

Land and sea border externalization

A view from Senegal and Mauritania

Examination and analysis of ASGI's May 2022 mission



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All photographs in the report were taken during the ASGI mission between 7 and 13 May 2022. Cover: Dakar city view.

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Summary

Between 7 and 13 May 2022 a group of ASGI members (lawyers, legal practitioners and researchers¹) visited Nouakchott, Mauritania, and Dakar, Senegal to assess from a legal viewpoint the progress in the implementation of policies aimed at outsourcing mobility control and border closure. These policies are implemented by the European Union (EU) and its Member States in agreement with both Senegal and Mauritania.

In 2020 the migration route through Senegal and Mauritania came under the spotlight once again as a result of the significant increase in people arriving from West Africa. The reasons for the increase are partly related to the departure containment policy that the European Union has adopted on a wider scale. For instance, in 2017 an agreement between Italy and Libya curbed migration across the central Mediterranean; measures were introduced to close or shift the migration route towards Ceuta and Melilla, where Morocco has often cooperated with the EU to contain transit across its territory.

In 2020 there was an [almost 900% rise](#) in arrivals on the Canary Islands compared to the previous year. The inadequate reception measures and facilities on the Canary Islands, combined with deterrence policies, led to serious violations of the rights of those arriving there. Migrants were often housed in poor and inadequate conditions and there have been many reports of [mistreatment by the authorities](#). The situation was aggravated by the COVID-19 pandemic, which made it harder to manage arrivals and assist migrants. Heavy criticism of the Spanish authorities over this is to some extent attributable to the absence of a comprehensive and coordinated action plan. Spain also committed to reviving its existing repatriation agreements with countries in West Africa, especially Senegal and Mauritania.

Both these countries have a long history of cooperating with Spain and the European Border and Coast Guard Agency (Frontex) on migration and border control. Stopping the irregular arrival in the Canary Islands of migrants from Senegal and Mauritania is among the (more or less explicit) aims of the cooperation. In 2018, with the end of Frontex's joint [Hera](#) operation that had ensured efficient cooperation in surveillance of the sea that separates Mauritania and Senegal from the Canary Islands, and the increase in arrivals on the Islands from 2020, the strategic importance of these two countries in helping control entry to the Schengen Area has grown. Both are now under pressure to sign status agreements that will allow Frontex agents to be deployed directly in Senegal and Mauritania to support their governments in the fight against migrants smuggling and irregular migration.

Management of the Atlantic route is emblematic of how the EU and the main transit countries govern migration through actions that are interlinked at the political, legal and social levels.

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The members of the mission to Senegal included: Cristina Laura Cecchini, Lucia Gennari, Alberto Pasquero, Loredana Leo, Alice Fill, Sebastian Carlotti, Annapaola Ammirati, Dario Belluccio, Nicola Datena and Martina Bossi.

Of key importance are publicly funded projects, policies and public discourses aimed at criminalising irregular migration within the countries of origin, transit and destination. In this respect the situation in Senegal is extremely interesting since there are many projects providing support to returning migrants or offering information on the risks of irregular migration. These actions have peaked in recent years and are firmly tied in with official policies that criminalise migration. Hallmark of these policies are the criminal proceedings undertaken against parents who allowed their underage children to cross the sea to the Canary Islands. After the boat sank, the parents of the children who drowned were accused of manslaughter and [complicity in people smuggling](#).

The narrative presents existing and relevant EU migration policies as neutral. Irregular departures and the tragedies associated with them are not linked to the EU's often very restrictive visa policies or to the absence of proper sea rescue facilities. Measures instead tend to focus on intercepting potential migrant boats at sea, strengthening sea and land borders, and passing anti-smuggling and anti-trafficking laws to criminalise migrants in the broadest sense. Through these reforms, detention has frequently been used both in the cases prescribed by law and arbitrarily, as a deterrent to stop migration.

The European Union's role in the implementation of these policies is crucial, particularly through financing *ad hoc* projects that are often implemented with the support of other international organisations.

On the other side of the sea, countries of arrival intensify pushback and readmission policies, supported by (often confidential) bilateral agreements between respective ministries and/or law enforcement authorities.

The EU's efforts to cooperate with Senegal and Mauritania in managing migration are part of a broader strategy to prevent or reduce the influx of migrants, which includes measures that may deviate from or conflict with international law. For instance, the EU has invested in supporting countries of origin and transit to become "safe" for readmission, without violating the non-refoulement principle. This approach echoes the concept of migration management [regional disembarkation platforms](#), which the European Commission and Council have proposed for the central Mediterranean. These platforms aim to establish agreements with coastal third countries to receive and process rescued people, with the support of UNHCR and IOM in ensuring compliance with human rights and asylum standards. Although this project has not been fully implemented, it provides a revealing glimpse into the EU's externalization policy goals.



DAKAR

1. Introduction

1.1. Investigation aims and instruments

This report is the result of investigations and analyses by an ASGI delegation during the mission. The delegation interviewed 21 key players in Mauritania and 25 in Senegal, including civil society organisations, institutions, migrants and witnesses (among whom IOM, UNHCR, Spanish institutions and European Union delegations). The identities of the interviewees were kept anonymous in order to protect them. The report presents the current state of play with the aim of improving understanding of how migration management is evolving in what are particularly strategic areas for the EU.

The interviews produced information on mobility control that it is hard to find in official documents. Even though further documentary evidence was not found, all the information provided by the organisations, institutions and migrants was included in order to reconstruct the complicated mosaic of border management policies and practices. This evidence has been included as a basis for further study and examination.

This report sheds light on several concerning aspects related to fundamental rights in light of the increasing externalization of migration and border control policies by the European Union and its Member States to Senegal and Mauritania. The analysis covers a broad range of topics, including interception at sea, search and rescue operations, irregular migration,

detention practices, border control, deportation, readmission from Spain, the criminalization of mobility, the role of international agencies such as IOM and UNHCR, asylum systems in the two countries, and the protection of victims of trafficking.

