EUROPEAN

POLICYBRIEF

ASILE
Global Asylum Governance and the European Union's Role

Shortcomings in EU Cooperation for Externalization of Asylum:
Lessons from Niger, Serbia, Tunisia and Türkiye

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ABOUT ASILE PROJECT

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

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

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1. Introduction

This Policy Brief addresses European Union (EU) support for asylum systems in selected third countries – i.e. Niger, Serbia, Tunisia and Türkiye - through a range of instruments including technical means (advice, training, capacity building), operational assistance (such as Frontex operations in non-EU countries) as well as financial support for refugee status determination, refugee reception, migration and border management. Specific focus is given to the instruments' compliance with transparency and accountability principles and international law, the extent to which the results achieved have been oriented towards facilitating mobility or the containment of asylum seekers and refugees, as well as their alignment with the United Nations Global Compact on Refugees (GCR).

2. Methodology

The Policy Brief is based on the ASILE Project 'Asylum for Containment' Report that has been co-authored by local researchers and two Amsterdam-based researchers.[2] The research is based on qualitative field work of 2 researchers in each of the 4 non-EU countries that are Niger, Serbia, Tunisia and Türkiye. Because of their expertise, the local researchers were encouraged to adapt the proposed general methodology so as to make it appropriate for their context; such adaptations are explained in the country reports. The three main sources were desk research on legislation and policy, existing academic and empirical literature, and 78 interviews with experts and practitioners in the four countries examined. This resulted in four Country Reports published in May 2022.[3]

3. Key Findings

3.1. Key Finding 1#: Third countries are hesitant to cooperate with the EU in strengthening their asylum systems out of concern for becoming extraterritorial EU hotspots

Third countries are eager to cooperate with the EU when it comes to strengthening their capacities in the field of policing and security. However, when it comes to reinforcing their asylum systems and reception infrastructures, third countries are hesitant to fully

[2] *Asylum for Containment. EU arrangements with Niger, Serbia, Tunisia and Turkey*, Brussels, March 2023.

[3] Bachirou Ayouba Tinni, Abdoulaye Hamadou, Thomas Spijkerboer: *Rapport de pays Niger*, Brussels: CEPS, May 2022; Olga Djurovic, Rados Djurovic, Thomas Spijkerboer: *Country Report Serbia*, Brussels: CEPS May 2022; Fatma Raach, Hiba Sha'ath, Thomas Spijkerboer: *Country Report Tunisia*, Brussels: CEPS May 2022; Gamze Ovacık, Meltem Ineli-Ciger, Orçun Ulusoy, Thomas Spijkerboer: *Country Report Turkey*, Brussels: CEPS May 2022.

cooperate because they are aware that the aim of EU support is the containment of refugees and asylum seekers on their territory.

The case of Türkiye, which adopted EU-inspired asylum legislation in 2013 and now hosts the largest refugee population in the world, has been a lesson for other countries. While non-cooperation takes different forms in different contexts, it is visible in all four countries under investigation. One example from each country:

- In Niger, local communities see mainly negative consequences of the cooperation of the national Nigerian authorities with EU policies, such as the "hotspotisation" of Agadez. This undermines the capacity of local authorities to implement cooperation effectively with the EU.
- In Serbia, effective implementation of an asylum procedure and of asylum reception conditions would turn it into a 'safe third country' for asylum seekers and refugees travelling from EU member states (Bulgaria and Greece) to other EU member states (Croatia, Hungary). This is a counter-incentive for Serbian authorities to effectively implement its legislation aligned with EU asylum acquis on course of Serbia - EU accession negotiation process.
- In Tunisia, although the Parliament passed an Asylum Bill submitted by the Ministry of Justice in 2018 (and developed with technical assistance from the EU), ratification was blocked at the executive level - not having received the Prime Minister's sign off to parliament for entry into force - as the fear of becoming a hotspot (hotspotisation) and being considered as a safe third country were paramount. Although we cannot write an alternative history, the likelihood of the Asylum Act entering into force would probably have been higher if it had not been part of EU externalization policy.
- Türkiye cooperates with the EU, or suspends its cooperation, as one element of its much more comprehensive foreign policy. Such issue-linkage mirrors EU policies linking migration management cooperation with non-migration related policy fields.

3.2. Key Finding 2#: Asylum and migration cooperation with the EU suffers from a lack of legitimacy

While EU actors obviously notice the non-cooperation of third countries in the field of migration, they interpret it as purely self-interested. From an EU perspective, it is logical and legitimate to think that asylum seekers and refugees can be contained in third countries if these countries have functioning asylum systems. However, third countries reject the EU imposition that they are better placed than EU member states to host refugees.

