2018).

²⁸ <https://www.ohchr.org/en/stories/2021/11/report-highlights-unsafe-and-undignified-expulsion-migrants-libya>

²⁹ Certain facts of abandonment have been reported as soon as 2019 (<https://www.infomigrants.net/fr/post/18628/tunisie-un-groupe-de-migrants-ivoiriens-abandonnes-dans-le-desert-non-loin-de-la-libye>), but also in 2021 (<https://observers.france24.com/fr/afrique/20211005-tunisie-migrants-desert-libye-femme-enceinte>).

³⁰ I.e., The memorandum of understanding (MoU) for cooperation between Algeria and Niger, in the field of labour, employment and social security, signed in Niamey on 16 March 2017 (ratified in 2019) as part of the signing of a series of agreements to relaunch cooperation between the two neighbouring countries; The agreement on the establishment and movement of persons signed on 30 June 1988 between Niger and Libya; MoU on labour exchange cooperation signed in November 2021. Labour agreements have also been signed between Niger, on the one hand, and Tunisia, on the other (1966), as well as with Saudi Arabia and Kuwait (2015).

Zinder region (centre-east of the country) with their children.³¹ It is this type of migration that has recently been the subject of headlines and an (informal) repatriation agreement between Dakar and Niamey. A thousand Nigeriens, all from Kantché and Magaria, two departments in the Zinder region, were repatriated from Senegal at the end of March-April 2022, after media coverage of their situation in Dakar. A similar situation unfolded in Benin and also in Ghana (according to various interviews). This is an issue that had already been widely publicised in Niger. It reveals strong hostility from part of the Nigerien population, and even from the authorities. The government is reluctant to establish a link between this type of migration and the misery of the Zinder region and favours the cultural explanation.³² It also points to networks of traffickers and deplores the negative impact on the image of Niger and Nigeriens.³³ Migration for begging is at the basis of the “voluntary repatriation agreement” concluded between Algeria and Niger in December 2014. As recently with Senegal, the agreement was for a limited number of

people to be deported (3,000, according to our information³⁴). Yet, it has justified, on the part of Algiers, first of all the expulsions of women and children practising begging,³⁵ then extension to Nigerien workers, and finally, since 2017 deporting thousands of West African nationals to Niger. This gradation in collective expulsions has been documented by several organisations, both the UN Special Rapporteur on the human rights of migrants and the IOM, as well as NGOs.³⁶ In his end-of-mission statement on 8 October 2018, the aforementioned Special Rapporteur was eloquent about Algerian practices (Special Rapporteur, 2018). First of all, he reported that the number of expelled migrants has increased steadily each year since 2014 (from 1,354 in 2014 to 12,177 in the first nine months of 2018). He highlighted the efforts of the Nigerien government to be notified in advance of evictions, and deplored “the lack of transparency and accountability” both in terms of Algerian decisions and in terms of discussions between Niger and Algeria that are never public.

³¹ In 2013, 92 people, including 37 women and 48 children, were found dead in the middle of the desert on their way to Algeria – a drama that Niamey used to launch its policy of combating the smuggling of migrants.

³² Interview with a local UN Office on Drugs and Crime (UNODC) officer in 2016.

³³ To apprehend the complexity of this circular migration, see the documentary made by the NGO Alternative Espace citoyen on the women of Kantché: <https://vimeo.com/243654549?ref=fb-share&1&fbclid=IwAR1wAVAP2k1YdMUnlp8Jwl5B48R6zonDEW6nXlns3U2-F-By0z0LkXAd1gE>

³⁴ It should be noted that no one (among Nigerien or foreign civil society or the scientific community whose members we interviewed) has had access to this “agreement”, which has been invoked by the Algerian and Nigerien governments.

³⁵ “Expulsions also took place before. According to figures provided to the departmental directorate of civil status in Matamaye by the IOM office in Agadez, between 2013 and 2014, 8,219 households were repatriated from Algeria. In sum, 1,735 women over 18 years old, 6,555 men over 18 years old, 2,074 girls from 0 to 17 years old and 2,070 boys from 0 to 17 years old as well. That is 12,540 people, including 4,244 minors.” <https://www.alternativeniger.net/exode-des-populations-de-kantche-vers-lalgerie/>

³⁶ Such as Alarme Phone Sahara directly on the field, Cimade, Médecins Sans Frontières (MSF), Fédération Internationale des Droits de l’Homme (FIDH), Amnesty International, Human Rights Watch and NGO collectives such as Loujna Tounkaranké.

See the 2018 inter-associative press release: <https://www.alternativeniger.net/communiqué-inter-associatif-algerie-recrudescence-des-rafles-de-personnes-migrantes-subsahariennes/>

And that of 2016: <https://www.alternativeniger.net/declaration-des-organisations-de-defense-des-droits-de-lhomme-sur-la-situation-des-ressortissants-subsahariens-en-algerie/> (this one mentions the EU).