Our research demonstrates that Senegal and Mauritania hold significant geographic and political importance. As Europe's interest in the region grows, including economic and financial investments, active cooperation in border control becomes crucial. Discussions between Frontex and these countries on status agreements represent a unique and important precedent in moving towards a model for containing and outsourcing migration, but with increasingly direct involvement by EU agencies. However, as the criminalization of mobility rises, migrants' real protection on the ground rarely improves, leading to political and legal consequences that are becoming increasingly clear

1.2. The current environment: discussion of the status agreement

In February 2022 during an official visit to Dakar together with Ursula von der Leyen, the President of the EU Commission, Ylva Johansson, the EU Commissioner for Home Affairs, suggested a status agreement that would allow Frontex to operate in Senegal in support of the government in its fight against people smuggling and irregular migration. The agreement, which focuses on controlling the migration route to the Canary Islands and the Atlantic route in general, is intended to control migration from Mauritania and along the central Mediterranean route. Its strategic importance to the EU is obvious.

The status agreement is being [negotiated on the model](#) used to regulate Frontex's actions in the Balkans. Currently, under article 218 TFEU that sets out the procedures for EU adoption of international agreements, the European Commission has entered into status agreements with Albania, Serbia and Montenegro and has authorised a number of Frontex missions in those third countries. Other identical agreements have been negotiated with North Macedonia, Bosnia and Herzegovina. The first of these is awaiting signature and the second is not yet in full force. Very briefly, these agreements under the 2016 Frontex Regulation (2016/399) allow and facilitate joint operations and [rapid border interventions](#) (for the rapid deployment of huge numbers of personnel in response to critical situations) and create a framework for Frontex assistance in deportation operations.

If negotiations are successful and Dakar signs the agreement, Frontex would be able to undertake both joint operations and also rapid interventions in Senegal. The agreement would effectively create a basis for joint Frontex/Senegalese border guard operations led by the Senegalese police. This would then allow greater cooperation with the [Africa Frontex Intelligence Community](#) (AFIC) in risk analysis and support for Frontex [risk analysis cells](#), which have been operating in Senegal since 2019.

In addition, according to the declarations made during the official visit last July, the agreement would involve significant transfers of technology, including extremely advanced surveillance systems and drones, that could be used to patrol border areas. Frontex stands out among EU agencies in its constant technical and technological innovation in border

control, which is becoming a real governance method. There were, for example, the [balloons](#) Frontex trialled in the Greek region of Evros last summer and its growing [use of drones](#) on the external borders of the European Union.² It is therefore not out of the question that the agreement might help make Senegal and its borders a preferred location for these tests and for the export of surveillance and control methods that could not be easily reconciled with EU (at least personal data protection) law.

Moreover, according to what has emerged from the agreement [negotiation directives](#) adopted by the Council last June, one of the EU's priorities is to ensure that Frontex personnel are able to operate as freely as possible in Senegal and in particular that they enjoy full civil and criminal immunity when acting in an official capacity. This clause is already included in other status agreements and has caused [a number of problems in the Balkans](#), where the immunity has prevented both appeals and the ability to suspend operations if human rights violations are discovered. The clause itself is therefore very problematic as this is an agency whose [accountability](#) is being heavily criticised and is also [under investigation](#) for its transparency and involvement in illegal refusals of entry at borders.

The importance (and potential) of the status agreement is enormous. By deploying Frontex outside Europe and not near the borders of the EU, the agreement is unique (or rather the first of its kind) in raising EU externalization of border controls to a new and higher level. Commissioner Johansson herself has [hailed the initiative](#) as 'the very first time we have had this type of cooperation with any country in Africa'. But it has also already [given rise to not a few concerns](#) about the risk of violation of the fundamental rights of migrants and potential asylum seekers from this new way of containing migration. However, signature of the agreement is at this point by no means a foregone conclusion. These risks, combined with general disagreement over a measure that clearly involves waiver by Senegal of some sovereignty over its own external border controls, are the subject of heated discussion by civil society. And finally, it should not be forgotten that Senegal's next presidential elections will be held at the start of 2024, making it hard to predict whether President Macky Sall will decide to sign such a pro-European agreement at such a delicate political time. Whatever happens, the very fact that negotiations have begun, the progress that has been made on them and their political and legal implications remain of primary importance.

Similar considerations on the risks and consequences of such an agreement also apply to a great extent to the relations between the European Union and Mauritania. Although the gradual expansion of Frontex's role seems less advanced in Mauritania than in Senegal, there are many similarities between the two cases, especially in terms of the EU's overall strategy and of the way the negotiations are being conducted.

On 7 June 2022 Frontex published an [action plan](#) listing the matters it believes the Mauritanian government must deal with as a matter of priority. These include greater human development, transition to a green and blue economy and the development of

² Frontex has never officially confirmed that it uses drones in its tests, even though there is a lot of evidence of this, as documented by a growing number of sources.

certain areas of governance, mainly in the field of migration. The plan then sketches out potential areas of operational collaboration for the achievement of these goals, in this sense anticipating the [4 July 2022 European Council decision](#) authorising the start of talks between the EU and the Mauritanian Republic over the adoption of a status agreement giving Frontex permanent powers to intervene in support of the Mauritanian police in migration management.

The [path](#) and stages leading to a status agreement are clearly defined in the action plan, which reveals the importance of the informal dialogue between EU institutions and the Mauritanian government in defining action strategies to continue the fight against both people smuggling and border management. In this regard, Frontex has agreed to be responsible for operating requirements as they emerge and this should initially come into force at the end of an ad hoc working arrangement intended to define the operating requirements in greater detail. With this as a basis, a more hands-on and permanent role can then be justified for Frontex that might be made possible through the status agreement.

Confirmation of the active dialogue between the parties and the gradual implementation of the action plan emerged with the [opening by Frontex of risk analysis cells in the Mauritanian capital Nouakchott on 20 September](#) to strengthen cooperation in migration and border control risk analysis, in coordination with the Africa Frontex Intelligence Community (AFIC). This is an important step forward as it confirms not just the presence of Frontex in the country but also the delay there has been in building the forms of collaboration and structures that are essential if the Agency is to play a greater role in Mauritania. In this sense, the further acceleration expected to occur in the next few months will be extremely interesting to observe.

