

CIVIL SOCIETY INPUT TO EU AFRICA COOPERATION ON MIGRATION:

EU-AU RELATIONS

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1. OVERVIEW OF THE 2014-19 PRIORITIES OF COOPERATION BETWEEN THE EU AND THE AU ON MIGRATION AND ASYLUM

Cooperation on migration and asylum policy between the European Union (EU) and the African Union (AU) over the last five years has been framed within four dialogue-led processes, namely: the Rabat Process;¹ the Khartoum Process;² the Support to the Africa-EU Migration and Mobility Dialogue (MMD);³ and the Joint Valletta Action Plan.⁴

The Rabat Process is structured as a political and technical dialogue which seeks to enable political cooperation on crucial migration issues between the EU and 58 countries from Central, West and North Africa. The priorities of the Rabat Process are to advance the respect for the rights of migrants and refugees and to combat poverty and promote sustainable development.

The Khartoum Process, which is also known as the EU-Horn of Africa Migration Route Initiative, brings the EU together with 41 AU Member States with the aim of achieving political cooperation between the parties. In particular, it focuses on human trafficking and people-smuggling.

The MMD, with a budget of € 18,500,000 that included a contribution from the Swiss Agency for Development and Cooperation, emerged as an element of the Joint Africa-EU Strategy (JAES) as determined in the context of the 4th Summit of the Africa-EU strategic partnership in 2014. The MMD was designed to advance six priority areas of cooperation that include: trafficking in human beings; irregular migration; remittances; the diaspora; mobility and labour migration; and international protection.

The Joint Valletta Action Plan (JVAC) emerged from the November 2015 Valletta Summit on Migration and seeks to bolster the cooperation between Africa and Europe in this regard. Serving as a convergence point for the Rabat and Khartoum Processes as well as the MMD, the JVAC is based on five pillars, namely: the development benefit of migration, root causes of irregular migration and forced displacement; legal migration and mobility; protection of migrants and asylum seekers; irregular migration, migrant smuggling and trafficking in human beings; and return, readmission and reintegration. JVAC also brought with it additional financial resources by way of the European Union Emergency Trust Fund for Africa (EUTF). Furthermore, JVAC brings to the forefront a monitoring aspect to the cooperation which comprises of a database of funded projects and the policies adopted in relation to the five pillars of the action plan.

1 Also known as the Euro-African Dialogue on Migration and Development, for more information see: <https://bit.ly/2UXkz4q>.

2 Also known as the EU-Horn of Africa Migration Route Initiative, for more information see: <https://bit.ly/2OVMpKA>.

3 For more information see: <https://bit.ly/2Sz11lb>.

4 For more information see: <https://bit.ly/2Hpg8R0>.

2. THE IMPACT OF MIGRATION AS AN ESSENTIAL PILLAR OF THE EU-AU PARTNERSHIP ON THE AU AND EU-AU RELATIONS

A key influence of the EU in relation to the AU's positioning on migration and asylum lies in the manner in which the EU has elevated migration as a key issue within the EU-AU partnership. Spurred on by the impetus of an increased number of people arriving from Libya and the Sahel region, EU concerns have seen migration become an issue of "unprecedented importance" in Euro-African relations.⁵ Indeed, the 2014 4th EU-Africa Summit yielded a Declaration on Migration and Mobility while the 5th Summit also saw the Joint Declaration prioritise Migration and Mobility but with a strong political commitment to address the root causes of irregular migration and forced displacement.

Consequently, the EU in its partnership with Africa has steered significant financial support towards migration-related projects and policies. The JVAC Database Insights of 2018 documented the following initiatives: 503 projects and 89 policies under the Rabat Process; 404 projects and 29 policies under the Khartoum process; and 102 projects and 106 policies which were implemented across dialogues and regions (in Africa and Europe). These initiatives were underpinned by approximately € 11.58 billion in project funding in the period 2015 to mid-2018.⁶

Embedded within these projects and initiatives has been a focus on cooperation that is geared towards increased returns and readmissions of irregular migrants to countries of origin and transit while also requiring such countries to enhance efforts on border security and management. Essentially, the EU in its pursuit of an externalisation policy has utilised financial diplomacy to influence migration approaches within African States as well as the AU as a continental body.