He noted that Algeria has conducted collective expulsions of Nigerien nationals as well as foreign migrants “from West African countries such as Cameroon, Ghana, Guinea Conakry, Mali and Nigeria, many of whom have been living and working in Algeria for years, with children born and schooled in the country.” The numerous protests of Nigerien authorities have had no impact. As the Special Rapporteur pointed out, “in the absence of individual risks assessments and due process guarantees, these expulsions do not respect the fundamental principle of non-refoulement and are contrary to international law.”

Nigerien nationals are brought to Assamaka, the first Nigerien town after the border with Algeria, then transported by the IOM and escorted by the Nigerien army to Agadez, from where they are returned to their regions and communities of origin. Non-Nigerien nationals are abandoned in the desert on the so-called “point zero”, from where they have to walk several hours to Assamaka, without any assistance. In this town, the IOM provides transport to Agadez. The Rapporteur remarked: “The Government of Niger, despite its international obligations, and due to its stretched capacities, has delegated IOM the response to the situation of non-Nigerien migrants expelled to Niger.”

Yet, since the end of 2022, many foreign nationals have remained stranded in Assamaka, and could not be evacuated by

the IOM “for health, security and consular reasons.”³⁷

In 2020, 23,171 migrants were deported to Niger compared to 27,208 in 2021.³⁸ The number of people expelled in 2022 is also above 20,000. Both the Algerian and the Nigerien governments refer to the 2014 agreement, as if it could be the legal basis for the collective expulsions, at least those of Nigerien nationals. Both benefit from it; the former to pretend that these practices are legal and concerted, the latter to save face by confirming the bilateral concertation. The lack of transparency around this agreement allows this game of fools, which hardly hides the asymmetry of relations between Algeria, on the one hand, and Niger and other West African states, on the other. ECOWAS has not reacted, since 2017, to the expulsions of its member states’ nationals, which may be explained by the irregular situation of many of them. However, in Algeria, like in Tunisia or in Libya, there are few possibilities to stay and work on a legal basis. In October 2022 at last, an ECOWAS mission expressed its concern about collective expulsions and asked all regions to renounce the forced returns of people in need of protection, which did not prevent the continuation of collective expulsions.³⁹

Actually, while collective expulsions are a common practice in Africa, massive expulsions to a “transit country”, as practised by Algeria, is not. We wonder, as is developed in the next section, if the “assisted transit

³⁷ See here <https://www.infomigrants.net/en/post/44807/we-were-abandoned-in-the-desert-at-2-am-migrants-expelled-from-algeria-to-niger>

And here <https://www.infomigrants.net/fr/post/46175/niger-750-migrants-maliens-coincés-dans-le-desert-bientôt-rapatriés>

³⁸ MSF, <https://www.msf.fr/communiqués-presse/niger-plus-de-14-000-migrants-refoules-violentement-d-algerie-depuis-le-début-de-l-année>

³⁹ <https://www.aa.com.tr/fr/monde/maghreb-la-cedeao-d%C3%A9ploie-les-expulsions-massives-et-fr%C3%A9quentes-de-ses-ressortissants-/2701631>

About the mission: <https://ecowas.int/la-cedeao-et-ses-partenaires-se-mobilisent-pour-une-solution-durable-a-la-situation-des-migrants-bloqués-au-niger/?lang=fr>

return” mechanism from Libya to Niger put in place from 2017 played a role in this turning point.

“Assisted transit return” from Libya to Niger

“Assisted return” refers to a service provided by the IOM in order to induce migrants to go back to their country of origin or a third country. This mechanism has gained momentum with the European Union Emergency Trust Fund (EUTF) for Africa, which funds the EU-IOM Joint Initiative on Migrant Protection and Reintegration launched in 2016, through which voluntary return is carried out.

The EUTF “for stability and addressing root causes of irregular migration and displaced persons in Africa” was launched at the Valletta Summit on Migration in November 2015. It finances programmes in the countries of three regions (Sahel and Lake Chad, Horn of Africa, North Africa), all located on the “Central Mediterranean route”. Through the EUTF, the EU has connected the allocation of funds for development aid and emergency responses with its migration agenda.⁴⁰ Furthermore, the IOM assisted returns particularly concern the main countries of origin of migratory flows to Europe (Alpes, 2020). These returns are therefore used as a way of managing European borders.

The IOM refers to return operations from Libya as “Voluntary Humanitarian Returns” (VHR) and from Niger as “Assisted Voluntary Returns” (AVR).⁴¹ In contrast to forced and assisted returns from EU countries, the AVR and VHR programmes are both justified by an emergency context for migrants and

are thus implemented as protection responses (Alpes, 2020). Besides, in comparison to deportations from Europe, return operations from so-called transit countries occur at a much greater scale.

