

**Contactless Collusion: The EU–Tunisia Memorandum of  
Understanding and the Shrinking Civic Space for Tunisian Civil  
Society Supporting Migrants**

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## **AUTHOR’S DECLARATION**

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Vienna, 14 June 2025

Ragab Elsoudany

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## Abstract

This thesis critically explores the human rights implications of the 2023 EU–Tunisia Memorandum of Understanding (MoU). While debates often focus on migrants’ rights, I argue that externalization policies also significantly affect civil society organizations (CSOs) supporting migrants, contributing directly, in the case of the MoU, to the shrinking civic space for solidarity in Tunisia. Drawing on Manners’ normative power concept and Huysmans’ securitization migration theory, I demonstrate how the EU’s prioritization of border security undermines its normative commitments, particularly to human rights. Analyzing policy documents, scholarly literature, and stakeholder interviews, I provide evidence that the MoU reinforced Tunisia’s authoritarian practices, enabling systematic repression against migrant solidarity networks. Interviews with Tunisian human rights defenders, an EU advocacy officer, and an EU delegation representative reveal how the EU’s deliberate silence and inaction toward violations committed under the MoU have compromised its credibility among local civil society actors. The thesis points to possible legal avenues within the EU legal system to hold the Union accountable for its complicity in these human rights abuses, underscoring the need for reforms in EU external migration policy and the establishment of robust legal accountability mechanisms. Ultimately, the study argues that unless the EU integrates genuine human rights conditionality into externalization practices, its credibility as a global human rights actor will continue to deteriorate.

## Introduction

On 16 July 2023, the European Union (EU) and Tunisia signed a Memorandum of Understanding (MoU),<sup>1</sup> primarily aimed at curbing irregular migration to the EU's external borders. This MoU is an informal, non-binding agreement that lacks mechanisms for monitoring human rights and ensuring accountability, enabling the EU to circumvent direct legal scrutiny for potential rights violations.<sup>2</sup> Moreover, it was signed at a time when Tunisia's human rights record was deteriorating, with documented violations against migrants and the use of racialized practices targeting sub-Saharan Africans.<sup>3</sup> The EU's decision to proceed despite such criticism raises further questions about its commitment to promoting human rights.

The MoU was concluded amid a dire situation for migrants' rights. United Nations (UN) human rights experts<sup>4</sup> and international human rights organizations<sup>5</sup> have documented violations against migrants following its signature. In addition to negotiating and signing this externalization agreement with a country that abuses migrants, the MoU was concluded amid official smear campaigns against Tunisian civil society organizations (CSOs) supporting migrants, portraying their staff as foreign agents.<sup>6</sup> Under the MoU's implementation, this has

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<sup>1</sup> 'Memorandum of Understanding between the EU and Tunisia' (*European Commission - European Commission*) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3887](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887)> accessed 13 June 2025.

<sup>2</sup> Tineke Strik and Ruben Robbesom, 'Compliance or Complicity? An Analysis of the EU-Tunisia Deal in the Context of the Externalisation of Migration Control' (2024) 71 *Netherlands International Law Review* 199.

<sup>3</sup> Human Rights Watch, 'Tunisia: Events of 2023', *World Report 2024* (2023) <<https://www.hrw.org/world-report/2024/country-chapters/tunisia>> accessed 13 June 2025.

<sup>4</sup> 'Tunisia: UN Experts Concerned over Safety of Migrants, Refugees and Victims of Trafficking' (*OHCHR*) <<https://www.ohchr.org/en/press-releases/2024/10/tunisia-un-experts-concerned-over-safety-migrants-refugees-and-victims>> accessed 13 June 2025.

<sup>5</sup> 'EU/Tunisia: Agreement on Migration "Makes EU Complicit" in Abuses against Asylum Seekers, Refugees and Migrants' (*Amnesty International*, 17 July 2023) <<https://www.amnesty.org/en/latest/news/2023/07/eu-tunisia-agreement-on-migration-makes-eu-licit-in-abuses-against-asylum-seekers-refugees-and-migrants/>> accessed 19 April 2025.

<sup>6</sup> 'Tunisia: UN Expert Alarmed by Arrests and Smear Campaigns against Migrant Rights Defenders' (*OHCHR*) <<https://www.ohchr.org/en/press-releases/2024/10/tunisia-un-expert-alarmed-arrests-and-smear-campaigns-against-migrant-rights>> accessed 13 June 2025.

escalated to the targeting and arrest of several CSO staff members.<sup>7</sup> But is the MoU merely a witness to the shrinking civic space for solidarity with migrants, or one of the forces driving it? Accordingly, the central question this thesis aims to address is: Has the EU–Tunisia MoU contributed to the shrinking of civic space for Tunisian civil society organizations that support migrants?

This thesis aims to contribute to the critical examination of the concept of the EU as a normative power in practice. It does so through the lens of the theory of securitization of migration, arguing that externalization policies, such as the MoU, affect not only the rights of asylum seekers and migrants but also contribute to shrinking of civic space for solidarity with migrants. When the EU and its Member States externalize border control and shift responsibility for migration control and asylum protection to third countries, they relinquish their normative commitments, particularly the promotion of human rights. Drawing on Violeta Moreno-Lax and Mariagiulia Giuffré’s argument that, under externalization agreements, the EU exercises contactless control over actions carried out by third countries that result in human rights violations,<sup>8</sup> I argue that the EU’s approach in Tunisia amounts to a form of contactless collusion: it knowingly enables and politically tolerates the targeting of solidarity with migrants through its continued cooperation with Tunisia under the MoU.

The methodology of this thesis adopts an interdisciplinary and qualitative research approach, drawing on migration studies, human rights law, and political science. It combines document-based (desk) research with semi-structured interviews. The desk research involves an analysis of academic literature, official statements from EU institutions and Tunisian authorities, as well

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<sup>7</sup> ‘Repressive Crackdown on Tunisian CSOs Following Months of Escalating Violence against Migrants and Refugees’ (*Amnesty International*, 16 May 2024) <<https://www.amnesty.org/en/latest/news/2024/05/tunisia-repressive-crackdown-on-civil-society-organizations-following-months-of-escalating-violence-against-migrants-and-refugees/>> accessed 13 June 2025.

<sup>8</sup> Violeta Moreno-Lax and Mariagiulia Giuffré, ‘The Rise of Consensual Containment: From “Contactless Control” to “Contactless Responsibility” for Forced Migration Flows’ in Satvinder S Juss (ed), *Research Handbook on International Refugee Law* (Edward Elgar 2019) 82–108.



as relevant reports published by United Nations human rights experts and international non-governmental organizations (INGOs).

To complement and deepen the analysis, the methodology includes semi-structured interviews with key stakeholders: Two Tunisian human rights defenders, a senior Tunisian staff member at an INGO working with CSOs supporting migrants in Tunisia, an EU advocacy officer at an INGO based in Brussels, and a staff member of the EU Delegation in Tunisia.

The interviews provide an essential perspective on the political and human rights impacts of the MoU, offering direct insights from actors engaged with the consequences of externalization on the ground and contributing to a deeper understanding of how EU policies affect civic space and the rights of those supporting migrants. To answer the central question, this thesis is divided into four chapters.

The first chapter establishes the theoretical framework, which consists of two core theoretical approaches: the EU as a normative power and the theory of securitization of migration. This thesis argues that the EU's securitization of migration works against the EU's stated normative ideals and undermines its normative power. The theoretical framework also introduces two supporting concepts: externalization, which contextualizes the MoU as an externalizing border control policy, and the idea of shrinking civic space.

The second chapter examines the role of the EU as a normative power in its external relations, with a focus on Tunisia. The chapter highlights contradictions between its stated values and actual priorities, particularly in the areas of migration control and security.

The third chapter highlights the backsliding of democracy and the deterioration of the human rights situation in Tunisia, with a particular focus on the rights of migrants, who face racial discrimination, while CSOs supporting them are targeted by smear campaigns. The chapter introduces the MoU and the criticisms raised by various stakeholders, including academics,

UN human rights experts, international human rights organizations, and some EU institutions. Additionally, the chapter provides an overview of the potential legal liability of the EU for human rights violations resulting from its externalization policies, including the MoU.

The fourth chapter presents an analysis primarily based on interviews conducted with Tunisian and non-Tunisian human rights defenders engaged in migration support and advocacy, as well as a staff member of the EU Delegation in Tunisia. These accounts provide rare testimony and insights into how the MoU contributes to the shrinking civic space for Tunisian CSOs that support migrants.

These four chapters are followed by a conclusion that affirms the main arguments of this thesis. The EU's securitization of migration has led to the outsourcing of border control, resulting in the EU's relinquishment of its normative commitments in external relations. These externalization policies, like the MoU, not only impacted migrants' rights but also contributed to shrinking civic space for CSOs that support migrants, as demonstrated in the case of Tunisia. Consequently, the EU's credibility among Tunisian civil society actors has been further eroded.