STATUS AGREEMENT	WORKING ARRANGEMENT
<p>A status agreement is a type of agreement between Frontex and a partner third country that is intended to improve cooperation and coordination in migration and border control management. These agreements set out the terms and conditions of Frontex's operations in the third country, including deployment of its personnel and resources, the exchange of information and technical and operating support. The final objective of a status agreement is to make border management and immigration control more efficient in the EU and the partner country.</p> <p>Status agreements are not legally binding but are instead political undertakings given to improve cooperation between Frontex and partner countries. They are regularly reviewed and updated as migration and border management challenges evolve.</p>	<p>This is an agreement between Frontex and a Member State or partner third country to strengthen cooperation in migration and border management.</p> <p>Working arrangements are less formal than Frontex status agreements and are usually about specific joint operations or projects, rather than being wider frameworks for cooperation. They set out the terms and conditions of Frontex involvement in a specific operation or project, including deployment of personnel and resources, the exchange of information and skills and technical and operating support.</p> <p>The final objective of a working arrangement is to make border management and immigration control more efficient in the EU and partner countries. Arrangements allow Frontex to supply targeted, à la carte support to Member States and partner third countries to help them deal with specific migration and border management challenges.</p>



DAKAR

2. Senegal

2.1. Migration governance in Senegal

Senegal is primarily a country of emigration in which the diaspora plays an extremely important social and political role because of the scale of remittances and their contribution to the country's GDP. However, since the start of this millennium, EU pressure on local institutions to set migration policies has increased, to the extent that it now, from abroad, imposes a political agenda that is focused on irregular immigration. At the core of the agenda are the policies concerning remittances from Senegalese nationals irregularly living in EU countries, Senegalese border management and coastal control policies and the promotion of anti-trafficking and anti-smuggling legislation. EU priorities are also promoted through targeted development cooperation projects that in Senegal, as in many other countries, mainly finance projects that include actions to dissuade people from emigrating. These are projects that mainly involve big organisations rather than the small organisations of local civil society.

The 2006 cayucos crisis (or Canary Islands crisis because of the around 40 000 people who reached the Canary Islands on typical Senegalese and Mauritanian fishing boats) was therefore a turning point. Since then, irregular migration has become a main topic in relations between Senegal and the EU, turning the sea border between Senegal and Spain into an area of intervention and security policy implementation. The 2015 migration crises gave a new impetus to these policies, particularly as regards the repatriation of irregular Senegalese nationals, the fight against smuggling and voluntary repatriation programmes, which have become increasingly central to migration management strategy in the region.

The Atlantic route to the Canary Islands [became heavily trafficked once again from 2018](#), and this has further intensified in recent years as EU controls along the central Mediterranean route have grown. It is estimated that between January and August 2022, 10 637 migrants reached the Canary Islands by irregular means. This was 15% up on the same period in 2021 when 9 255 new arrivals were recorded.

Another effect of EU pressure has been the [rise in players and institutions](#) dealing with migration management. The most political department of the Foreign Ministry not only manages diaspora-related programmes and policies but also handles the diplomatic side of migration, including returns and repatriation. Other duties concerning travel documents for repatriated persons and relations with the diaspora are handled by the Legal and Consular Affairs Department and the General Department for the Support of Senegalese Citizens Abroad. The Internal Ministry on the other hand is the main player in the regulation of the entry, stay and departure of third country nationals. The Ministry's border police unit also plays a crucial role in cooperation with the European Border and Coast Guard Agency, particularly since the 2006 Canary Islands crisis.

The following paragraphs show how externalization policies are helping to form a migration management system at several levels: criminalisation of irregular migration and more funds for land and sea border controls; increased repatriation and voluntary returns; new laws on asylum, trafficking and smuggling. The plans appear to focus mainly on preventing migration towards Europe and making return easier. Representing migrants as victims is helping delegitimise the Agency and the ability to choose destination countries and methods of travel.

In addition, despite the growth in different forms of cooperation between Senegal and the EU, visa policy plays almost no part in migration management.

Internationally, Senegal is a signatory of: the 1951 Refugee Convention and its 1967 Protocol; the 1969 OAU Convention governing specific aspects of refugee problems in Africa; the 1990 International Convention on the Protection of the Rights of All Migrant Workers and their Families; the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons; and the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air.

Regionally, Senegal is a signatory of the Economic Community of West African States (ECOWAS) Treaty and its protocols, and of the Treaty on the West African Economy and Monetary Union (UEMOA). Both treaties establish the free movement of persons, goods, services, and capital for the citizens of member states, and the rights of residence and establishment.

Nationally, Law 71-10 of 25 January 1971 establishes the conditions of entry, residence and establishment in Senegal for foreigners, while Law 2005-06 of 10 May 2005 establishes the rules for fighting against human trafficking and related practices and for protecting victims.

2.1. Integrated border management - land and sea borders

In the area of coastal control, Senegal is party to several cooperation frameworks, including police cooperation with Spain that has been in force since 2006 under a [memorandum](#) on joint patrol operations to combat irregular emigration. Since the agreement was signed, there have been several *Guardia Civil* patrol boats in Dakar.

In 2006 Frontex presence off the coast of Senegal began to intensify, partly via various Hera operations (the last one, which ended in 2018, directly involved Spanish, Senegalese and Mauritanian authorities in air and sea patrols of the areas through which the Atlantic route passes). [Other memoranda](#) followed to strengthen police cooperation. Spain believes Senegal is a key partner in '[keeping the Atlantic route closed](#)'. A number of different EU initiatives have helped do this, the main one being the 2006-2011 [Seahorse Operations](#) whose main aim was to improve the sharing of information on surveillance along Spain's Atlantic border via satellite communications.

The question of sea patrol has so far been closely linked with intercepts at sea, where – because of the lack of official data – there is little information available. While we do know that such intercepts form part of the criminalisation approach we discussed above, establishing precisely which personnel is directly involved and how is both a crucial and a complex matter.

Land border controls on the other hand at present involve several projects and many international players. In October 2019, for example, the [joint operating partnership](#) was launched to fight against migrant smuggling and human trafficking in Senegal. This pushes for greater interministerial coordination (Internal, Armed Forces, Economy and Finance, and Justice Ministries) as part of closer cooperation with EU Member States (Civipol, the technical international cooperation agency of the French Interior Ministry, is among the main partners).