“Since 2017, more than 106,700 migrants have been repatriated from countries in North Africa, Horn of Africa, and the Sahel and Lake Chad region to at least 46 countries of origin across Western, Central and Eastern Africa, as well as Central, South and South-East Asia through the EU-IOM Joint Initiative” (OHCHR, 2022, p.11). More and more states delegate their responsibility on expulsions to IOM, which enables the financial, logistical and diplomatic burden to be lightened, and expulsions into so-called “voluntary returns” to be transformed.

In addition to this collaboration system, a special mechanism has been set up in Libya, which has made Niger a hub for assisted transit return. In 2017, after CNN revealed mistreatments against African migrants in Libya – the latter being sold “as slaves” –, the African Union (AU), the EU and the UN announced the launch of an emergency evacuation plan through a “joint task force”.

The evacuation system from Libya is based on the distinction between refugees and other migrants. Refugees are identified by the UNHCR – mainly around three nationalities (Sudanese, Somali, Eritrean) – and must be evacuated, obviously not to their country of origin. Since 2017, the UNHCR has managed to evacuate 8,143 refugees and asylum seekers from Libya,⁴² most of them to the Emergency Transit Mechanism (ETM) created in 2017 in Niger (3,526 as of December 2022⁴³)

⁴⁰ For a critique of the lack of transparency in the management of these funds and connected potential violations of public procurement law, see Spijkerboer and Steyger (2019); and Vermeulen & al. (2019).

⁴¹ Actually, the AVR in Niger is one of the 20 AVR the IOM implements in the world. See https://publications.iom.int/system/files/pdf/avr_en.pdf

⁴² <https://www.unhcr.org/rw/17295-first-evacuation-flight-of-2022-from-libya-to-rwanda-brings-over-100-asylum-seekers-to-safety.html>

and to the ETM created in 2019 in Rwanda (900 people as of 2022) from where resettlement and other pathways are sought.

The “other migrants” are offered by the IOM a “voluntary return” to their countries of origin. The 2017 evacuation plan was conducive to the launch of a new assisted return initiative implemented by the IOM under the auspices of its pre-existing VHR, initially launched in 2016. As a first step in the VHR operation (i.e., from Libya), the IOM organised the repatriation of 3,100 Ivorians, bringing the number of migrants assisted by the IOM to go home in 2017 to 16,561, compared to 2,700 in 2016. Besides, 4,000 Nigerien nationals were repatriated in 2017 by the IOM in the framework of its Migrant Resource and Response Mechanism (MRRM), also funded by the EUTF.

In addition to being a country of origin, Niger is the top host country for IOM return programmes, with “voluntary returns” constantly increasing (16,414 in 2019), which mainly concern people returning from Libya or expelled from Algeria. The IOM manages six centres (in Dirkou, Niamey, Agadez and Arlit) where migrants evacuated or expelled from Libya or Algeria, or who arrived in Niger from various places, are assisted and encouraged to return to their home country. The IOM has also developed “information campaigns” to deter migrants from heading to Libya, also using “community mobilisers” trained to reach out to migrants in various parts of Niger and convince them to go to transit centres and organise their return.

These mechanisms raise a number of problems. For Niger first of all, which, having received compensation, agreed to cooperate as a transit return partner on the condition of a significant turnover of refugees and migrants, whose stay should therefore be temporary. However, refugee resettle-

ments do not live up to UNHCR’s requests and hopes. The IOM is also failing to cope with the situation. In addition, these two types of “transit return” make Niger not only a migratory hub but a pole of attraction: people come to pass, but also to have access to UNHCR and IOM institutions. The presence of these stranded people creates tensions, especially with local communities, as in Agadez in 2018 (Boyer et al., 2020), due to a significantly growing foreign population, and to pressure on life resources (water, waste, sanitation, security). One of the consequences was the relocation of the UNHCR centre to respond to a request for refugees’ remoteness. However, refugees themselves – mostly from Sudan – expressed their frustration both at being blocked and in difficult conditions, as in December 2019 and January 2020, when hundreds of them demonstrated and were later accused of burning down the camp. Criticisms against the IOM are also numerous and multifaceted. Although many migrants have appreciated the IOM’s humanitarian assistance, the organisation is generally associated with the causes of their blockage and policies repressing mobility. The notion of “voluntary return” is questionable. “Transit return” is said to be voluntary in the sense that migrants give their consent to be returned. However, in Niger, access to shelter and other forms of assistance in the IOM-run transit centres is conditional upon agreeing to “voluntarily” return to the country of origin. Also, the voluntary nature in a context where migrants have no choice to stay or go elsewhere is a decoy (OHCHR, 2022). Most of these so-called “transit returnees” come from Libya and Niger, but they are also from Mali, Morocco and Algeria. While AVR and VHR are legitimised on humanitarian grounds, their funding might also stem from their potential to curb irregular migration to Europe (MEDAM, 2019).