Moreover, the thesis found that the MoU is not a simple top-down agreement. It is an agreement that reflects the convergence of interests between the two parties, where Tunisia is not the weaker party, but rather an active partner that benefits from the EU's migration priorities to advance its own agenda. Additionally, the EU institutions, including the European Commission, the European Parliament, and the EU Ombudsman, have different approaches towards the MoU, and the Commission, which is leading this process, remains the dominant institutional actor. The informal externalization agreements, like the MoU, enable the EU to circumvent liability for human rights violations. Nevertheless, there are growing legal arguments that establish the EU's responsibility, and the EU's legal system itself provides direct and indirect mechanisms for pursuing legal accountability of the EU. Although meeting

admissibility requirements remains challenging, this calls for meaningful reforms of current procedures.

# **1 Theoretical framework: Normative Power and Securitization of Migration**

This thesis employs two core theoretical approaches as a core lens: Ian Manners' concept of the EU as a normative power and Jef Huysmans' theory of securitization of migration. These provide the main lenses for analyzing how the EU promotes or undermines its claimed norms in external relations, while combating irregular migration and treating it as a threat. I argue that when the EU securitizes migration, it works against promoting its normative ideals and undermines its normative power.

As this thesis will explain, the EU's tendency to frame migration and asylum as a security matter, rather than a human rights issue, has led it to intensify the outsourcing of border control to third countries, overlooking the dire human rights situation in favor of guaranteeing the successful implementation of its migration-control agreements. In doing so, the EU relinquishes its norms in external relations, particularly promoting democracy and human rights. In light of this, I examine how the EU's securitization of migration could negatively impact its normative power, with a focus on the human rights norm, in its relation with Tunisia after signing a bilateral agreement (the MoU) that outsourced border control to Tunisia.

The thesis applies these two core theoretical frameworks as they intersect in the case of the MoU. Additionally, it relies on two supporting concepts: the definition of externalization by Cantor et al. and the notion of shrinking civic space by Antoine Buyse. Externalization helps in contextualizing the MoU as an externalizing border control policy. At the same time, the idea of shrinking civic space offers insight into the context within Tunisia, where the civic space for civil society organizations supporting migrants is shrinking; I argue that the MoU has contributed to this trend.

## 1.1 The EU as a Normative Power: Concept, Mechanisms, and Critique

The concept of the EU as a normative power is central to this thesis.<sup>9</sup> Introduced by Ian Manners, it presents the EU as a unique actor in international politics, one that influences other actors not through military force or traditional civilian power, but through the promotion and diffusion of norms.<sup>10</sup> He observed that the EU formation as a political entity has occurred mainly as a treaty-based legal order,<sup>11</sup> it is more committed than other international actors to shaping its external relations based on a set of norms derived from the European Convention on Human Rights (ECHR), the Universal Declaration of Human Rights (UDHR), the Treaty on European Union (TEU),<sup>12</sup> and the Charter of Fundamental Rights of the European Union.<sup>13</sup>

Manners identified five core norms: Peace, liberty, democracy, the rule of law, and human rights, all of which are explicitly reflected in the TEU, the Treaty establishing the European Community (TEC), the common foreign and security provisions of the Union, and the membership criteria adopted at the Copenhagen European Council in 1993.<sup>14</sup> Moreover, he identified four additional minor norms: social solidarity, anti-discrimination, sustainable development, and good governance.<sup>15</sup> According to Manners, these norms are diffused in external relations through six mechanisms.<sup>16</sup> *Contagion* refers to cases where EU norms spread to other countries without the EU actively promoting them; instead, other actors adopt these ideas simply by observing the EU's example.<sup>17</sup> *Informational* diffusion occurs when the EU disseminates its norms through official messages and policy announcements, such as

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<sup>9</sup> Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 JCMS: Journal of Common Market Studies 235.

<sup>10</sup> *ibid* 239.

<sup>11</sup> *ibid* 241.

<sup>12</sup> *ibid*.

<sup>13</sup> *ibid*.

<sup>14</sup> *ibid* 242.

<sup>15</sup> *ibid* 242- 243.

<sup>16</sup> *ibid* 244.

<sup>17</sup> *ibid*.

statements from EU leaders or the introduction of new policy initiatives.<sup>18</sup> *Procedural* diffusion refers to the process by which EU norms are disseminated through formal ties with other actors, such as cooperation agreements, membership in international organizations, or EU enlargement negotiations.<sup>19</sup> *Transference* diffusion refers to the spread of EU norms through the exchange of goods, aid, trade, or technical support, often accompanied by financial assistance or the imposition of conditions in return for cooperation.<sup>20</sup> *Overt* diffusion refers to the spread of EU norms through its direct presence abroad, such as delegations, embassies, high-level visits, or monitoring missions.<sup>21</sup> The last mechanism, *cultural filter*, refers to how third countries receive EU norms based on their own identity and understanding, which can lead to acceptance, adaptation, or rejection.<sup>22</sup>

For Manners, the concept of the EU as a normative power goes beyond the idea that it is formed on a normative basis.<sup>23</sup> He argues that the “most important factor shaping the international role of the EU is not what it does or what it says, but what it is.”<sup>24</sup> He further explains that the EU has an “ontological quality,” meaning it is fundamentally built on and driven by values and norms.<sup>25</sup> This gives the EU the capacity to act as a norm-setter and a positive force in international relations.<sup>26</sup> Thus, he argues that the EU’s politics, rooted in norms, can reshape what is considered normal in global politics.<sup>27</sup>

This vision has been reflected in academic literature examining the EU’s external politics and how it diffuses its “norms”, particularly democracy and human rights, and has placed Manners’

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<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid* 245.

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid* 252.

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid* 253.

concept of the EU as a normative power under scrutiny. For example, Raja Nouredine examined the EU's role in the field of human rights. He argued that, although its discourse and actions may reflect a normative attitude, its efforts to promote these norms have been inconsistent and often failed to produce meaningful change.<sup>28</sup> Moreover, he concluded that the EU and its Member States had not adhered to shared policies and values as Manners had expected.<sup>29</sup> Additionally, the EU Member States follow their interests at the expense of the EU's norms, which "delegitimises the EU's role in international politics, and limits the effectiveness of its human rights policies."<sup>30</sup>

In this context, this thesis offers an additional critical examination of Manners' argument by focusing on the EU's normative power in diffusing one of its claimed core norms (human rights) through a *procedural* diffusion mechanism (the MoU) with a third country, Tunisia.

## 1.2 Securitizing Migration and its Impacts

Having explained the normative power concept, which is essential to this thesis, I will now outline the other core concept: the securitization of migration. Jef Huysmans analyzed how the EU developed its migration policy by framing migration as a security issue that threatens internal public order, social integration,<sup>31</sup> and cultural identity,<sup>32</sup> portraying itself as an "endangered society,"<sup>33</sup> which led to the securitization of migration.<sup>34</sup> He noted that EU policies, often indirectly, support ideas like welfare chauvinism and cultural homogeneity as sources of stability.<sup>35</sup> In this context, the EU's migration policy has seen growing agreement

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<sup>28</sup> Raja Nouredine, 'Normative Power Europe and in Field of Human Rights: Is the EU a Force for Good in the World?'" (2021) 8 Australian and New Zealand Journal of European Studies <<https://openjournals.library.sydney.edu.au/index.php/ANZJES/article/view/15169>> accessed 3 June 2025.

<sup>29</sup> *ibid* 117.

<sup>30</sup> *ibid*.

<sup>31</sup> Jef Huysmans, 'The European Union and the Securitization of Migration' (2000) 38 *JCMS: Journal of Common Market Studies* 751.

<sup>32</sup> *ibid* 752.

<sup>33</sup> *ibid*.

<sup>34</sup> *ibid* 753.

<sup>35</sup> *ibid*.

on the need to limit migration,<sup>36</sup> and the political discourse has increasingly linked migration with terrorism and transnational crime, as well as border control; an approach reflected in the 1990 Convention Applying the Schengen Agreement of 14 June 1985.<sup>37</sup> Thus, the EU treats migration as a security issue that requires a security policy to protect the community from the “invasion of (illegal) immigrants and asylum-seekers.”<sup>38</sup> He observed that such an approach does not treat it as a human rights issue that requires a human rights-based response,<sup>39</sup> and further highlighted that the securitization of migration is not solely produced by far-right political parties, but is the result of multiple actors, including governments, institutions, and the media.<sup>40</sup>

Border control is essential under the securitization of migration. According to Huysmans, in the wake of the Single Europe Act, the intensification of external border controls emerged as a new policy response to the easing of internal frontier controls,<sup>41</sup> aiming to protect the community from perceived outsiders. Relying on Philip Rudge’s conclusion that EU migration and asylum policy is shifting away from the human rights and humanitarian field toward concerns like terrorism, drug trafficking, and economic control, Huysmans highlights that the persistence of the security approach has become an institutionalized mode of policymaking.<sup>42</sup> This enables the framing of migration through the same security lens used for issues like terrorism, drug trafficking, and money laundering.<sup>43</sup> In light of this, the EU reinforces the idea that migrants are outsiders and a burden, supporting nationalist views and weakening efforts toward a more inclusive Europe committed to guaranteeing migrants more rights.<sup>44</sup>

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<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> *ibid.* 766.