Another programme of note is [GAR-SI Sahel](#) (Rapid Action Groups – Surveillance and Intervention in the Sahel), an expensive programme that from 2017 has been building up the operating capabilities of the Senegalese authorities to give them effective control over border and extra-urban areas. [Project participants](#) in addition to Senegal are the Sahel G5 (Burkina Faso, Mauritania, Mali, Niger and Chad) and, coordinated by Spain (through FIIAPP, its cooperation agency), France, Italy and Portugal. In practice this should lead to cooperation between the various national police forces to facilitate the exchange of information on matters concerning the fight against terrorism and migration management, and especially to a reduction in forced and irregular migration. If the status agreement between Frontex and Senegal comes into force, it will be advisable to monitor if and how the new cooperation framework intersects with GAR-Si Sahel.

Further developments are under way as part of the [programme to support and strengthen civil registration](#) and to create a national biometric identity database, which since 2019 has been financed by the EU Trust Fund and implemented by the French and Belgian cooperation agencies. This is another programme that could have a significant impact on emigration control in Senegal under the new status agreement.

2.2. The fight against trafficking and smuggling and the criminalisation of migration

In response to the migration crisis at the start of the millennium, Senegal passed [Law 06 of 10 May 2005](#) on the fight against human trafficking and similar practices and on the protection of victims. The law has been criticised for failing to distinguish properly between trafficking and smuggling, thus simply criminalising migration in general.

In the first few years after the law was passed, its application criminalised people leaving Senegal for the Canary Islands because anyone intercepted at sea was [automatically](#) arrested and detained on smuggling charges. In recent years the practice, although not entirely ended, does seem to be applied less frequently. One of the controversial applications of the law has been that of a [father accused of](#) people smuggling because he put his son on a boat that later sank. Even though the case produced a not guilty verdict, it is typical of the much wider criminalisation of migration.

Our findings show that the law tends to be used mainly to control and stop mobility, rather than to combat human trafficking and exploitation in the strict sense. The confusion between trafficking and smuggling is consequently extending the scope of statutory penalties and is turning the law into a means of stopping and disincentivising irregular migration.

On this point Felipe González Morales, the United Nations Special Rapporteur on the Human Rights of Migrants, [commented](#) that criminalising every type of migration forces people into

living hidden lives and exposes them to further risk of violation of their fundamental rights. He added that by claiming to fight against people smuggling, the authorities are confusing smuggling with the criminalisation of migrants.

During our interview with the representatives of UNODC in Senegal we were told that there are two forms of trafficking: [Talibé children](#) who are forced into begging (this concerns around 30 000 children in the Dakar region alone) and the sexual exploitation of Senegalese and Nigerian women and girls who are forced into prostitution in the gold mining areas of Kedubu. The instruments for protecting victims are very limited. The State often calls on NGOs and private institutions to identify and assist victims. Although the 2005 Act clearly states that the victims of trafficking cannot be repatriated, they often are, because there are no protection facilities for them.

A new bill is currently under discussion to bring the present law into line with the Palermo Protocol. The reform is part of [PROMIS](#), a joint UNODC (United Nations Office on Drugs and Crime) and OHCHR (Office of the United Nations High Commissioner for Human Rights) project funded by the Netherlands that aims to 'strengthen the fight against migrant smuggling in Western Africa, from a human rights-based approach'.

Of fundamental importance in Senegal are also the programmes to raise awareness of the risks of irregular migration. These are often managed by returned migrant organisations funded by EU NGOs, EU cooperation agencies and the IOM. A number of awareness-raising programmes are however also run by independent, politicised, pan-African organisations trying to support the creation in Senegal of life and individual and collective improvement projects.

2.3. International organisations in Senegal

Present in Senegal since 1998 and involved in EU migration flow management projects, the International Organization for Migration (IOM) is a key player in setting the political agenda for migration management in Senegal. The IOM has been involved since 2014 in an [EU border control initiative](#) that, among other things, aimed to set up 8 new control posts on the border between Senegal, Mali and Mauritania and has also helped train Senegalese border guards. State border control support programmes and migrant tracking projects have a big impact on freedom of movement within Ecowas for its citizens. The expansion in the number of control posts therefore risks unduly and unlawfully blocking mobility, is increasing corruption among border guards and is therefore causing people to turn to smuggling and trafficking networks. The rise in controls, far from creating secure mobility channels, is instead criminalising migration and causing it to go underground. IOM plays a key role in return, reintegration and awareness programmes fighting irregular migration and therefore funds a large number of (also small) civil society organisations. Since 2015 IOM has been involved in return and reintegration projects funded by EUTFA. Between 2016 and 2018 it also helped draft the Senegalese national migration policy.

Through the EUTF, IOM has received EU funding for 25 projects, of which 4 in Mauritania and 3 in Senegal. UNHCR instead has been involved in 15 EUTF-funded projects, of which 3 in Mauritania and 2 in Senegal.

UNHCR's role in Senegal seems rather limited in terms of mobility control and right of asylum outsourcing policies. However, both IOM and UNHCR are working closely with the European Union to manage various aspects of Senegalese migration policy (voluntary repatriation, actions to strengthen border controls), while at the same time collecting information and data considered of great importance by the EU. By presenting themselves as neutrals able to mediate between migrants, local government and the European Union by taking a humanitarian approach, IOM and UNHCR are helping sustain externalization policies and make them acceptable.

The growing presence of such players in a role that is increasingly in line with EU policies is evidence of a new complex architecture for migration control. The fact that it is mainly the international and cooperation agencies of EU Member States that are funding migration programmes, is generally making it difficult for organisations that promote a more critical approach to these policies and are trying to promote a different view of migration to survive.

2.4. The asylum system in Senegal

The body assessing requests for asylum in Senegal is CNE (National Eligibility Commission). Once a request for asylum has been submitted, a renewable 3-month residence permit is issued until there has been a CNE hearing and decision. A second interview is then arranged with a police inspector from the Interior Ministry. Once the request for asylum has been submitted, the requester enters the asylum network, which is effectively supervised by the UNHCR that funds various Senegalese NGOs to provide assistance. It should be noted however that neither asylum seekers nor refugees receive any help with food or housing. If the request is rejected in the first instance, an appeal can be made to the Commission itself and if this fails, to the President of the Republic.