The IOM manages six centres (in Dirkou, Niamey, Agadez and Arlit) where migrants evacuated or expelled from Libya or Algeria, or who arrived in Niger from various places, are assisted and encouraged to return to their home country

⁴³ <https://data.unhcr.org/en/documents/details/98251>

The gap between the promises and hopes stemming from the offer of assisted return, on the one hand, and the reality of repatriation, on the other, also raises several concerns. Assisted return is indeed criticised for its impact on deported persons. It seems that only 9% of migrants have had a rehabilitation programme and psychological support – in addition to not benefiting from the aid promised for reintegration.⁴⁴ Many would end up in their country of origin in a worse situation than before they left (OHCHR, 2022).

The IOM is also criticised for its lack of efficiency and, again, the gap between expectations and realities before readmission. Since August 2022, mobilisations of migrants stranded in Agadez have been publicised. In August, 500 Malian nationals deported from Algeria and other countries demonstrated outside the IOM reception centre to protest against their deprived conditions although the IOM promised to repatriate them. This impatience for repatriation was also voiced out by Senegalese nationals in September, then by Sudanese nationals in October. To make their situation of blockage and destitution known, and to demand support from their diplomatic representatives in order to be repatriated, these people decided to walk from Agadez to Niamey.⁴⁵

Against a background of impediments to mobility, made up of both prohibitions and obstacles to leaving and circulating, as well as poor conditions of stay and multiple expulsions, claims for a right to return emerge.⁴⁶ It should be noted that most of intra-African returns are made

by the migrants themselves, at their own cost, without any support, to leave difficult living conditions. “The existence of self-organised returns underlines the gravity of the abuses towards migrants in the region” (Rodriguez 2020). Beyond the right to return, which is proclaimed here, it is the right to leave one’s country and the right to dignity outside of it that are violated.

Finally, while the local economy around transit migration has been destroyed by the anti-transit policy carried out in the north of Niger since 2016, new markets have emerged. The presence of refugees and returnees since 2017 has represented a new opportunity to capture the migratory lucrative business, creating tensions and challenges around new resources (Boyer and al. 2020). Unlike the “transit economy”, which benefited local communities (through commercial activities but also through the payment of taxes), the “anti-transit economy” (Bachirou 2021) benefits international organisations and mainly foreign bodies and NGOs, all revolving around managing and helping returnees and stranded people. Criticisms in Niger are therefore very important: the huge amounts of the EUTF benefit the European/Western stakeholders who have come on the spot – mostly the *German Gesellschaft für Internationale Zusammenarbeit (GIZ)* and the IOM – and a very small part goes to local partners (Cimade, 2020; Vermeulen et al., 2019), without taking into consideration the municipal and regional realities. Local actors and needs are just ignored. This “new humanitarian market” of “post-expulsion” (Chappart,

⁴⁴ ASGI online conference 29 September 22, Isidore Collins Ngueuleu (World Organization Against Torture [OMCT]). See other data in Alpes (2020).

⁴⁵ See various articles and advocacy from Alarme Phone, especially here: <https://alarmephonesahara.info/fr/blog/posts/niger-migrant-e-s-senegalais-e-s-prennent-la-route-pour-marcher-d-agadez-vers-niamey-et-reclament-leur-retour-au-senegal>

⁴⁶ On the right to return, see Muiuzi (2021).

2015) can also be observed elsewhere, for example in Mali.

Intra-ECOWAS expulsions from Niger

Niger has also practised expulsions and refoulements within the framework of the implementation of Law 2015-036 of 26 May 2015 to combat the smuggling of migrants.⁴⁷ Between January and September 2017, for example, 10,574 people were turned back, 2,373 intercepted and left to the border, and 2,208 were “made available to the IOM within the framework of voluntary return.”⁴⁸

Even if ECOWAS has not officially protested, these practices have provoked negative reactions from its member states. According to Niamey, the persons concerned were undocumented, which justified their expulsion. However, investigations carried out by researchers and migrant-aid associations⁴⁹ have revealed that expulsions also concerned people holding official documents and entitled to move in Niger. Moreover, the absence of documents cannot justify ill-treatment and does not exempt the state from the obligation to respect the law.