I argue that the politics of fear toward migrants, as contended by Huysmans, has led to the securitization of migration and, consequently, to strict border control and the framing of migration as a security issue. This has shaped the EU's external policies with third countries through the implementation of so-called externalization policies. Such an approach contradicts the EU's self-projection as a normative power, as explained by Manners, by prioritizing deterrence of migration over the diffusion of human rights norms in its external actions.

### 1.3 Externalization Policies: Concept and Implications

The modern history between the EU and Tunisia has been marked by association and partnership agreements that place the values of democracy and human rights at their core. This thesis focuses on the most recent agreement, the EU–Tunisia MoU, which aims to deter irregular migration while also respecting human rights.<sup>45</sup>

This thesis identifies the MoU as a border externalization agreement. It adopts the definition of externalization by Cantor et al. as “a process of shifting functions that are normally undertaken by a State within its territory so that they take place, in part or in whole, outside its territory.”<sup>46</sup> According to them, externalization policies are more than a migration or asylum issue; they are broadly a tool of governance, where a state transfers specific responsibilities, usually carried out within its territory, to be carried out partly or wholly outside its borders.<sup>47</sup>

They use this broader definition of externalization to distinguish between two types of externalized measures: those that block migrants and asylum seekers from reaching a state's territory (such as border controls), and those that shift the asylum process itself to another country.<sup>48</sup>

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<sup>45</sup> ‘Memorandum of Understanding between the EU and Tunisia’ (n 1).

<sup>46</sup> David Cantor and others, ‘Externalisation, Access to Territorial Asylum, and International Law’ (2022) 34 *International Journal of Refugee Law* 122.

<sup>47</sup> *ibid.*

<sup>48</sup> *Ibid.*

Their analysis illustrates that the jurisdiction can arise without direct control if a state knowingly contributes to rights violations abroad and rejects the idea that states can avoid responsibility by acting through others or beyond their borders.<sup>49</sup> Thus, I argue that human rights violations resulting from an externalization policy, like the MoU, are not only the responsibility of the third country but also of the externalizing state itself, which cannot evade responsibility. This applies not only to migrants' rights but also to broader human rights implications caused by the implementation of such policies, which should not be dismissed as collateral damage. In light of this, the thesis examines whether the MoU has contributed to the shrinking of civic space in Tunisia, particularly affecting solidarity networks that support migrants and refugees, with a focus on CSOs.

#### **1.4 Shrinking Civic Space: Definition and Dynamics**

Antoine Buyse defines civic space as “the practical room for action and manoeuvre for citizens and CSOs. It operationalises this space by the extent to which these organisations can enjoy the freedoms of association, peaceful assembly and expression.”<sup>50</sup> He argues that the elements of civic space – institutional channels, discourse, and the capacity to act – are directly linked to human rights.<sup>51</sup> I view the civic space through Buyse's perspective and employ it in examining the Tunisian civic space after the signing of the MoU.

Buyse explains how civic space is shrinking. This happens through institutional and legal restrictions, including the use of laws to suppress CSOs, which may face limitations on their establishment, registration, activities, access to resources,<sup>52</sup> or foreign funds.<sup>53</sup> He highlights

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<sup>49</sup> *ibid* 126.

<sup>50</sup> Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights' (2018) 22 *The International Journal of Human Rights* 969.

<sup>51</sup> *ibid*.

<sup>52</sup> *ibid*.

<sup>53</sup> *ibid*.

how some governments operate in legal grey zones, arbitrarily targeting CSOs with governance scrutiny to punish them for criticizing the government.<sup>54</sup>

One crucial tool used against CSOs, according to Buyse, is the discourse that portrays their staff or activists as “foreign agents,” making them targets of official propaganda.<sup>55</sup> He also noted that stigmatizing CSOs often paves the way for state action, including prosecution, by legitimizing their suppression and targeting staff members after labeling them.<sup>56</sup> In implementing such measures, governments often raise concerns about national security and stability, portraying CSOs as traitors serving foreign interests.<sup>57</sup> Finally, Buyse emphasizes that threats and the use of violence represent the harshest face of shrinking civic space, sometimes leading to the killing of human rights defenders or the targeting and intimidation of their family members.<sup>58</sup>

Hence, this thesis seeks to answer the following question: *Has the EU–Tunisia MoU contributed to the shrinking civic space for Tunisian civil society organizations that support migrants?* I applied the concept of EU normative power and the theory of securitization of migration to examine whether the EU’s externalization policies align with its claimed role as a unique international actor, as Manners argues, or whether, as Huysmans suggests, the prioritization of deterrence overrides human rights norms. The thesis further argues that deterring irregular migrants and asylum seekers from reaching EU Member States is a core interest that drives the EU to act against its normative commitments, and that the human rights implications go beyond migrants’ rights also to include the shrinking of civic space for solidarity networks, as will be detailed in Chapter Three.

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<sup>54</sup> *ibid.*

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> *ibid* 973.

## 2 Contradictions in EU Policy: From Ben Ali to Post-Uprising Tunisia

In this chapter, I examine the EU's role in Tunisia through Manners' concept of the EU's normative power.<sup>59</sup> I argue that although the EU has occasionally criticized authoritarian practices under Ben Ali and after the 2011 uprising, it has consistently prioritized stability and security over democracy and human rights. When it comes to migration control, the EU often compromises its normative values to address the perceived threat of migration.

The EU portrays itself not only as an entity built on norms but also aims to promote these norms in its external relations. For example, according to Article 2 of the Treaty on European Union (TEU), the EU is founded on the values of respect for human dignity, freedom, democracy, equality, and the rule of law.<sup>60</sup> Article 21 of the TEU illustrates that, in its external relations, the EU acts guided by “the principles which have inspired its creation”, including the indivisibility of human rights, and aims to develop relations and build partnerships with third countries based on a set of values, including the consolidation and support of human rights.<sup>61</sup> The Union has its own Charter of Fundamental Rights, which states in the preamble that the EU is founded on the indivisible, universal values of human dignity, freedom, and equality.<sup>62</sup> It affirms that the enjoyment of these rights entails responsibilities and duties concerning other persons and the human community.<sup>63</sup> The EU's global strategy for foreign and security policy stated that the Union's “enduring power of attraction can spur transformation,”<sup>64</sup> mentioning neighboring countries, including Tunisia. Acknowledging the challenges in the neighborhood,

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<sup>59</sup> Manners (n 9).

<sup>60</sup> Consolidated Version of the Treaty on European Union [2016] OJ C202/1.

<sup>61</sup> *ibid.*

<sup>62</sup> Official Journal of the European Communities, Charter of Fundamental Rights of the European Union (2000) 8.

<sup>63</sup> *ibid.*

<sup>64</sup> Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union's Foreign and Security Policy (June 2016) 25.

the EU made a promise to “promote human rights through dialogue and support, including in the most difficult cases.”<sup>65</sup> In its review of the European Neighbourhood Policy, the EU affirms its commitment to promoting good governance, democracy, the rule of law, human rights, and supporting civil society.<sup>66</sup> This self-portrayal should be kept in mind when applying Manner’s approach to the EU’s behavior as an international actor.

## 2.1 EU Interests and Values under Ben Ali

Over the past decades, the EU’s relationship with Tunisia has developed through agreements such as the Euro-Mediterranean Partnership (EMP)<sup>67</sup> in 1995 and the European Neighbourhood Policy (ENP)<sup>68</sup> in 2004. While both aimed to promote democracy, the EMP prioritized economic and trade cooperation, whereas the ENP has a greater focus on political reforms and governance.

Analyzing the EU’s democracy promotion in Tunisia through Manners’s normative power model reveals contradictions between its ideals and actual policies. Powel examined the relationship between the EU and Tunisia under Ben Ali and concluded that the EU prioritized security and stability over core European values, such as democracy and human rights.<sup>69</sup> He argued that this approach aligned with the Tunisian regime, led to the marginalization of political groups, mainly Islamists, restricted democratic development, and ultimately

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<sup>65</sup> *ibid* 26.

<sup>66</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Review of the European Neighbourhood Policy 2015, <<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52015JC0050>> accessed 13 June 2025.

<sup>67</sup> ‘Euro-Mediterranean Partnership - Implementation Programme’ (*CORDIS / European Commission*) <<https://cordis.europa.eu/article/id/7287-euromediterranean-partnership-implementation-programme>> accessed 16 June 2025.

<sup>68</sup> ‘European Neighbourhood Policy | EEAS’ <[https://www.eeas.europa.eu/eeas/european-neighbourhood-policy\\_en](https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en)> accessed 16 June 2025.