A separate comment is required for LGBTQI+ people seeking protection, since homosexual acts are against the law in Senegal (art. 219(3) Criminal Code). In July 2021 this caused France to [remove Senegal from its list of countries of safe origin](#). The situation is no better for the [victims of trafficking](#), who receive rather limited protection and whose material support is almost entirely delegated to civil society organisations, in part because the 2005 Act on this subject has not been implemented in full. Failure to recognise and repatriate the victims of trafficking is not unusual. For people who obtain protection in Senegal because of discrimination against their sexual orientation and/or sexual identity, the risk of further criminalisation continues. UNHCR resettlement in third countries remains a very faint hope.

On 5 April 2022 the Senegalese National Assembly passed (and President Macky Sall signed) a [new law](#) on the status of refugees and stateless persons, replacing the 1968 law on asylum

(Law 68/27, amended in 1969). While various local associations agree that the law will (on paper) improve the standard of protection for refugees and especially for stateless persons, there is concern that it will not be followed by any proper improvement in their living conditions. The disparity between officially recognised rights and the *de facto* situation also facilitates externalization, which could allow greater collaboration between the EU and Senegal on migration and asylum specifically in the light of the new standards on protection, even though their effects would be limited for the persons actually concerned.



NOUAKCHOTT, FISH MARKET

3. Mauritania

3.1. Migration governance in Mauritania

Mauritania is one of the countries of migrant and refugee origin and transit that, from the EU viewpoint, plays a major strategic role. This is primarily because of its geographic location on the Atlantic close to the Canary Islands and near countries key to migration dynamics in the Sahel region, such as Senegal, Mali and Morocco. Like Senegal, Mauritania has therefore attracted attention from Spain, which has deepened cooperation on migration policy and border control management specifically because Mauritania is a buffer between the Maghreb, West Africa and the Sahel.

Mauritania is primarily a country of transit for migrants travelling to Europe. Its closeness to the Canary Islands gives access to the EU, especially for boats from Nouadhibou, which is on the coast near the border with Western Sahara.

Since the second half of 2019, the number of foreign nationals leaving from Mauritania and Senegal has risen significantly. The strategic role of the two countries in mobility control in the area has consequently grown significantly: firstly through Spain's revival of types of cooperation already tried and tested, especially in the last two decades (mainly via international agreements between the due countries and Spain); secondly through the attempt to beef up the presence and effective commitment of external players (e.g. Frontex) that are helping Spain in the complex containment of movement to the EU; and thirdly by giving Mauritania resources and skills that are effective in containing inflows.

[Since the 2000s](#) Mauritania has been under significant pressure from the EU - and Spain in particular - to stop irregular flows of migrants. The strategy adopted has been to strengthen the instruments that facilitate the readmission of foreign nationals (including those from third countries) into Mauritania, increase police border controls and intensify coastal patrols.

The keystone of this strategy is the [bilateral readmission agreement](#) signed by Spain and Mauritania in July 2003. Under the agreement, Spain can ask Mauritania to readmit not just Mauritanian but also third country nationals. This is permitted under clause IX of the agreement if the third-country nationals in question do not meet Spanish entry requirements and are 'presumed' to have travelled through Mauritania before making their irregular entry into Spain.

In March 2006 after the cayucos crisis mentioned above, Mauritania and Spain signed a further (unpublished) agreement to intensify coastal patrol of Mauritanian waters. The agreement includes the supply of four naval vessels, one helicopter and twenty *Guardia Civil* agents with special training to support the Mauritanian authorities in coastal patrol and maritime interdiction. The agreement was made while [Frontex's Operation Hera](#) (2006-2018) involving Senegal and initially Morocco was being set up. As we have said, the general aim of the operation was to limit the flows of irregular migrants from West Africa to the Canary Islands. The two methods used to achieve this ambitious aim were: firstly, support through bilateral agreements for the readmission from the Canary Islands of third-country nationals into countries in West Africa; and secondly joint sea patrols to stop boats leaving the coast of Africa for the EU.

Mauritania has also been the subject of Spanish-promoted development cooperation actions that have anything but humanitarian aims and are instead focused on stopping departures to the Canary Islands and managing mobility. One typical example, and a key piece in the flow containment strategy, is the set up in 2006 of the [first detention centre for irregular immigrants](#) (*El Guantanamito*) in Nouadhibou with support from the Spanish development and international cooperation agency. Although the centre no longer appears to be operational, it introduced a period in which – as the following paragraphs show - foreign nationals were detained to control not so much entry into the country as exit from it.

3.2. Search and rescue missions in Mauritanian territorial waters

An at least brief historical examination of diplomatic relations between Spain and Mauritania and between the European Union and Mauritania is essential to understand the information we obtained through our meetings with the organisations involved in rescuing intercepted foreign nationals or readmitting them after they have tried to reach the Canary Islands. We must point out a *caveat* concerning the understandable bias these organisations (particularly IOM and UNHCR) displayed when explaining their dynamics and roles.

In addition to our previous comments on the agreement for joint Spanish/Mauritanian patrols of Mauritanian territorial waters, it should be noted that Project [SEAHORSE](#) created a satellite communications network for the States that signed up to it (Spain, Mauritania,



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Senegal and Capo Verde), two logistics centres in Mauritania and the introduction of mixed patrols to improve the prevention of irregular migration.

In 2008 Spain and Mauritania signed an (unpublished) [Memorandum of agreement](#) on immigration and sea rescue. This resulted in a new operating centre in Nouakchott, which is in close contact with the regional coordination centre for the Canary Islands, and plans for new supplies of equipment and more sea search and rescue training for Spanish personnel.

The sudden new wave of departures in the second half of 2019 met with a prompt response from the Spanish government through the significant relaunch in January 2020 of the readmission agreement and a new bilateral meeting during the [Sahel summit](#) on 30 June 2020, during which Spain repeated that it was prepared to beef up support for Mauritanian sea border patrols.

Although [Mauritania is not a signatory of the Hamburg Convention](#), the [IMO's maps](#) do confirm that there is a Mauritanian rescue area over which the country's coast guards have jurisdiction. During our meetings however, we were told that even though jurisdiction does lie with Mauritania's coast guards, they are financially and logistically dependent on foreign funding and technical support.