As a result, a complaint against Niger was lodged with the ECOWAS Court of Justice in May 2022 by the *Association Malienne des Expulsés* and the *Association Jeunesse Nigérienne au Service du Développement Durable* (part of the *Alarme Phone Sahara* network), with support of some civil society associations.⁵⁰ This com-

plaint targets Law 2015-036 because of the way in which it has been interpreted and implemented by public authorities, and the injunction of the EU and some member states have consisted of prohibiting any movement of sub-Saharan Africans beyond Agadez based on a presumption of the desire to leave for Europe. It is therefore on Nigerien territory, even before any crossing of the Algerian or Libyan border, and even well before a possible departure through the Mediterranean, that people legally benefiting from the right of movement are prevented from moving. “According to the applicant associations, the implementation of the law has not only resulted in a flagrant violation of the right to free movement of citizens of the Community, but also the detention, expulsion, harassment and torture of migrants in the country.”⁵¹

This case illustrates at least two recent trends: first, African civil societies are increasingly involved in the field of migration and are part of transnational networks of mobilisation against policies of migration repression and criminalisation – the prioritisation of migration in the region has precisely been an opportunity for civil societies to develop and structure themselves. Second, as in Europe, the law is increasingly mobilised by activists, with judicial strategies defined to counter migration policies and practices that evolve into violation of legal frameworks and human rights. Refoulements and expulsions constitute the privileged domain for legal action, which may lead to legal progress.

The implementation of the law has not only resulted in a flagrant violation of the right to free movement of citizens of the Community, but also the detention, expulsion, harassment and torture of migrants in the country

⁴⁷ For comments on this Law, Perrin (2020).

⁴⁸ Presentation by the Director of Territorial Surveillance, Report of the third edition of the National Day of Mobilisation against human trafficking, Agadez 2017, ANLTP/TIM.

⁴⁹ Interviewed in 2022.

⁵⁰ Association for Juridical Studies on Immigration (ASGI); Network of University Legal Aid Institution (NULAI Nigeria); World Organization Against Torture (OMCT) and Nile University Law Clinic.

⁵¹ Minutes of the press conference of the collective of NGOs, 22 September 2022. See the announcement of the press conference: <https://sciabacaoruka.asgi.it/en/press-conference-niger-complaint-lodged-against-the-law-criminalising-the-transit-of-migrants/>

Some legal aspects about intra-African expulsions

The presentation of some evolutions in intra-African expulsion practices and mechanisms above has already addressed a number of legal points, in particular by mentioning:

- various types of illegal deportations (collective, out of any procedure)
- non-compliance with a bilateral agreement (e.g., between Algeria and Niger)

The following development intends to focus on a few legal points, in a way that is both more general and more specific. Indeed, it aims at specific legal indications with a view to some easy improvements, and it also seeks to stimulate reflection on legal trends. A first set of comments concerns the (discreet and ad hoc) existence of intra-African bilateral agreements. The second section deals more specifically with provisions relating to expulsions, adopted at national or regional levels, and briefly comment on their implementation.

A bilateral matter

While the EU and its member states seek to foster the readmission of TCNs to “transit countries”, intra-African readmission agreements so far only govern expulsions from a receiving country to a country of origin. Yet, a common problem with Euro-African and intra-African readmission agreements is the lack of transparency and access to agreements, including formal ones, which does not only concern undemocratic countries.

Bilateral readmission agreements among African states have been stipulated during the 2000s and 2010s, but they are often informal and designed for a particular crisis. Few agreements aim to provide a framework

for future expulsions; this was allegedly the case of a network of repatriation agreements concluded by Libya in 2006 with Mali, Niger, Chad, Egypt and Algeria. Some months before, in a context of rapprochement with the EU, 26 African embassies present in Tripoli were informed that they should repatriate to their respective countries all those who had entered Libyan territory illegally (Bredeloup & Zongo, 2005). Yet, the agreements have never been published. Subsequent expulsions from Libya have still been collective and in violation of various rights, but the countries of origin were at least notified (see Sylla [2020] about the 2008 expulsions to Mali). Other bilateral agreements, generally informal, seek to respond to a given situation, such as the aforementioned agreement between Senegal and Niger in March 2022. However, the similar agreement concluded between Niger and Algeria saw its initial circumscribed object extended *ratione temporis* and *ratione materiae* by one of the two parties to justify illegal expulsions. This deviation from the agreement also reflects Algeria’s contempt for its neighbours further south, and is made possible by the absence of West African cohesion.

Diplomatic relations between states play a fundamental role in expulsion practices, as well as in the conclusion of (often “gentleman’s”) agreements. Agreements between North and sub-Saharan African countries are generally characterised by asymmetry in relations. They are concluded to deal with the readmissions of sub-Saharan nationals staying in North African countries. The aforementioned agreement between Algeria and Niger is a caricature of this kind of deal: on an ad hoc basis, not publicised, invoked for illegal practices. Nevertheless, expulsions can also be part of good relations, as between Morocco, on the one hand, and several West-African countries such as Ivory Coast, Mali, Senegal, Guinea, Cameroon, on the other. In a context of regularisation of migrants in Mo-