<sup>69</sup> Brieg Tomos Powel, ‘A Clash of Norms: Normative Power and EU Democracy Promotion in Tunisia’ (2009) 16 *Democratization* 193.

reinforced authoritarian tendencies, exposing a contradiction between the EU's stated normative goals and its actual foreign policy with Tunisia.<sup>70</sup>

When Tunisia was under Zine el-Abidine Ben Ali's authoritarian rule, international human rights organizations urged the EU to stop trading human rights for security. They accused the EU of not only overlooking the legally binding human rights clause in its Association Agreement with Tunisia, despite serious human rights violations, but also actively avoiding any confrontation with the Tunisian regime at the time.<sup>71</sup> The EU has been condemned for ignoring the deteriorating human rights situation in Tunisia, including the targeting of human rights defenders, the use of torture, restrictions on the freedom of expression and association, and the use of military trials to prosecute civilians and opposition figures.<sup>72</sup>

Instead of supporting democratization, EU democracy promotion in Tunisia paradoxically reinforced authoritarianism. Ben Ali's regime benefited economically from market-focused reforms, enabling continued political repression, while intensified security cooperation after 9/11 legitimized his rule.<sup>73</sup> This reveals how the EU's strategic interests in stability, economic cooperation, and counterterrorism often prioritize over its normative commitment to human rights and democratic governance.

Furthermore, the EU focused on working with Ben Ali's regime to enforce its migration management policies, which offered him additional opportunities to consolidate his power. In response to the EU's expectations for controlling irregular migration, Ben Ali's administration seized the opportunity to pass Law 2004-06, which included vague provisions that expanded

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<sup>70</sup> *ibid* 207 - 208.

<sup>71</sup> 'EU-Tunisia: Stop Trading Human Rights for Security' (*Amnesty International*, 28 January 2002) <<https://www.amnesty.eu/news/eu-tunisia-stop-trading-human-rights-for-security-0037/>> accessed 11 March 2025.

<sup>72</sup> *ibid*.

<sup>73</sup> Vincent Durac and Francesco Cavatorta, 'Strengthening Authoritarian Rule through Democracy Promotion? Examining the Paradox of the US and EU Security Strategies: The Case of Bin Ali's Tunisia' (2009) 36 *British Journal of Middle Eastern Studies* 14 -17.

state control and increased societal surveillance.<sup>74</sup> The law imposes harsh penalties on irregular migrants and those who support them, including heavy fines and prison sentences ranging from three to twenty years.<sup>75</sup> It also removes the right to appeal migration cases decisions and offers no protection against expulsion for vulnerable groups, such as minors and pregnant women.<sup>76</sup> This law remains in force and provides the legal infrastructure to suppress migrants and their solidarity network.

During the final months before Ben Ali was ousted in January 2011 following a popular uprising, criticism of the EU's approach toward his regime persisted. For example, by the end of 2010, the Tunisian government had amended the penal code to criminalize international communications by journalists and human rights defenders, yet instead of criticizing the law and its goals, the EU was preparing to grant Tunisia advanced status, which would provide privileged access to EU markets.<sup>77</sup> An analysis of the EU's policy toward Tunisia from a human rights perspective reveals that the EU has violated its own human rights commitments under various treaties and international agreements.<sup>78</sup> Since 1995, it has also played a key role in sustaining Ben Ali's regime.<sup>79</sup>

Thus, the EU's focus on its interests, such as migration control, has strengthened authoritarian practices under Ben Ali, while ignoring the deterioration of the human rights situation and the criticism of human rights groups. The response came from the suppressed citizens in the form

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<sup>74</sup> Jean-Pierre Cassarino, 'Channelled Policy Transfers: EU-Tunisia Interactions on Migration Matters' (2014) 16 *European Journal of Migration and Law* 97.

<sup>75</sup> Katharina Natter, 'Ad-Hocratic Immigration Governance: How States Secure Their Power over Immigration through Intentional Ambiguity' (2023) 11 *Territory, Politics, Governance* 683.

<sup>76</sup> *ibid.*

<sup>77</sup> Kamal Singh Masuta, 'Attacks on the Press 2010: Tunisia' (*Committee to Protect Journalists*, 15 February 2011) <<https://cpj.org/2011/02/attacks-on-the-press-2010-tunisia/>> accessed 11 March 2025.

<sup>78</sup> Inconsistent European Policies Fail to Address Human Rights Abuses in Tunisia: The European Union-Tunisian Relationship on Human Rights Issues (Euro-Mediterranean Human Rights Network 2010).

<sup>79</sup> *ibid.*

of a popular uprising that ousted Ben Ali, exposing the failure of the EU in upholding the human rights norm in its relations with Tunisia.

## 2.2 Democracy Promotion and Its Limits Post-2011 Uprising

Following the 2011 uprising, the EU was keen to demonstrate its support for the transition process, including preparations for the election, and allocated additional funds to civil society.<sup>80</sup> Additionally, the EU established an EU-Tunisia Task Force to support the country's political transition.<sup>81</sup> According to the European Commission, between 2011 and 2016, the EU allocated 2 billion euros in assistance, comprising 1.2 billion euros in grants and 800 million euros in macro-financial aid, to support Tunisia's democratic and economic transition and ensure fiscal stability.<sup>82</sup> This also included 85 projects worth 41 million euros, co-funded by the EU and implemented by CSOs.<sup>83</sup> Nevertheless, the EU's approach to democratization in Tunisia has faced criticism for its inconsistencies and prioritization of security and economic interests over genuine democratic consolidation.

After 2011, the EU invested in institution-building, but its focus on short-term stability and security often undermined deeper reforms.<sup>84</sup> Its engagement with elites and civil society actors experienced some progress but also tensions, particularly on migration.<sup>85</sup> Noura and Redissi argue that, despite the EU's democratic assistance, Tunisian transition actors find it insufficient, emphasizing the need for a more inclusive Mediterranean approach and criticizing the EU's

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<sup>80</sup> European Commission, The EU's response to the 'Arab Spring' (16 December 2011) <[https://ec.europa.eu/commission/presscorner/detail/en/memo\\_11\\_918](https://ec.europa.eu/commission/presscorner/detail/en/memo_11_918)> accessed 5 June 2025

<sup>81</sup> *ibid.*

<sup>82</sup> European Commission, 'Joint Communication to the European Parliament and the Council: Strengthening EU Support for Tunisia' (29 September 2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016JC0047&from=MT>> accessed 11 March 2025.

<sup>83</sup> *ibid.*

<sup>84</sup> Elisabeth Johansson-Nogués and Adrià Rivera Escartin, 'Supporting the Tunisian Transition? Analysing (in)Consistencies in EU Democracy Assistance with a Tripartite Nexus Model' (2020) 27 Democratization 1385.

<sup>85</sup> *ibid.*



failure to engage its partners.<sup>86</sup> They affirm that, to support democracy effectively, the EU must adopt policies that reflect local needs and promote inclusive governance.<sup>87</sup>

Following the 2011 uprising, Tunisians navigated a complex and challenging political process to achieve their struggle for freedom, democracy, and social justice. Islamist groups, secular politicians, and civil society actors debated the values that should define the state and form their shared living. Ultimately, the impact of EU norms in Tunisia depended not only on EU policies but also on how local actors interpreted and applied them within their context and in light of their local values. The acceptance of EU norms in Tunisia depends on the country's political context, as Tunisians are more influenced by their history than by the EU model, viewing the political transition as the development of a distinct Tunisian system rather than an automatic adoption of EU norms.<sup>88</sup> While some support for EU norms exists, frustration with post-2011 socio-economic struggles and security issues could lead to a challenge to their diffusion.<sup>89</sup> Therefore, the EU norms in Tunisia are being accepted or rejected based on their perceived ability to drive socio-economic progress.<sup>90</sup>

Between 2011 and 2014, key reforms, including the adoption of the 2014 constitution, strengthened political rights and civil liberties, while also succeeding in addressing political disputes and raising hopes for democratic progress. Tunisia was often cited as the success story in contrast to the failures of other Arab Spring uprisings.<sup>91</sup> However, this progress was disrupted on 25 July 2021, when President Kais Saied removed the prime minister, dissolved parliament, revoked parliamentary immunity, and assumed control over the public prosecution,

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<sup>86</sup> Asma Nouria and Hamadi Redissi, 'The Tunisian "Exception" and the Role of the EU: Perspective from Tunisia' (2020) 25 *European Foreign Affairs Review* 47.

<sup>87</sup> *ibid.*

<sup>88</sup> Ragnar Weilandt, 'Acceptance in Principle, Contestation in Practice: EU Norms and Their Discontents in Tunisia' (2022) 29 *Democratization* 518- 519.

<sup>89</sup> *ibid.*

<sup>90</sup> *ibid.*

<sup>91</sup> 'Tarek Masoud, Review Essay: Why Tunisia?' (*Journal of Democracy*) 29, 4 (October 2018), 166-175 <<https://www.journalofdemocracy.org/articles/review-essay-why-tunisia/>> accessed 16 June 2025.

claiming it was necessary to address the political crisis.<sup>92</sup> Two months later, he issued Decree 117, which formalized the suspension of parliament, stripped it of its legislative powers, and granted himself the authority to rule by decree.<sup>93</sup> In December 2021, he extended the suspension until after a constitutional referendum (25 July 2022) and legislative elections (December 2022). These actions consolidated executive power, accelerated Tunisia's democratic backsliding, and put it back on the authoritarian track.