Spain plays a key role in this support, mainly via its *Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas* (FIIAP), which has EU funding through the [Partenariat Opérationnel Conjoint pour Mauritanie](#) project that has itself recently received new funding until 1 September 2024. We also received confirmation from several sources that ships donated by Spain carry *Guardia Civil* agents who are providing technical and logistics support. Patrols should be restricted to Mauritanian territorial waters alone.

International organisations are not directly involved in these operations but, as we were told, can be called on by the Mauritanian police at their discretion during sea intercept and

rescue operations. Most landings are in the Nouadhibou area and some on the Nouakchott coast. Intervention in these cases comes mainly from the Mauritanian Red Crescent and the French Red Cross, which provide humanitarian first aid to those concerned. No real healthcare facilities or specialist personnel are supplied but anyone in a particularly serious condition can be taken to a local hospital.

The role of IOM and UNHCR in landings is not entirely clear, since it is not documented. UNHCR has confirmed that it is prepared to intervene when it receives reports directly from any NGO present at a landing after an interception but this information has been contradicted by other interviewees. If, however, UNHCR is not in attendance at a landing, this will essentially prevent those intercepted at sea and then brought to Mauritania in preparation for rejection from accessing the international protection procedure.

IOM also told us that standard operating procedures (SOPs) have been produced for landing operations but that, although they have been finalised, they are not yet applied or published.

It should also be noted that anyone intercepted during departure or near the coast is [systematically held and accused of people smuggling](#) under the new laws 2020-017 and 2020-018.

3.3. Criminalisation of migration

From the beginning of the millennium, Mauritania, like Senegal, has developed instruments to stop trafficking. In the same year as the readmission agreement was signed with Spain, [Law 25/2003](#) was passed, which contains just a few articles but allows ample discretion when identifying the type of offence concerned.

Various civil society members discovered that from the start of the 2020s the Mauritanian authorities have developed a very clear practice that has led to a rise in the number of smuggling charges and to the arrest of presumed smugglers. Law 21 of 2010 ([Law 21/2010](#)) was an attempt by Mauritania to strengthen the law in order to prevent and fight the illegal smuggling of migrants, protect victims and promote cooperation. Ten years on, the entry into force of laws 2020-017 and 2020-018 on the fight against human trafficking and smuggling and their subsequent implementation has further toughened the law, which for a decade now has been criminalising mobility. This is an approach that has increased corruption and the blackmail of foreign nationals. Indeed the only way of avoiding a smuggling charge is to pay off the police while in detention in a police station.

This is a criminalisation strategy that is also being used for preventive purposes by charging migrants themselves who are about to leave for the Canary Islands with smuggling. People are often intercepted on the coast or while waiting to travel (in warehouses and other transit places) and are then arrested on smuggling charges. The trafficker as a legal construction has therefore become a means of criminalising and repressing mobility along the Atlantic route in order to meet EU demands. Among the trickle of new Mauritanian laws passed in the last two decades on the fight against people smuggling, the most recent came on 5 July 2022 with the adoption of [Decree 102](#) establishing the organisation and operation

of INLCTPTM (the National Authority for the Fight against People Trafficking and Migrant Smuggling). The agency was created in implementation of article 53 of Law 017 of 2020 and is tasked with receiving reports, coordinating efforts, cooperating with the organisations that deal with trafficking, adopting coordinated systems for identifying, accepting and protecting, and with creating a database of the victims of trafficking.

3.4. Detention of foreign nationals

[To date at least three](#) locations have been used to detain migrants in Mauritania: the Bagdad police station (Nouakchott), the DRS (*Direction Régionale de Sûreté*) (Nouadhibou) and the Nouadhibou detention centre. The last (also known as *El Guantanamo*) was set up in what used to be a school with funds from Spain's AECID (Agency for International Cooperation for Development). The centre opened in 2006 and was officially closed in 2012 after numerous [reports](#) of overcrowding, dreadful hygienic conditions, abuse and the total lack of access to healthcare and legal assistance. The reports we received appear to confirm that the Nouadhibou detention centre is no longer active and that it is due to be replaced in the near future with a 'reception centre for victims from the sea' requested by the European Union, which is apparently intended to rehabilitate people intercepted at sea.

Following the closure of the Nouadhibou detention centre, foreign nationals have been held in police stations, including the above Bagdad station. In these cases, detention is systematically used for repatriation purposes, whatever the interception method. Foreign nationals readmitted from Spain under the 2003 agreement are therefore held here while awaiting repatriation, along with people intercepted near the coast. Although NGOs said they were not allowed into police stations, international organisations told us they had no problem entering. Nevertheless, no-one who had been detained and with whom we were able to speak said that they had ever seen any organisations inside the police stations. UNHCR apparently confirmed that there is no formal agreement allowing international organisations into police stations but that the Mauritanian authorities freely grant their representatives access upon request. As in the case of landings, organisations must however be aware of potential asylum seekers who are being detained. After assessment by UNHCR personnel, their release may be requested.

3.5. Removal of foreign nationals to land borders

The massive use of administrative detention is an essential part of the policy for containing flows of foreign nationals in Mauritania. According to several people we spoke to, detention is used not only for people involved in readmission procedures from Spain or who have been intercepted while trying to leave from the coast of the country, but also, with varying frequency, people who are irregularly present in Mauritania (presumably under art. 19 of Decree 169 of 1964, which is the keystone of Mauritanian immigration law). We were told that the authorities make regular round ups in various metropolitan areas (e.g. the Sepra

district) at fixed times (18:00) to fill up vehicles that then transport the foreign nationals outside the country.

Removals are very informally organised, without warrants, check of previous detention, provision of statutory information or opportunity to meet lawyers or international organisations (we were told that telephones are confiscated and it is impossible to contact anyone). Some interviewees mentioned that organisations have essentially no interest in people who have been detained or are about to be removed, even in cases where organisations are actually in attendance. Everyone without distinction is taken to the southern borders of Mauritania (with Senegal and Mali), without any check of their nationality or opportunity to access IOM's voluntary return schemes.

The frontier post most involved in these summary removals is near the city of Rosso on the border with Senegal and along the natural frontier formed by the River Senegal. The building itself and its facilities were renovated in 2016 with help from IOM as part of the EU-funded [Support for Border Management](#) project. Migrants are handed over to private dug-outs that take them over the border. The practice has crowded the area with foreign nationals.