A common problem with Euro-African and intra-African readmission agreements is the lack of transparency and access to agreements, including formal ones, which does not only concern undemocratic countries

rocco⁵² and reintegration of the latter into the AU, some meetings between representatives of the respective governments enabled the rapid collaboration of consulates to facilitate expulsions from Morocco in 2018 (GADEM, 2018) or again in 2020. These few repatriations could appear, in the respective countries of origin, as part of a balanced approach on the part of Morocco, which, after launching a new, more integrative immigration policy, was also resuming controls and arrests in the north of the country. Yet, this occasional bilateral practice has not been favoured by Morocco. In 2021, the IOM's Assisted Voluntary Return and Reintegration (AVRR) programme returned the fifth-highest number of migrants worldwide (2,372) from Morocco to West-Central Africa (Barone, 2023). The use of "voluntary returns" via the IOM appears as a disguised form of deportation (GADEM, 2018), which avoids having to go through tedious bilateral negotiations as well as through an administrative procedure.

(Lacking) provisions and (failing) practices

National and regional legal frameworks usually contain stipulations relating to deportation and expulsion. In general, they are insufficiently protective because they do not provide adequate procedural and substantive safeguards to protect against expulsion or to initiate appeals. For instance, Moroccan Law 02-03 (article 20) provides for a possibility of filing an appeal against the refusal to issue or renew a residence permit.⁵³ However, this appeal does not

prevent a decision to be taken to deport the person in accordance with the provisions of the law. Moreover, still in Morocco, the deadlines for appealing against expulsion decisions are extremely short (48 hours). In terms of procedural guarantees, the situation may be worse in Algeria: while certain categories of foreign nationals⁵⁴ are protected from expulsion in Morocco (art. 26 of Law 02-03), in Algeria the judge can only order the temporary suspension of the deportation decision for them (art. 32 of Law 08-11).

More generally, a procedure can be described in legislation, but never followed in practice, as is the case in Morocco, Algeria and Tunisia, in particular when it comes to expelling African nationals.

Moreover, deportation and expulsions are associated in most cases with prior arbitrary arrests and detention, without any respect for the rights of individuals and the procedures provided for by law. A noticeable point is the considerable development of administrative detention practices which are absolutely not provided for by law. The deprivation of foreign nationals' freedom in "reception centres" in Tunisia, in particular in El Ouardia, was the subject of a complaint lodged by the World Organization Against Torture (OMCT) to the administrative court, which concluded in 2020 that this practice was illegal. Unfortunately, the Tunisian authorities never took this ruling into account and have not changed their practice.⁵⁵ With regard to Libya, the systematic detention of people intercepted at sea with the indirect support of the EU and its member states, although aware of the ter-

⁵² Two campaigns took place in 2014 and 2016.

⁵³ Before the president of the administrative court within 15 days following the date of notification of the decision.

⁵⁴ Minor children, pregnant women, foreign father or mother of a minor child who is a national of the country, etc.

⁵⁵ <https://omct-tunisie.org/2022/06/06/le-centre-de-el-ouardia-zone-de-non-droit-ou-9-personnes-sont-arbitrairement-privees-de-leurs-libertes/>

rible conditions of detention, is the subject of judiciary initiatives, sometimes against an EU member state,⁵⁶ sometimes against the EU.⁵⁷ The mobilisation of law and courts is a growing common instrument for NGOs, international organisations (IOs) and individuals to defend the rights of people, especially in situations related to deportations. While not all cases result in a conviction by a court, they are nevertheless increasingly effective because of the judicial positions and of the media coverage they create.⁵⁸

At a regional level, texts contain some provisions related to expulsions that are poorly protective. For instance, article 21 in the Protocol to the Treaty Establishing the African Economic Community (ECA) Relating to Free Movement of Persons, Right of Residence and Right of Establishment provides that expulsions must result from a legal decision, but only when the entry of the person in the territory has been regular. The necessary legal basis should not be conditioned. Furthermore, the ECOWAS protocol of 1979 makes it possible to refuse entry, even to ECOWAS nationals, to “inadmissible migrants” under national laws and regulations (art. 4); an extremely vague concept which undermines the objective of free movement of persons and increases the risk of refoulement.

Finally, legal frameworks are often not respected, or can even pave the way for illegal practices and legitimise abuses. This is the case of the aforementioned Niger-Algeria “voluntary repatriation agreement” of 2014, which Algiers continues to abus-

ively refer to, including when it is about the collective expulsions of non-Niger nationals. This is also the case of provisions of the aforementioned ECA Protocol and the ECOWAS protocols, which stipulate that any expulsion should be notified in advance to the person concerned and that the government of the country of origin should be informed – while expulsion without any notification is commonplace.