That was a test of the EU's adherence to its stated norms and its proclaimed commitment to promoting democracy. On 11 July 2022, the High Representative on behalf of the EU declared that the EU is closely following the political process including the preparation for voting on the new constitution, which acknowledges the concerns of its draft, and affirmed the need for "inclusive national dialogue is a cornerstone of any credible constitutional process and long-term stability".<sup>94</sup> On 27 July 2021, the High Representative, on behalf of the EU, called for the reactivation of the Tunisian parliament and respect for fundamental rights.<sup>95</sup> On 21 October 2021, the European Parliament adopted a resolution calling for the restoration of institutional stability and the protection of fundamental rights and freedoms.<sup>96</sup> By March 2023, the European Parliament's criticism of Tunisia's President had become more severe, issuing a resolution that condemned Saied's authoritarian drift and his use of Tunisia's dire socio-

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<sup>92</sup> Human Rights Watch, 'Tunisia: President's Seizure of Powers Threatens Rights' (2021) <<https://www.hrw.org/news/2021/07/27/tunisia-presidents-seizure-powers-threatens-rights>> accessed 11 March 2025.

<sup>93</sup> Sarah Yerkes and Maha Alhomoud, 'One Year Later, Tunisia's President Has Reversed Nearly a Decade of Democratic Gains' (Carnegie Endowment for International Peace 2022) <<https://carnegieendowment.org/posts/2022/07/one-year-later-tunisia-president-has-reversed-nearly-a-decade-of-democratic-gains?lang=en>> accessed 11 March 2025.

<sup>94</sup> Council of the European Union, 'Tunisia: Declaration by the High Representative on Behalf of the European Union' <<https://www.consilium.europa.eu/en/press/press-releases/2022/07/11/tunisia-declaration-by-the-high-representative-on-behalf-of-the-european-union/>> accessed 11 March 2025.

<sup>95</sup> Council of the European Union, 'Tunisia: Declaration by the High Representative on Behalf of the European Union' <<https://www.consilium.europa.eu/en/press/press-releases/2021/07/27/tunisia-declaration-by-the-high-representative-on-behalf-of-the-eu/>> accessed 11 March 2025.

<sup>96</sup> European Parliament, 'Resolution of 21 October 2021 on the Situation in Tunisia' <[https://www.europarl.europa.eu/doceo/document/TA-9-2021-0440\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0440_EN.html)>.

economic situation to reverse the country's democratic transition, and called for an end to the ongoing crackdown on civil society.<sup>97</sup>

However, the criticism remained rhetorical and did not lead to concrete actions to restore democracy or uphold Tunisia as the Arab Spring's only success story. This gap between strategic interests and normative aspirations raises doubts about the EU's credibility as a democracy and human rights advocate.

### 2.3 The Priority of Security and Migration Control

When Tunisia's democratic progress stalled due to socio-economic struggles, security threats, and rising authoritarianism, the EU prioritized a broader strategy of externalizing migration governance and strengthening cooperation with Tunisia on border security.

By 2015, the escalating migration crisis in Europe, in addition to a series of terrorist attacks in Tunisia, reshaped the EU's priorities with its southern neighbor, where security and migration control dominated the commitments to human rights and democratic consolidation. The European Parliament's 2016 resolution on EU-Tunisia relations affirmed this trend by emphasizing the need for deeper cooperation on counterterrorism and migration management.<sup>98</sup> It called for stronger collaboration in preventing irregular migration, reinforcing border security, and enhancing return and readmission agreements.<sup>99</sup> At the same time, the resolution expresses deep concern over specific human rights issues, such as the application of the death penalty and the need for judicial reforms.<sup>100</sup> Thus, the resolution demonstrated the EU's focus on stability and security while also showing an interest in human

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<sup>97</sup> European Parliament, 'Tunisia: Recent Attacks against Freedom of Expression and Association and Trade Unions, in Particular the Case of Journalist Nouredine Boutar' <[https://www.europarl.europa.eu/doceo/document/TA-9-2023-0084\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0084_EN.html)>.

<sup>98</sup> European Parliament resolution of 14 September 2016 on the EU relations with Tunisia in the current regional context (2015/2273(INI)) 2016.

<sup>99</sup> *ibid.*

<sup>100</sup> *ibid.*

rights and democratic principles to some extent. This pattern illustrates the EU's complex approach to utilizing migration governance to maintain regional stability while upholding its normative values.

Over time, the EU's critical stance on Tunisia's deteriorating human rights situation and democratic decline has weakened. While the European Parliament condemned Saied's authoritarian actions, the EU's policies have mainly avoided strong conditionality or pressure, prioritizing short-term stability and migration cooperation instead. Viewing Tunisia as a key partner for managing migration and ensuring energy and trade stability, the EU has sidelined its normative commitments.<sup>101</sup> As a result, its limited response to democratic backsliding and the deterioration of human rights, while perceiving Tunisia as a gatekeeper to European borders, risks reinforcing authoritarianism and weakening the EU's credibility as a normative power.<sup>102</sup>

In July 2023, the EU and Tunisia signed an MoU,<sup>103</sup> marking a significant shift in EU migration policy. Framed as a strategic partnership, the agreement provides Tunisia with financial resources and technical support in exchange for stricter migration controls aimed at curbing irregular migration to Europe. The MoU reflects the EU's broader strategy of externalizing migration governance by outsourcing migration management responsibilities to third countries. The EU and its Member States increasingly rely on such externalization policies as the EU-Turkey Statement,<sup>104</sup> as well as the Italy–Libya Memorandum of Understanding.<sup>105</sup>

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<sup>101</sup> Maria Do Céu Pinto Arena, 'The US and EU Response to Tunisia's Democratic Backsliding: Promoting Democracy or Protecting Interests?' (2024) 59 *The International Spectator* 158.

<sup>102</sup> *ibid* 171.

<sup>103</sup> 'Memorandum of Understanding between the EU and Tunisia' (n 1).

<sup>104</sup> 'EU-Turkey Statement, 18 March 2016' (*Consilium*) <<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>> accessed 6 June 2025.

<sup>105</sup> Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, signed 2 February 2017, English translation published by EU Migration Law Blog, <[https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM\\_translation\\_finalversion.doc.pdf](https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf)> accessed 6 June 2025.

Externalization policies expose migrants to grave abuses by shifting border control to countries with poor human rights records. In Libya, migrants intercepted at sea are routinely subjected to enforced disappearance and arbitrary detention, in which they face torture and extortion.<sup>106</sup> In Tunisia, authorities have subjected refugees, asylum seekers, and migrants to torture and other forms of ill-treatment in detention settings and during collective expulsions.<sup>107</sup> The United Nations (UN) human rights experts have expressed their concerns regarding grave violations of migrants' rights in Tunisia, criticizing that it is still considered a safe place for migrants and asylum seekers.<sup>108</sup> Additionally, the UN experts implicated the EU in the harsh treatment of migrants in Tunisia due to the implementation of the MoU, considering the continuation of cooperation with Tunisia, which infringes on international human rights and refugee law.<sup>109</sup>

In this context, securitizing migration involves framing migrants and asylum seekers as a security threat that undermines political identity and autonomy, as Huysmans noted, transforming migration governance into fear management.<sup>110</sup> Thus, driven by this perceived threat, one can argue that the EU justifies the employment of externalizing border control agreements, further ignoring the human rights implications highlighted by the UN and international human rights organizations.

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<sup>106</sup> 'Libya: New Evidence Shows Refugees and Migrants Trapped in Horrific Cycle of Abuses' (*Amnesty International*, 24 September 2020) <<https://www.amnesty.org/en/latest/press-release/2020/09/libya-new-evidence-shows-refugees-and-migrants-trapped-in-horrific-cycle-of-abuses/>> accessed 6 June 2025.

<sup>107</sup> 'Joint Statement: Tunisia Is Not a Place of Safety for People Rescued at Sea' (*Amnesty International*, 4 October 2024) <<https://www.amnesty.org/en/latest/news/2024/10/joint-statement-tunisia-is-not-a-place-of-safety-for-people-rescued-at-sea/>> accessed 13 June 2025.

<sup>108</sup> 'Tunisia: UN Experts Concerned over Safety of Migrants, Refugees and Victims of Trafficking' (n 4).

<sup>109</sup> *ibid.*

<sup>110</sup> Jef Huysmans, 'The Politics of Insecurity: Fear, Migration, and Asylum in the EU' (Routledge 2006) 61-62.

## 2.4 Conclusion

Overall, the EU's engagement with Tunisia reflects ongoing contradictions between its stated values and its actual priorities, especially in migration control and security. From Ben Ali's authoritarian rule to the post-2011 democratic period and the 2023 MoU, which concluded amid a deterioration of the human rights situation and democratic backsliding, the EU has consistently prioritized stability and curbing migration over genuine democratic reforms and human rights protections. While the EU speaks of promoting democracy and human rights, its actions often support authoritarian practices and overlook the human rights violations of its allies, particularly its partners in externalizing migration. When the EU securitizes migration, it works against promoting its normative ideals and undermines its normative power.