Guidimakha is another region concerned by this type of summary removal. It is located in a strategic position on the border with both Senegal and especially Mali. It offers the closest border to the coastal cities of Nouakchott and Nouadhibou and is therefore particularly accessible near Selibaby. We were told however that Malian nationals have also been removed to far more remote and desert areas of the country, such as Hodh el Chargui and Hodh el Gharbi, where people are abandoned over the border without any means of survival. We do not have any reliable estimates of the number of deaths this has caused but according to [some](#) studies it could be [even higher](#) than the number of deaths in the Mediterranean.

3.6. IOM's role in Mauritania

The International Organization for Migration plays a key role in the policies of externalizing and containing foreign nationals, although it has only had a fixed presence in the country since 2007, mainly as a result of a request from the Mauritanian government for support with land border management.

In 2010 IOM provided the essential impetus for the [Mauritanian national migration strategy](#), which was adopted to facilitate an over-arching approach to the question of migration. IOM's importance was subsequently confirmed when the [national strategy of integrated border management in Mauritania](#), which had been produced to develop technical and logistical capabilities for land, sea and air border management, was drawn up and funded.

As part of its analysis of intervention methods in different border areas, IOM produced an intervention analysis and policy document entitled [Cartographie et présentation de la gestion des frontières en Mauritanie](#), which has been the foundation for later projects in

which IOM has been directly involved in support of the Mauritanian public security authorities as they develop policies to contain the freedom of movement.

When looking to understand the role of IOM in Mauritania, the Strengthening Border Management, Fostering Protection and Reintegration of Migrants in Mauritania Project details the role of the organisation in the country. The project has 8 000 000 euro in funding from the EU Emergency Trust Fund and is evidence of the growth in investment based on an integrated approach to migration management. [The objectives achieved](#) in terms of assistance to migrants already in Mauritania are very limited. In the five years the project was running (it shut down in September 2021), only 219 migrants in transit were protected and/or assisted, 17 returning migrants received reintegration assistance and 31 migrants obtained assistance after voluntary return. More impressive is the number of voluntary returns (1066), even though this is very low when compared with the number of unofficial returns that always concern very high numbers and to some extent explain why the organisation has been unable to access people involved in these procedures. The list of achieved objectives does not however provide any specific estimates [of the work done by IOM in strengthening border management](#), which forms a very large part of the project. Objectives included: studies of migration dynamics involving Mauritanian borders; the creation of new border posts and a new inter-service coordination centre for Mali, Senegal and Mauritania; the supply of technical equipment; the restructuring of existing crossing points and the organisation of training courses for the Mauritanian border police. With regard to the construction of four new border crossing points at Hamoud, Tenaha, El Melgue and Sagne (in the Guidimakha region), the project provided support for new local patrols.

IOM also received [significant funding from the Japanese government](#) between 2015 and 2017, once again to strengthen the border management capabilities of the Mauritanian authorities in partnership with its neighbouring countries.

IOM's intervention in security and control of the freedom of movement therefore seems far greater than the humanitarian support it provides to people in movement, and confirms that the organisation is actually instrumental in policies to stop migration and to outsource its management.

In terms of boosting Mauritanian legislative policy, [IOM has helped draft the law on the fight against human trafficking and people smuggling](#) to which we have already referred. This is another key factor evidencing the Mauritanian government's apparent focus on human rights.

3.7. Role of UNHCR in Mauritania: access to asylum

Mauritania has no national law on the right of asylum even though it has ratified the Geneva Convention. [Information published by UNHCR](#) shows that since December 2015 an asylum bill has been 'waiting to be passed'. However, a number of different interviewees told us that Mauritania has no particular national interest in passing such a law and also that major technical support would be needed to create an asylum system.

UNHCR handles Mauritania's entire asylum procedure, which is divided into two separate procedures. The first is for people in the Mbera camp where Malian migrants from what are considered the most dangerous regions are registered as *prima facie* refugees. In urban areas however, asylum seekers can ask to be registered with the ALPD (Association for the Fight against Poverty and Under-development), which is an implementing partner of UNHCR. Completed forms requesting registration are sent to UNHCR, which then gives asylum seekers a pre-registration appointment to assess whether they fall into a vulnerable category (unaccompanied minors, men and women who are victims of gender-based violence) that gets fast-track registration.

Following registration, applicants receive an asylum request certificate valid for six months, after which – and as soon as possible – they are allotted an RSD (refugee status determination) interview appointment. According to UNHCR, the Mauritanian Interior Ministry signed a memorandum of understanding in December 2021 in which it agreed to recognise UNHCR status decisions. The MoU should make it possible to issue refugees with a Mauritanian national refugee card along the lines of what happens in the Mbera camp. Despite UNHCR declarations that no conditions apply to the seeking of asylum, various people have told us that persons from a number of countries (e.g. Sierra Leone) cannot access the procedure. According to some of those we interviewed, this is because the African Union has produced a list of safe countries from which asylum cannot be sought. UNHCR does not generally provide any dedicated services for asylum seekers in Mauritania and only makes one-off payments for housing or healthcare if particular vulnerabilities have been certified.

The time required to confirm protection depends on the type of procedure followed. According to UNHCR, in fast-track procedures for e.g. Malian migrants in the Mbera camp, a decision can be made in a week - once registration has been completed. But in the case of asylum seekers in urban areas, UNHCR says it can take between one and six months, depending on the number of interviews required and the complexity of the case. Several of the people we interviewed who are members of Mauritanian civil society organisations or asylum seekers however said that it can take a several years to obtain refugee status. In the event of refusal, there is an appeal deadline. When it comes to drafting the appeal, asylum seekers who are illiterate (or who simply want help with the procedure) have to approach local organisations that will help them write and present their appeals. The request will then be considered for a second time and if it is again refused, counselling is provided with a view to referral to other organisations. The likelihood of success is not high in such cases and people are usually referred to the relevant national agencies or IOM for voluntary repatriation.

3.8. Slavery and its correlation with human trafficking

Despite the efforts made in the last few decades to eliminate slavery in Mauritania, which have led to changes in the law, in practice slavery is still a reality. Interviews with members



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of Mauritanian civil society revealed a repeated and consistent distinction between two forms of slavery:

- **Traditional slavery:** slavery from birth that is life-long and mainly affects Mauritanian nationals from the [Haratin ethnic group](#). These people can be bought, sold and hired. Slaves are simply goods belonging to their owner
- **Modern slavery:** the enslavement of foreigners without documents who can therefore be blackmailed. Modern slaves are mainly female domestics who work in private homes, and building workers.