Agreements can also make situations more complex and unsecure. In 1980 for instance, Libya and Mali signed an agreement regulating the employment of Malian workers in Libya. Instead of promoting the establishment of channels for legal migration, this convention contributed to the illegalisation of Malian nationals by accentuating the constraints weighing on them, the conditions to be in a regular situation and the bureaucracy. Expulsions from Libya of sub-Saharan migrants, in particular Malians, Burkinabè and Nigeriens, became significant between 1985 and 1995, fuelled by the consequences of this agreement (Sylla, 2020).

Due to this general finding of non-respect of law and rights and the insufficiency of legal frameworks as far as intra-African expulsions are concerned, practices and projects to develop deportations to transit countries such as Libya raise great concerns. In its judgment *Hirsi Jamaa and others v. Italy*⁵⁹, the European Court of Human Rights (ECHR) found that Italy violated article 3 of the European Convention on Human Rights, not only because deportation to Libya entailed a risk of ill-treatment in

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⁵⁶ E.g., Italy, <https://sciabacaoruka.asgi.it/en/asgi-asks-the-italian-court-of-auditors-for-an-investigation-into-the-use-of-public-funds-in-detention-centres-in-libya/>

⁵⁷ Communication to the Office of the Prosecutor of the International Criminal Court (ICC), <https://www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>

⁵⁸ To know more about initiatives dedicated to strategic litigation, including on migration and asylum matters, see for example here <https://sciabacaoruka.asgi.it/en/strategic-litigation/> and here <https://www.glanlaw.org/migrationandborders>

⁵⁹ <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-109231%22%5D%7D> <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-109231%22%5D%7D>

Libya, but also a risk of subsequent deportation to the country of origin where the applicant might be ill-treated, which constituted an “indirect refoulement” according to the Court’s case law. North-South expulsions are not covered by this chapter but, insofar as the EU and its member states encourage and support interceptions at sea by Libyan coastguards to ensure returns to Libya (Perrin, 2021), it is important to remember that, in the UN system, it has consistently been held that “Libya cannot be considered a safe place for the return or disembarkation of migrants intercepted or rescued at sea and that such returns to Libya may violate the principle of non-refoulement.”⁶⁰ Even if the same situations are not deplored in ECO-WAS member states, deportations to “stop-over countries”, as is increasingly practised and envisaged, are likely to raise numerous legal, ethical and diplomatic problems, but also economic and social issues as shown previously with reference to Niger. Moreover, while “transit return” already exempts from a certain number of procedures and relations with countries of origin, some practices go even further while disregarding individuals’ identity and background, with the sole objective of deporting to the South. This was the case in 2020, when Morocco was refusing deportations from Spain, the latter expelled to Mauritania, expecting a subsequent expulsion to Mali.⁶¹ “Community return”, namely expelling West-African nationals to any ECOWAS member state, implies disregarding diplomatic sensitivities within the Community, ignoring rights and

procedures, and creating tensions. Is it possible to believe that French or German nationals would be expelled to Poland or Belgium because they are part of the EU? Expulsion matters are also closely linked to biometric developments and access to personal data (Dauchy, 2023). The ECO-WAS biometric card, which will support free movement and identification of people, will play a key role in facilitating readmissions (ICMPD, 2021). The EUTF is funding the development of biometrics in civil registry offices in Senegal, with potential benefits for individuals. Nevertheless, the link that the Senegalese authorities explicitly establish with return policies leads to reluctance and difficulties in the implementation (MEDAM, 2019).

Conclusions and policy recommendations

This chapter has mainly set out practices of intra-African expulsions, of which we see the dimensions generally not respectful of law and fundamental rights, and the dramatic consequences for people on the move or living outside their country. African states are responsible for legal loopholes and abusive practices, which reflect both the division of African countries and states with little concern for their populations. Nevertheless, the major evolutions that we have highlighted are intimately linked to European policies in the region, which therefore have an indirect but fundamental responsibility for violations and abuses. In-

⁶⁰ UN, Report of the Secretary-General on the United Nations Support Mission in Libya, 20 May 2022, para. 106, available at: <https://unsmil.unmissions.org/reports-secretary-general>; UNHCR and IOM: <https://www.unhcr.org/news/press/2021/6/60ca1d414/iom-unhcr-condemn-return-migrants-refugees-libya.html>; OHCHR: https://www.ohchr.org/sites/default/files/2021-12/Unsafe_and_Undignified.pdf

⁶¹ Given the Spain-Mauritania agreement allowing the deportation of non-Mauritanians to Mauritania, signed in 2003 (see reference in Chapter 2), and the government’s willingness to cooperate on readmission of TCNs (already mentioned in Chapter 2).