### **3 The EU–Tunisia MoU: Securitization, Authoritarianism, and Legal Implications**

In this chapter, I argue that the securitization of migration leads the EU to overlook the deterioration of human rights in Tunisia, particularly the rights of migrants, to secure Tunisia’s cooperation in containing the perceived threat of migration. This partnership reflects a convergence of political interests that reinforces authoritarian practices and exposes the EU to both legal and political responsibility for the resulting rights violations. I trace how President Saied’s rhetoric and authoritarian consolidation have enabled a systematic crackdown on migrants and those who defend them. At the same time, the EU, despite being aware of the repressive environment, has continued to prioritize migration containment over the protection of human rights.

#### **3.1 Authoritarian Consolidation and Rights Erosion in Tunisia**

Tunisia’s failure to break free from authoritarian legacies, combined with the inability of the political system produced by the 2014 constitution to address the socio-economic dilemmas, enabled Saied to consolidate power through a populist narrative that framed his unconstitutional actions as a necessary correction of a corrupt political system.<sup>111</sup> In this context, Tunisian authorities have intensified repressive practices that Tunisians believed they would not see again after ousting Ben Ali. For example, the authorities have used Decree-Law 54 to target dissent, and prosecute critics, journalists, and rights defenders, severely undermining freedom of expression.<sup>112</sup> Reporters Without Borders criticized “President Kais

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<sup>111</sup> Francesco Tamburini, “‘How I Learned to Stop Worrying and Love Autocracy’: Kais Saied’s “Constitutional Self-Coup” in Tunisia’ (2023) 58 *Journal of Asian and African Studies* 904.

<sup>112</sup> ‘Tunisia: Cybercrime Decree Used Against Critics | Human Rights Watch’ (19 December 2023) <<https://www.hrw.org/news/2023/12/19/tunisia-cybercrime-decree-used-against-critics>> accessed 27 April 2025.

Saied's growing authoritarianism and inability to tolerate media criticism.”<sup>113</sup> Additionally, Tunisia experienced arbitrary arrest and detention of political opposition figures and members of Tunisia's dissolved parliament;<sup>114</sup> the use of anti-terrorism laws to prosecute political opposition figures;<sup>115</sup> the trial of civilians before military courts;<sup>116</sup> severe limitations on the work of civil society organizations; restrictions against human rights defenders;<sup>117</sup> undermining the independence of the judiciary;<sup>118</sup> and the curtailment of media freedom.<sup>119</sup>

Saied was re-elected for a second term in the 2024 presidential elections, held in a tightly restricted political environment. A month before the elections, the Independent High Authority for Elections denied accreditation to several civil society groups, citing concerns about foreign funding.<sup>120</sup> The UN High Commissioner for Human Rights (UNHCHR) expressed concern over the arrest of prospective candidates and the exclusion of most contenders from the race.<sup>121</sup> The European Parliament's think tank has expressed concern about the restrictive political

<sup>113</sup> ‘2023 World Press Freedom Index – Journalism Threatened by Fake Content Industry | RSF’ <<https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry>> accessed 18 April 2025.

<sup>114</sup> ‘Tunisia: Wave of Arrests Targets Critics and Opposition Figures | Human Rights Watch’ (24 February 2023) <<https://www.hrw.org/news/2023/02/24/tunisia-wave-arrests-targets-critics-and-opposition-figures>> accessed 18 April 2025.

<sup>115</sup> ‘Ghannouchi Sentencing Marks Aggressive Crackdown on Saied Opposition’ (*Amnesty International*, 18 May 2023) <<https://www.amnesty.org/en/latest/news/2023/05/tunisia-ghannouchi-sentencing-marks-aggressive-crackdown-on-saied-opposition/>> accessed 18 April 2025.

<sup>116</sup> ‘Tunisia: Convictions of Six Civilians by Military Courts Must Be Quashed’ (*Amnesty International*, 2 February 2023) <<https://www.amnesty.org/en/latest/news/2023/02/tunisia-convictions-of-six-civilians-by-military-courts-must-be-quashed/>> accessed 18 April 2025.

<sup>117</sup> ‘Tunisia: Restrictions against Defenders, Violence and Reversal of Gains’ (*UN SR Human Rights Defenders*) <<https://srdefenders.org/information/tunisia-restrictions-against-defenders-violence-and-reversal-of-gains/>> accessed 18 April 2025.

<sup>118</sup> ‘Tunisian Authorities Must End Erosion of Judicial Independence’ (*Amnesty International*, 31 May 2024) <<https://www.amnesty.org/en/latest/news/2024/05/tunisia-authorities-must-end-erosion-of-judicial-independence/>> accessed 18 April 2025.

<sup>119</sup> ‘Tunisia: Crackdown on Media Freedoms’ (*OHCHR*) <<https://www.ohchr.org/en/press-releases/2023/06/tunisia-crackdown-media-freedoms>> accessed 18 April 2025.

<sup>120</sup> ‘Rejected Poll Monitors Accuse Tunisia's Election Authorities of Bias’ (*AP News*, 9 September 2024) <<https://apnews.com/article/tunisia-poll-monitors-election-accreditation-presidential-vote-2c84de290135e410860f5c24f9ce375a>> accessed 18 April 2025.

<sup>121</sup> ‘Türk Calls on Tunisia to Uphold Rule of Law and Democratic Freedoms’ (*OHCHR*) <<https://www.ohchr.org/en/press-releases/2024/10/turk-calls-tunisia-uphold-rule-law-and-democratic-freedoms>> accessed 18 April 2025.



climate and noted the challenge the EU faces in supporting democratic processes while implementing the MoU.<sup>122</sup>

Tunisian authorities have increasingly rejected scrutiny of human rights. On 18 February 2025, the UNHCHR urged Tunisian authorities to end the pattern of arrests, arbitrary detentions, and imprisonment of human rights defenders, lawyers, journalists, activists, and politicians, many of whom were held in pre-trial detention on vague charges for exercising their rights and freedoms.<sup>123</sup> In response, Tunisia rejected the criticism, defended its human rights record, and framed the prosecutions as legitimate public law cases unrelated to political activity.<sup>124</sup> Moreover, Tunisia's withdrawal of the right of individuals and non-governmental organizations to access the African Court on Human and Peoples' Rights marks a serious setback for human rights protection, as it restricts victims' ability to seek justice beyond domestic courts.<sup>125</sup>

Together, these developments reflect not only the consolidation of authoritarian rule but also a deliberate dismantling of the post-2011 rights framework.

### **3.2 Securitization, Informality, and Human Rights: Examining the MoU**

In a context where the human rights situation in Tunisia was deteriorating, the European Commission signed, on 16 July 2023, the MoU with Tunisia establishing a strategic and comprehensive partnership built on the following pillars: macroeconomic stability, trade and investment, green energy transition, people-to-people contacts, and migration and mobility.<sup>126</sup>

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<sup>122</sup> 'Tunisia's 2024 Presidential Elections | Think Tank | European Parliament' <[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_ATA\(2024\)762411](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2024)762411)> accessed 18 April 2025.

<sup>124</sup> 'Republic of Tunisia, Ministry of Foreign Affairs, Migration and Tunisians Abroad, Tunisia has received with deep astonishment the inaccuracies and criticisms contained in the statement issued by the United Nations High Commissioner for Human Rights (OHCHR), regarding the situations of some Tunisian citizens who are subject to judicial prosecution by the national judiciary (25 February 2025) <<https://www.diplomatie.gov.tn>> accessed 18 April 2025.

<sup>125</sup> Press Statement: Centre for Human Rights Expresses Concern about Tunisia's Withdrawal of Access to the African Court by Individuals and NGO's (*Centre for Human Rights*, 20 March 2025) <<https://www.chr.up.ac.za/latest-news/3965-press-statement-centre-for-human-rights-expresses-concern-about-tunisia-s-withdrawal-of-access-to-the-african-court-by-individuals-and-ngo-s>> accessed 18 April 2025.

<sup>126</sup> 'Memorandum of Understanding between the EU and Tunisia' (n 1).

While framed as a mutually beneficial agreement, the MoU must be understood within the broader context of the EU's ongoing efforts to externalize migration control.

The migration and mobility pillar of the MoU underscores the fundamental tension between the EU's normative rhetoric and its actual externalization practices. The MoU references respect for human rights and affirms that the return of irregular migrants in Tunisia to their countries of origin will be conducted in accordance with international law and respect for their dignity; however, it overlooks the establishment of monitoring and accountability mechanisms. The MoU's focus remains securitized, emphasizing border control, combating smuggling, and prioritizing returns and readmissions. In the MoU, Tunisia explicitly affirms its rejection of becoming a settlement country for irregular migrants, along with the EU's commitment to providing additional financial, training, and technical support for border management, which would result in policies that undermine migrants' rights.

The informal nature of the MoU, combined with the lack of effective accountability and monitoring mechanisms, raises serious concerns about its potential collusion in human rights violations.<sup>127</sup> In such a repressive context, Tunisian CSOs fear retaliation and hesitate to share information, limiting oversight of the MoU.<sup>128</sup> The informal MoU, concluded swiftly without adequate safeguards or proper Council mandate, illustrates the EU's increasing use of informal deals to externalize migration control despite severe human rights risks.<sup>129</sup> This informality limits transparency and accountability, significantly restricting parliamentary and judicial oversight.<sup>130</sup> Moreover, by supporting authoritarian regimes, the MoU undermines civil society and human rights defenders, weakening the EU's external action objectives to promote human rights, democracy, and good governance.<sup>131</sup>

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<sup>127</sup> Strik and Robbesom (n 2).