One impact of this approach is that it has contributed to the trend of securitising European development assistance.⁷ In short, this means that where there had been greater flexibility to accord resources towards development agendas, such as enhancing the provision of basic services, such flexibility has decreased in favour of supporting border security and management.⁸

Under the EUTF, for example, countries such as Mali, Niger and Libya have received support geared towards the capacity enhancement of their law enforcement agencies as well as border control whilst development-oriented projects have been contained.⁹ An impact of this securitised approach has been the erosion of protection for migrants along migratory routes. Libya, for example, has stood out for the numerous reports of migrants facing imprisonment, violence, slavery and barriers to reaching desired safe destinations to seek asylum.¹⁰ This in turn has seen the EU utilise the EU-AU partnership to enlist the AU in coordinative endeavours aimed at corrective action such as the AU–EU–UN Tripartite Taskforce on the Situation of Stranded Migrant and Refugees in Libya. The taskforce is mandated with the objective of saving and protecting the lives of migrants and refugees along migratory routes, and in particular in Libya.¹¹ Some of the cited achievements under this arrangement include "over 48,000 voluntary humanitarian returns of migrants from Libya to their home countries facilitated by IOM and AU Member States, as well as over 4,000 evacuations of refugees by UNHCR from Libya."¹²

5 Matthieu Tardis, 'European Union Partnerships with African Countries on Migration: A Common Issue with Conflicting Interests' in Notes de l'Ifri (French Institute of International Relations March 2018), <https://bit.ly/2OT2i4n> accessed 10 February 2020.

6 Khartoum Process, 'JVAP Database Insights 2018: Infographic Features Projects and Policies Contributing to JVAP Implementation' (8 November 2018), <https://bit.ly/3bAEY50> accessed 6 February 2020.

7 Supra, note 5, 16.

8 Luca Raineri and Alessandro Rossi, 'The Security–Migration–Development Nexus in the Sahel: A Reality Check', in Ahmed, Bashair, Danda, Mahamadou, Grant, Audra K., Ntousas, Vassilis, Raineri, Luca, Rossi, Alessandro, Sagna, Souleymane and Venturi, Bernardo *The security–migration–development nexus revised: a perspective from the Sahel* (Foundation for European Progressive Studies, Brussels, 2018), 24.

9 Supra, note 5.

10 Luigi Scazzieri, 'To manage migration, the EU needs to rethink its neighbourhood policy' in Insights (Centre for European Reform 17 May 2018).

11 African Union, 'Meeting of the Joint AU-EU-UN Taskforce to Address the Migrant and Refugee Situation in Libya', <https://bit.ly/38xIVWj>.

12 *Ibid.*

Another related and critical point of reflection is the balance of power within the EU-AU partnership and the established priorities regarding migration. African States have decried the fact that the partnership's projects in this arena have been dominated and driven by public opinion within the EU that views migration flows as a threat to European security and identity.¹³ As a result, there has been a misalignment between the short-term or immediate imperatives of the EU and the long-term goals of the AU.¹⁴ Illustratively, within the implementation of JVAC, African States are disappointed by the little progress made on the second pillar of opening pathways for legal migration when compared to the aspects that emphasise border security and the return of migrants to countries of origin.

Yet, despite these inherent tensions on priorities, the EU's financial support under the Joint Africa-EU Strategy has contributed to positive developments in normative advancements for migration at the AU-level. Under the MMD, which required the "development, monitoring and implementation of pan-African migration and mobility frameworks",¹⁵ the AU achieved the milestone of developing the Migration Policy Framework for Africa and Plan of Action (2018-2030) (hereinafter MPFA). The MPFA is the AU's contemporary strategic guide to Member States' as well as Regional Economic Communities' (RECs) management of migration. The MPFA propounds eight key pillars to migration, namely: migration governance; labour migration and education; diaspora engagement; border governance; irregular migration; forced displacement; internal migration; and migration and trade.

The AU also achieved the adoption of the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment (PFMP). The PFMP obliges the AU to monitor and coordinate the implementation of the protocol and thus places the AU at the epicentre of collaboration with RECs and Member States in the formulation of free movement policy regimes and procedures. While 33 Member States have signed the PFMP, it is yet to come into force since only four out of the required 15 Member States have proceeded to ratify the protocol.