If one thinks of Niger (per capita income in 2021 $ 594,90) or Tunisia (per capita income in 2021 $ 3.924,30), it seems obvious that the EU (per capita income in 2021 $ 38.234,10) is better able to host refugees and asylum seekers than these countries. For Serbia, it remains unclear why it would host refugees and asylum seekers coming from Türkiye via

the EU member states of Greece and Bulgaria instead of same EU member states hosting them. An important root cause of the current refugee situation in North Africa is the disintegration of Libya that followed a NATO military intervention initiated by France and the US in 2011. Local key informants hold the view that the EU has contributed in significant ways to the problem; financially it is much better able to carry the responsibility; so why should Tunisia and Niger be willing to do that for them?

3.3. Key Finding 3#: The lack of legitimacy leads to non-transparent decision-making bypassing democratic procedures

The lack of legitimacy from the perspective of third countries helps to explain why cooperation between EU and third country actors is often non-transparent or even secret; it involves local actors selectively, and bypasses or even undermines democratic accountability procedures. Open, democratic decision-making is hindered in third countries because of the perceived lack of legitimacy of cooperating with the EU by local citizens. In this manner, EU external asylum and migration policy is at odds with a foundational element of its external action, which is the promotion of democracy.

3.4. Key Finding 4#: Asylum and migration cooperation contributes to violations of the rule of law

EU external asylum and migration policy contributes to the rule of law by supporting the development of a legislative basis for state action in the field of migration and asylum. However, at the same time it also contributes to violations of international law in third countries, specifically: the right to leave any country; the right of freedom of movement within the territory of a state; the prohibition of collective expulsion; the right to be protected from refoulement and the right to an effective legal remedy. Also, EU external asylum and migration policy is characterized, on a number of issues, by the absence of effective legal remedies against potential or actual violations of European law or human rights law by EU actors themselves. This concretely concerns large scale refoulement and push backs, as well as the Frontex Status Agreements with non-EU countries.

3.5. Key Finding 5#: The containment aims of asylum support can result in a normative vacuum

EU instruments supporting asylum systems in third countries (which are generally speaking positive in terms of international law and the UN GCR commitments) are often adopted in the framework of containment policies, which are problematic in light of the same instruments. This self-contradictory interlinkage makes it hard to evaluate EU instruments as to their compatibility with international law and the GCR, because this evaluation depends on the frame one adopts: is only the asylum support project taken into account, or also the containment policy of which it is part?. The resulting difficulty in making a normative evaluation of EU instruments can contribute to a normative vacuum.

3.6. Key Finding 6#: EU actors need to become more familiar with third country perspectives; this should be operationalised in EU funded research projects

In its design and in its implementation, EU external asylum and migration policy is based on misperceptions. This concerns the normative underpinnings of third country non-cooperation in particular (*supra*, Key Finding 2#). This misperception hinders effective international cooperation. Also, EU actions in third countries often remain conditional on EU support and fail to create sustainable change in asylum systems because third country perspectives are disregarded. Research in this field can contribute to providing EU policy makers with better insight in third country perceptions. This requires giving third country researchers a key role in designing, reviewing and implementing research projects.

4.Policy recommendations

On the basis of the above, we formulate the following policy recommendations:

1. EU commitments will be seen as more reliable if they are long-term and comprehensive, as opposed to the short-term projects adopted on an ad hoc basis that are typical for current policy instruments such as the Facility for Refugees in Türkiye and the EU Trust Fund for Africa (*Asylum for Containment*, p. 15-18).
2. EU commitments will be seen as more reliable if they are formal and take the form of legislation and treaties instead of, as they increasingly do, Memoranda of Understanding (MoUs), non-public texts and press releases (*Asylum for Containment*, p. 15-22).
3. EU commitments will be seen as more legitimate if EU actors do not seek to negotiate bilaterally with individual third countries (in the case of Africa) which may have a weak position, but instead engage with the African Union or regional economic communities such as ECOWAS (*Asylum for Containment*, p. 20-21).
4. In order to improve the rule of law conformity of the EU activities, (1) project documents should operationalise human rights objectives in a specific manner; (2) an *ex ante* human rights audit should be performed, as recommended by the European Ombudsperson in the context of the EU- Türkiye Statement, and should be made public; (3) *ex post* independent monitoring and evaluation reports should be performed and should be made public (*Asylum for Containment*, p. 22-28).
5. EU commitments will be seen as more reliable if they are unconditional commitments, instead of relying on issue linkage such as between readmission and visa facilitation (*Asylum for Containment*, p. 15-18).
6. In order to increase the democratic accountability of EU activities, there should be transparency concerning all documents, as well as transparent criteria for the

timing and subject of civil society organisations (CSOs) consultations as well as for the CSOs to be involved (*Asylum for Containment*, p. 19-21).

7. EU actors need to be more familiar with the perspectives of third countries; one way of getting more insight in this is to promote and fund researchers from the countries involved to carry out an independent research agenda (*Asylum for Containment*, p. 8-12).

8. EU funded (as well as other) research projects involving third countries should give a key role to local researchers; the ethics of the cooperation with local researchers should be an element of grant procedures, as well as of review procedures (*Asylum for Containment*, p. 11-12).