<sup>128</sup> *ibid.*

<sup>129</sup> *ibid* 221.

<sup>130</sup> *ibid* 222.

<sup>131</sup> *ibid.*

The EU's financial commitments under the MoU lack transparency and reveal a clear focus on border control over migrant protection. Two months after concluding the MoU, the European Commission declared that 127 million euros would be allocated to support Tunisia's budget and for migration.<sup>132</sup> Later, the Commission stated that it would provide total support for migration of 105 million euros, without providing information on additional financial support as per the MoU.<sup>133</sup> Strik and Robbesom noted that the Commission did not publish specific figures for its migration-related commitments.<sup>134</sup> However, they cited leaked documents showing that just 5% of the 105 million euros was dedicated to protecting refugees and migrants.<sup>135</sup> In comparison, 62% was directed toward police, search and rescue operations, returns, and border management equipment.<sup>136</sup> The leaked documents also indicated that EU support for migration in Tunisia could reach 253 million euros.<sup>137</sup> They referred to another source, which noted that the total expected support under the MoU might amount to 785 million euros.<sup>138</sup> Strik and Robbesom concluded that there is a clear imbalance between protection and border control, showing that the EU's primary focus is not on building an effective protection system in Tunisia, but instead on strengthening border control and sending migrants back to their countries of origin.<sup>139</sup>

The MoU has sparked significant criticism over its legality, transparency, and human rights implications, particularly in light of Tunisia's deteriorating rights context. The criticism raised by UN human rights experts,<sup>140</sup> human rights groups,<sup>141</sup> European Parliament Members who

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<sup>132</sup> *ibid* 209.

<sup>133</sup> *ibid*.

<sup>134</sup> *ibid*.

<sup>135</sup> *ibid*.

<sup>136</sup> *ibid*.

<sup>137</sup> *ibid*.

<sup>138</sup> *ibid*.

<sup>139</sup> *ibid*.

<sup>140</sup> 'Tunisia: UN Experts Concerned over Safety of Migrants, Refugees and Victims of Trafficking' (n 4).

<sup>141</sup> 'EU/Tunisia: Agreement on Migration "Makes EU Complicit" in Abuses against Asylum Seekers, Refugees and Migrants' (n 5).

questioned the European Commission for signing the MoU without sufficient consultation, emphasizing that it was concluded with a “country where human rights violations against sub-Saharan Africans and violent crackdowns on domestic opposition are well documented.”<sup>142</sup>

The European Parliament issued a resolution expressing its concerns over implementing the MoU with respect for principles in external action relating to democracy, human rights, and the rule of law, as outlined in Article 21 of the TEU, in addition to Article 2 of the EU-Tunisia Euro-Mediterranean Agreement, which emphasizes respect for human rights.<sup>143</sup>

Furthermore, the EU Ombudsman found that the European Commission had completed a risk management exercise for Tunisia before the signing of the MoU; however, it did not proactively share this information.<sup>144</sup> A few months later, a leaked internal report by the EU’s diplomatic service (EEAS) detailed the deterioration of the political climate and the shrinking civic space in Tunisia, acknowledging the arrests of CSO staff assisting migrants under EU-funded programs.<sup>145</sup> It also warned that the EU’s credibility could be undermined by its close cooperation with Tunisia; however, it recommended continuing the partnership, even if this meant violating the EU’s human rights commitments.<sup>146</sup> Meanwhile, the European Commission has overlooked the documented deterioration of human rights in Tunisia, proposing to include Tunisia in the EU’s first list of safe countries of origin.<sup>147</sup> This move is

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<sup>142</sup> Juan Fernando LÓPEZ AGUILAR REUTEN Domènec RUIZ DEVESA, Pietro BARTOLO, Cyrus ENGERER, Thijs, ‘Parliamentary Question | Memorandum of Understanding between the European Union and Tunisia | E-002799/2023 | European Parliament’ <[https://www.europarl.europa.eu/doceo/document/E-9-2023-002799\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2023-002799_EN.html)> accessed 19 April 2025.

<sup>143</sup> ‘European Parliament - The Adoption of the Special Measure in Favour of Tunisia for 2023 - Thursday, 14 March 2024’ <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0175\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0175_EN.html)> accessed 7 June 2025.

<sup>144</sup> ‘Decision on How the European Commission Intends to Guarantee Respect for Human Rights in the Context of the EU-Tunisia Memorandum of Understanding (OI/2/2024/MHZ) | Décision | Médiateur Européen’ <[https://www.ombudsman.europa.eu/fr/decision/en/193851?utm\\_source=perplexity](https://www.ombudsman.europa.eu/fr/decision/en/193851?utm_source=perplexity)> accessed 19 April 2025.

<sup>145</sup> Jennifer Rankin, ‘EU Fears for Its Human Rights Credibility as Tunisia Crushes Dissent, Leak Shows’ *The Guardian* (13 September 2024) <<https://www.theguardian.com/world/2024/sep/13/eu-fears-for-its-human-rights-credibility-as-tunisia-crushes-dissent-leak-shows>> accessed 20 April 2025.

<sup>146</sup> *ibid.*

<sup>147</sup> Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level 2025.

likely to have significant implications for the protection and asylum claims of nationals from these countries. All this together confirms that securitizing migration still dominates the EU's foreign policy engagements with third countries involved in externalization agreements. The European Commission's continued neglect of repeated warnings, even from other EU institutions, reflects a conscious acceptance of these consequences, ultimately implicating the Union in Tunisia's deterioration of human rights and undermining its international obligations.

### **3.3 State Rhetoric, Conspiracy Narratives, and the Criminalization of Solidarity**

The MoU operates amid Tunisia's escalating repression against migrants and President Saied's rhetoric, which presents migration as part of a conspiracy against the country. Since 2019, Saied has deployed a strategy of authoritarian populism rooted in disinformation, using conspiracy narratives and populist rhetoric to suppress dissent, delegitimize democratic institutions, and consolidate power.<sup>148</sup>

A country with a deteriorating human rights record, documented violations against migrants, and official racial rhetoric should not be considered a safe place or credible partner for an agreement claiming to respect human rights, as the MoU stated. On 21 February 2023, just a few months before the MoU was signed, President Saied promoted a conspiracy narrative, claiming that sub-Saharan migration was part of a plot to undermine Tunisia's Arab-Islamic identity.<sup>149</sup> He accused parties, not mentioned, of being paid to facilitate it, linking the migrant influx to crime and social unrest.<sup>150</sup> In response, the Chairperson of the African Union Commission issued a statement condemning Saied's remarks, describing them as racist

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<sup>148</sup> Majd Abuamer, 'Disinformation as an Authoritarian Strategy: The Populist Playbook in Egypt and Tunisia' [2025] British Journal of Middle Eastern Studies 1.

<sup>149</sup> 'Tunisia's President Saied Claims Sub-Saharan Migrants Threaten Country's Identity' (23 February 2023) <[https://www.lemonde.fr/en/le-monde-africa/article/2023/02/23/in-tunisia-president-kais-saied-claims-sub-saharan-migrants-threaten-country-s-identity\\_6016898\\_124.html](https://www.lemonde.fr/en/le-monde-africa/article/2023/02/23/in-tunisia-president-kais-saied-claims-sub-saharan-migrants-threaten-country-s-identity_6016898_124.html)> accessed 22 April 2025.

<sup>150</sup> *ibid.*

statements targeting fellow Africans in Tunisia, and calling for all migrants to be treated with dignity and for an end to racialized hate speech that could incite harm.<sup>151</sup> On 5 March 2023, after the backlash, the President stated, attempting to mitigate the impact of his remarks, denied that it was racist, and once again accused unnamed parties of orchestrating the campaign against him.<sup>152</sup> However, Human Rights Watch documented a surge in racist violence against Black African migrants, following the president's remarks, including physical assaults, arbitrary arrests, and evictions.<sup>153</sup>

President Saïed's migration rhetoric has escalated into a coordinated crackdown on both migrants and those who defend their rights. On 16 May 2024, Amnesty International reported that Tunisian authorities launched an unprecedented crackdown on migrants, refugees, and the human rights defenders supporting them, just days after a high-level coordination meeting with the Italian Ministry of Interior on migration management.<sup>154</sup> Later, human rights defenders supporting migrants became targets of smear campaigns, as President Saïed accused the leaders of organizations assisting and sheltering "illegal" sub-Saharan migrants of receiving large sums of foreign funding and labeled them as "mostly traitors and foreign agents."<sup>155</sup> This aligns with Buyse's explanation of how governments could employ discursive tools to target civil society actors and shrink civic space.<sup>156</sup>

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<sup>151</sup> 'The Chairperson of the African Union Commission Strongly Condemns the Racial Statements on Fellow Africans in Tunisia, African Union' <<https://au.int/en/pressreleases/20230224/chairperson-african-union-commission-strongly-condemns-racial-statements>> accessed 22 April 2025.

