Frontex cooperation with third countries: examining the human rights implications

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

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

Frontex in the Balkans

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

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

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

Frontex in West Africa

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

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

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

A look into the future

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

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

The cooperation of Frontex with third countries is tailored to the region. For Balkan countries, the road towards their accession to the EU is inextricably linked to cooperation in preventing migrant movements. This incentive makes them particularly receptive to EU securitisation concerns, and is likely to encourage more direct operational cooperation as their geographical location allows reduced operational costs for Frontex.

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

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

Call for robust safeguards

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

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

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

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

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