The AU has also leveraged the resources under the partnership to enhance its institutional capacity and to play a role in the convening and facilitating of key inter-State as well as inter/intra-regional platforms for migration and asylum dialogue. One such example is the Pan-African Forum on Migration (PAFoM). Established in 2015 and having since conducted five editions, PAFoM invites African regional institutions and partners to disseminate contemporary information on migration trends, patterns and dynamics with a view to honing in on durable solutions to migration challenges on the continent.¹⁶ PAFoM's focus areas include: migration governance, regional integration, facilitated free movement of persons, facilitated trade, integrated border management, visa regimes and combatting irregular migration.¹⁷ Furthermore, the AU declared 2019 to be "The Year of Refugees, Returnees and IDPs: Towards Durable Solutions to Forced Displacement in Africa", in relation to which the 8th High-Level Dialogue of the African Governance Architecture (AGA) was held in December 2019 under the same theme.

3. RECOMMENDATIONS FOR FUTURE EU-AU RELATIONS, IN RELATION BUT NOT LIMITED TO MIGRATION

The next phase of the EU-Africa Strategy should consolidate the gains made over the last five years but in a manner that sees greater effort and commitment to the first four pillars of JVAC and dispels the asymmetrical emphasis on return, readmission and reintegration. The MPFA can serve as a roadmap to a more balanced relationship that takes into consideration Africa's own understanding of its migration dynamics as well as the interventions required to ensure the continent derives the developmental benefits of migration. Moreover,

13 Supra, note 8, 25.

14 L. Miyandazi et al., 'AU-EU Relations: Challenges in Forging and Implementing a Joint Agenda' (2018) 25:4 South African Journal of International Affairs 25 461, 472.

15 Supra, note 3. See in particular 'Annex 7, Action Document for the Support to Africa-EU Migration and Mobility Dialogue'.

16 See International Organization for Migration 'Pan-African Forum on Migration', <https://bit.ly/31Y3Z5O>.

17 *Ibid.*

and importantly, the AU's theme for 2020 is "Silencing the Guns: Creating Conducive Conditions for Africa's Development". This theme acknowledges armed conflict and its contribution to forced migration as being one of the major challenges in Africa.

Taking stock of the foregoing, the following recommendations are made for the next phase of the EU-Africa Strategy and cooperation with the AU:

- **Support a robust campaign of ratification and operationalisation of relevant AU frameworks and instruments:** To consolidate previous gains, there is a need to support operationalisation of the MPFA. This includes an increased focus on the ratification of migration-related instruments by AU Member States and to look to their implementation within national legal regimes. Some priority instruments include: the PFMP, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and the draft Protocol to the African Charter on Human and Peoples' Rights in the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa.
- **Increase accountability for migration policies, projects and initiatives through the inclusion and capacity enhancement of the African Human Rights System:** While the epicentre of dialogue and project support on migration has been the AUC, the EU can enhance the prospects of policy implementation by creating an MMD-like facility that is focused on cooperating with and enhancing the capacities of accountability organs of the African Human Rights System in as far as migration is concerned. These include: the African Commission on Human and Peoples' Rights (ACHPR); the African Court on Human and Peoples' Rights (AfCHPR); the African Committee of Experts on the Rights and Welfare of the Child (ACERWC); National Human Rights Institutions (NHRIs) and Civil Society. This should also entail the inclusion of migration as a key feature of periodic reporting by Member States before relevant platforms such as the African Peer Review Mechanism as well as the ACHPR and ACERWC.
- **Require the respect and protection of Human Rights Defenders (HRDs) as well as the maintenance and expansion of civic space:** Both the EU and AU should explicitly undertake to respect the role played by HRDs and civil society in highlighting protection concerns for migrants and in facilitating the pursuit of justice where abuses occur. Therefore, their activities in this regard should not be criminalised or draw other forms of punitive measures, intimidation and harassment. This is particularly in light of past experiences with the security-laden approach to migration.
- **Accelerating the implementation of projects and initiatives that advance the protection of migrants and demonstrate the development benefits to migration:** The EU should further efforts towards improved pathways to legal migration such as addressing high visa fees and arduous visa application procedures as a step towards realising the second pillar of JVAC. In the spirit of shared responsibility, the EU should move to eliminate artificial barriers to seeking asylum and increasing the number of refugees it receives for resettlement from camps in third countries.
- **Enhance support to corresponding themes that relate to the root causes of migration:** In recalling the first pillar of JVAC on addressing the root causes of migration, the EU should enhance its support towards themes such as transitional justice, electoral governance, illicit financial flows, climate change and sustainable development. Focus on the Africa Union Transitional Justice Policy (AUTJP) and the development of the African Ten-Year Action Plan on Human and Peoples' Rights can serve as useful starting points.



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