Traditional slavery

Mauritania abolished slavery under Decree 81-234 of 9 November 1981 but introduced no implementing regulation to abolish it in fact as well as in law. Almost thirty years later, Law 2007-048 introduced a penalty for slave owners with 5-10 years' imprisonment for the offence of enslavement. The law also creates a number of slavery-related offences: depriving child slaves of their right to education, forced marriage (or the prevention of marriage) of women, fine art reproductions promoting slavery and violence against slaves.

Despite the introduction of these legal instruments, local organisations have over the years reported a general failure to apply the 2007 Act because of general incapacity and hostility

within the administration, police and judiciary when it comes to [prosecuting slavery-related offences](#). In 2010 the UN special rapporteur on modern forms of slavery [published a series of recommendations](#) requesting the Mauritanian government to adopt a national strategy for the fight against slavery that included amendment of the 2007 Act. In response to these recommendations, Law 2015-031 now identifies slavery as a crime against humanity, bringing the definitions of slavery and slavery practices into line with the relevant international conventions, has created [special courts to sit on slavery-related matters](#) and has raised the term of imprisonment from 10 to 20 years.

Despite the progress made at the legal level, in practice slavery has yet to be eradicated in Mauritania. Various local organisations have for years been complaining that laws are ineffective and that it is extremely difficult to apply them. According to the representatives of SOS Esclaves, there are many reasons for the problem in Mauritania, including unclear legislation and a shortage of judges, authorities and professionals with appropriate training. While Mauritanian law may have begun to develop a few ways of protecting the enslaved, authorities' and judges' lack of training makes access to that that protection extremely difficult. One example of this is that legal aid, which is available to all, is unknown even to lawyers. In practical terms, the only way of obtaining legal representation is through associations that either have members who are lawyers or that are able to pay for independent lawyers.

Associations therefore offer legal representation to former slaves who declare themselves to be freed slaves. Once they have made the declaration, they are questioned by the public prosecutor and the special courts created under Law 2015-031 hear the case, although the outcome is not generally of much value. As a number of organisations in the country have confirmed, the imbalance of power in Mauritania, which depends on personal wealth, means that justice can be obtained only by people with a lot of money - which is certainly not a situation in which freed slaves find themselves.

Modern slavery

[Law 2020-017](#) introduced into Mauritanian law an Act on the prevention and repression of human trafficking and the protection of victims. And it is this law on trafficking that includes new and the most recent references to slavery and its associated practices by stating that 'Human trafficking includes: exploitation of the prostitution of others and other forms of sexual exploitation, forced labour and services, slavery and similar practices, forced servitude and begging, the total or partial removal of organs, and all other forms of exploitation'. People smuggling, which affects migrants arriving in or passing through Mauritania, has been identified by local associations as the 'new form of slavery', or modern slavery, made possible by lack of documents. Local associations such as SOS Esclaves say that the biggest risk is faced by migrants from Sub-Saharan Africa, especially those from Senegal, Togo and Mali.

Most victims are women, who are channelled into prostitution or become '*filles domestiques*', or domestic slaves, who work in the home without pay. Migrants are also

exploited as building workers who are threatened with being reported to the police for having no documents if they ask for pay. It is extremely difficult for the victims of this new form of slavery to report their plight since this would lead to their repatriation.

The absence of effective protection for traditional slaves applies even more obviously to migrants. Lack of valid documents deprives them of almost all rights. Even the holding of a valid residence permit is not entirely without risk since local associations have confirmed that it is not unusual for the police to seize documents in order to extort money from the holder. Mauritanian criminalisation of migration and EU policies for outsourcing border controls mean that transit through Mauritania often takes many years, during which time the risk of being caught up in modern slavery is great.

In May 2022 the [UN special rapporteur on contemporary forms of slavery](#), while declaring that changes in the law were 'encouraging', admitted that 'The continued existence of slavery and other slavery-like practices in Mauritania regrettably demonstrates that relevant laws are not enforced in practice and that a social transformation and a change in the mindset of the country's leaders is needed in order to fully recognize and address slavery instead of denying its existence'.

4. Conclusions

To conclude, the analysis contained in this report, which does not claim to be either complete or exhaustive, throws light on some of the most worrying developments with regard to fundamental rights as the European Union and its Member States increasingly externalize their migration and border control policies.

The possible status agreement between Frontex and Senegal and Mauritania will have significant political and legal implications. Politically, giving an EU agency such an active official role in border control would seem to be a *de facto* transfer of sovereignty to meet EU migration policy objectives and a form of intrusion that could create tensions, particularly in a very highly politicised civil society like Senegal. Legally, Frontex operations outside its own territory (and continent) will create many accountability problems if there is any violation of migrants' fundamental rights - a risk that is heightened by the immunity requested for its agents. We must also expect repetition of the problems that have arisen with other status agreements that are already in force.

As we have shown, status agreement discussions are taking place within the context of the border control cooperation that has consolidated over the last few decades between Senegal and Mauritania and the EU at both the bilateral level (with Spain) and also within the framework of the wider policies promoted by the European Union. The latter range from readmission agreements and sea and land border control programmes to the measures for fighting against smuggling and trafficking. Examination of Senegalese and Mauritanian migration policies and border controls show however that such cooperation appears primarily to criminalise mobility rather than to improve migrant protection in these countries. The priority seems to be on operational cooperation in border control and enforcement.

The role of international organisations such as IOM and UNHCR looks, subject to the differences between them, generally fluid and elusive, suggesting that it is essentially hard to provide effective support to the migrants who are intercepted and brought back, to give assistance to asylum seekers and refugees or to protect migrants who are being detained. Compared with the relatively ineffective direct assistance they provide to migrants, United Nations agencies play a key role in translating EU political objectives into practice and law. One example of this is the projects they run to improve mobility tracking.

Further studies are essential to continue the monitoring of the political and legal developments we have shown, even if this is only to ensure that the alleged neutrality with which they are presented does not conceal their deep implications – particularly when it comes to protection of the rights of migrants.