Also: <https://www.rfi.fr/fr/podcasts/20201031-maliens-expuls%C3%A9s-canaries-espagne-droit-asile-frontex>

deed, the EU and its member states, which are responsible for the multiplication of obstacles to migration in the Western and Central “Mediterranean routes”, maintain and support the control systems and invoke the resulting violence as justifying the impediments to mobility. European borders have thickened⁶² and widened in North and West Africa, and even beyond. The constraints they generate throughout this space have the double effect of developing margins without rights and without morals and creating various opportunities of which migrants are the object.⁶³ In the short and long term, this approach promotes less safe, less orderly and less regular migration within Africa and on to Europe.

Recommendations to the European Union and its member states

- The EU member states, and particularly Spain, should put an end to forms of “transit return”, i.e., deportations to a country of which the expellee does not have citizenship, and refrain from considering the extension to ECOWAS. They should deport only to countries of origin, unless the person concerned wishes otherwise.
- The EU and its member states should avoid supporting African migration policies that violate human rights, and they should speak out against deportation practices that violate rights. They should avoid pressuring African states to develop policies and mechanisms to control migration without the prior existence of sufficient legal safeguards and effective means of human rights protection in these countries.
- They should encourage the development of legal modes and channels of migration within Africa and not contribute to the illegalisation of mobility in the northern region of Africa.
- They should not see human rights violations on the Western or Central Mediterranean routes as a deterrence measure to mobility to Europe and should contribute to reducing constraints and risks on migrants.
- They should support the implementation of assisted return programmes as an aid for individuals and, for example, assistance to migrants should not be conditional on their “willingness”/commitment to return to their country of origin. Migrants in difficult conditions, in Algeria or Libya, could be offered transportation to a country that is not their country of origin (e.g., within the ECOWAS), for another migration in good conditions (with the consent of the state concerned), rather than a humiliating return home surely soon followed by a wish to leave again. Besides, aid could be developed to support access to regularity for migrants outside their country of origin or in the country of origin before departure (accompaniment in the procedures, support from the administrations).
- The granting of EUTF projects should be more transparent and these projects should diversify the partners and benefit more local actors directly (not via the IOM or GIZ). The European Parliament should surely exercise more thorough control over the use of these funds.

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Recommendations to the AU, the ECOWAS and their member states

- States should fill the legal gaps in insufficiently protective provisions in re-

⁶² For developments on border thickness and methods of exercising sovereignty, see Basilien-Gainche (2021).

⁶³ Objects of trafficking and business, instruments of diplomatic pressure, means for raising funds, etc.

- gional agreements (the aforementioned ECOWAS protocols, ECA protocol, etc.) and national frameworks.
- States must improve transparency and access to bilateral agreements concluded on readmission issues. The members of parliaments in these states should also exercise checks and controls.
 - Expulsions should always be based on a legally valid decision, about which the person concerned is notified in advance and can appeal. The country of origin shall be informed of the forthcoming expulsion of its national (as provided for in regional conventions).
 - Collective expulsions are illegal and should not be practised. They should stop immediately, as well as other practices contrary to human rights, such as abandonment in the desert.
 - States should not accept the “readmission” of non-nationals, whether from an EU member state or an African state, and ensure the social, political and diplomatic costs of expulsion decided by another state.
 - Countries of origin should ensure the defence of the rights of their nationals abroad, do their best to ensure that they travel and stay abroad in safe and legal conditions, and should assist with repatriation when necessary.
 - ECOWAS and the AU should react firmly when the rights of the nationals of their member states are violated, whether by a member state or by a third state. They should use any forms of collective pressure or leverage to address such violations.
 - ECOWAS and its member states should promote compliance with their protocols relating to freedom of movement, residence and establishment. In particular, they should facilitate the issuance of identity and travel documents, recognise the documentation issued by other member states, fight against corruption and obstacles to mobility at and within borders, and facilitate access for nationals of member states to consular protection.

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List of acronyms and abbreviations

AVR	Assisted voluntary return
CSO	Civil society organization
CoA	Court of Auditors
EBPM	Evidence-based policy-making
ECA	African Economic Community (ECA)
ECOWAS	Economic Community of West African States
EIDHR	European Instrument for Democracy and Human Rights
ENPI	European Neighbourhood and Partnership Instrument
ETM	Emergency transit mechanism
EU	European Union
EURA	European Union readmission agreement
EUTF	EU Trust Fund for Africa
FIIAPP	Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas
Frontex	European Border and Coast Guard Agency
IO	International organisation
IOM	International Organization for Migration
MENA	Middle East North Africa
MOCADEM	Mécanisme opérationnel de coordination des actions pour la dimension externe des migrations
NATO	North Atlantic Treaty Organisation
NDICI	Neighbourhood, Development and International Cooperation Instrument
NGO	Non-governmental organization
OACPS	Organisation of African, Caribbean and Pacific States
OJEU	Official Journal of the European Union
OMCT	World Organisation Against Torture
TCN	Third-country nationals
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VHR	Voluntary humanitarian return

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