<sup>152</sup> Ri'āsat al-Jumhūriyyah al-Tūnisiyyah, *Balāgh ḥawla al-ḥamla al-muta'allaqa bi-l-'unṣuriyya al-maz'ūma fī Tūnis* [Statement on the Campaign Concerning Alleged Racism in Tunisia], 5 March 2023 <<https://shorturl.at/ZaGjP>> accessed 27 April 2025.

<sup>153</sup> 'Tunisia: Racist Violence Targets Black Migrants, Refugees | Human Rights Watch' (10 March 2023) <<https://www.hrw.org/news/2023/03/10/tunisia-racist-violence-targets-black-migrants-refugees>> accessed 22 April 2025.

<sup>154</sup> 'Repressive Crackdown on Tunisian CSOs Following Months of Escalating Violence against Migrants and Refugees' (n 7).

<sup>155</sup> 'Tunisia: UN Expert Alarmed by Arrests and Smear Campaigns against Migrant Rights Defenders' (n 6).

<sup>156</sup> Buyse (n 50).

These developments illustrate the broader context in which the MoU operates. It is not merely a top-down imposition driven by Tunisia's economic vulnerability; rather, the MoU reflects a convergence of interests between the EU and its southern neighbor, which comes at the direct expense of migrants and those who defend their rights. The Tunisian regime seeks to consolidate authoritarian rule through anti-migrant narratives and to distract citizens from economic and political impasses.<sup>157</sup> At the same time, the EU aims to outsource migration management, which is inherently incompatible with protecting the rights of migrants.<sup>158</sup>

European migration externalization agreements not only undermine migrants' rights but also contribute to the shrinking of civic space, both in third countries and within Europe itself. The 2016 EU–Turkey Migration Deal legitimized the authoritarian regime and its crackdown on human rights defenders, contributing to the shrinking of civic space for solidarity groups with migrants.<sup>159</sup> Furthermore, European states have also adopted domestic measures that increasingly restrict civic space for those supporting migrants and refugees within Europe.<sup>160</sup>

Thus, the situation of migrants and those who support them in Tunisia is not an isolated case, but part of a broader pattern in which the externalization of migration policies, driven by the securitization of migration, is instrumentalized to provide political legitimacy and material support to authoritarian rule. These policies not only suppress migrants' rights and silence solidarity, but also raise fundamental legal questions about the EU's responsibility for the human rights violations they enable beyond its borders.

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<sup>157</sup> 'Katharina Natter, Reinventing a Broken Wheel [2023] Verfassungsblog' <<https://verfassungsblog.de/reinventing-a-broken-wheel/>> accessed 22 April 2025.

<sup>158</sup> *ibid.*

<sup>159</sup> 'When Externalization Meets Authoritarianism: Defending the Rights of Migrants and Refugees in Turkey' (*Human Rights Centre Blog*, 21 June 2024) <<https://hrcessessex.wordpress.com/2024/06/21/when-externalization-meets-authoritarianism-defending-the-rights-of-migrants-and-refugees-in-turkey/>> accessed 22 April 2025.

<sup>160</sup> 'Study on Civil Society Support to Refugees and Migrants in Council of Europe Member States' (Council of Europe, 15 June 2024) <<https://rm.coe.int/conf-exp-2024-3-en-study-on-civil-society-support-to-refugees-and-migr/1680b07d4c>> accessed 22 April 2025.

### 3.4 Is the EU Liable for Human Rights Violations Under Externalization?

The EU and its Member States' externalization agreements, such as the EU–Turkey statement, the Italy–Libya MoU, and the EU–Tunisia MoU, have raised serious questions regarding human rights protection and accountability. These agreements raise questions about whether the EU and its Member States can be held responsible for abuses occurring outside their territories, the extent of the EU's jurisdiction over such acts, and which mechanisms exist to hold the EU accountable for human rights violations arising from these policies.

The EU's liability may extend beyond borders when externalization policies result in human rights violations over which it exercises control. Although the Convention relating to the Status of Refugees is silent on its extraterritorial application, the United Nations High Commissioner for Refugees (UNHCR) affirms that the protection against refoulement applies beyond borders.<sup>161</sup> Under externalization, the EU exercises indirect control over actions carried out by third countries that implement those agreements.<sup>162</sup> The obligation of non-refoulement is not confined to the 1951 Refugee Convention but is firmly embedded in international human rights law. Crucially, international jurisprudence has made clear that this obligation applies extraterritorially wherever a state exercises jurisdiction or effective control over individuals, regardless of where the violation occurs. Both the European Court of Human Rights and the UN Human Rights Committee have confirmed that states must prevent refoulement not only within their territory but also when acting beyond it, such as through cooperation with third countries.<sup>163</sup>

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<sup>161</sup> 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol' (*UNHCR*, 1 January 2011) <<https://www.unhcr.org/media/advisory-opinion-extraterritorial-application-non-refoulement-obligations-under-1951-0>> accessed 21 April 2025.

<sup>162</sup> Moreno-Lax and Giuffr , 92–96 (n 8).

<sup>163</sup> *ibid*



Externalization policies violate the right to leave, as protected under Article 12(2) of the International Covenant on Civil and Political Rights and Article 2(2) of Protocol No. 4 to the European Convention on Human Rights, and effectively obstruct access to asylum.<sup>164</sup> States cannot evade responsibility under the Convention by acting through third countries, particularly where they exercise decisive influence and are, or should be, aware of the foreseeable consequences of such cooperation.<sup>165</sup> Under Article 16 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, States that knowingly assist in wrongful acts share legal responsibility.<sup>166</sup> Additionally, pushbacks and maritime interdictions, especially through proxy actors, may also breach obligations under the law of the sea, including the duty to rescue and ensure safe disembarkation.<sup>167</sup> Pushbacks at the EU's external borders exemplify Member States' attempts to evade their human rights responsibilities, systematically violating international law principles, including non-refoulement and the prohibition against collective expulsions.<sup>168</sup>

Moreno-Lax introduces the concept of “functional jurisdiction” to demonstrate that responsibility arises when a state exercises public power, such as funding or coordination, regardless of its physical presence, reinforcing the notion that human rights obligations follow power, not territory.<sup>169</sup> Thus, the EU and its Member States cannot justify externalization by outsourcing actions they are prohibited from carrying out themselves, particularly when the resulting rights violations are foreseeable. Moreover, EU officials involved in externalization policies could face prosecution before the International Criminal Court under Article 25(3)(c)

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<sup>164</sup> *ibid* 95.

<sup>165</sup> *ibid* 108.

<sup>166</sup> *ibid* 102-103.

<sup>167</sup> Cantor and others, 125-138 (n 46).

<sup>168</sup> Solveig Als and others, *Externalization and the UN Global Compact on Refugees: Unsafety as Ripple Effect* (RSC Policy Paper 2022/12, European University Institute 2022) 13.

<sup>169</sup> Violeta Moreno-Lax, ‘The Architecture of Functional Jurisdiction: Unpacking Contactless Control—On Public Powers, *S.S. and Others v. Italy*, and the “Operational Model”’ (2020) 21 German Law Journal 385.

of the Rome Statute for knowingly aiding international crime.<sup>170</sup> This argument was raised in a 2019 communication to the ICC Prosecutor, which presented evidence of EU complicity in crimes against humanity committed against migrants in Libya as part of a deliberate policy to curb migration.<sup>171</sup>

There are additional remedies within the EU system to pursue accountability for human rights violations resulting from the MoU. However, meeting the admissibility and legal standing requirements for these remedies is challenging. Article 263 of the Treaty on the Functioning of the European Union (TFEU) provides that the Court of Justice of the European Union (CJEU) has jurisdiction to review the legality of legislative acts and other acts of the European Parliament, the European Council, the Council, the Commission, and the European Central Bank, where such acts are intended to produce legal effects.<sup>172</sup> Any natural or legal person may initiate judicial proceedings before the CJEU against an act addressed to them or which is of direct and individual concern to them.<sup>173</sup> This condition makes it difficult for individuals to meet the admissibility threshold. Still, they can bring an action before national courts, which may then request a preliminary ruling from the CJEU.<sup>174</sup> Article 267 TFEU<sup>175</sup> could be used indirectly, as it allows individuals affected by measures adopted by EU institutions to challenge

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<sup>170</sup> Pat Rubio Bertran, 'Assessing the Responsibility of EU Officials for Crimes Against Migrants in Libya' (*E-International Relations*, 2 July 2021) <<https://www.e-ir.info/2021/07/02/assessing-the-responsibility-of-eu-officials-for-crimes-against-migrants-in-libya/>> accessed 21 April 2025.

<sup>171</sup> Omer Shatz and Juan Branco, Communication to the Office of the Prosecutor of the International Criminal Court Pursuant to Article 15 of the Rome Statute: EU Migration Policies in the Central Mediterranean and Libya (2019) <<https://www.statewatch.org/observatories/frontex/frontex-under-scrutiny-inquiries-and-investigations-november-2020-onwards/communication-to-the-office-of-the-prosecutor-of-the-international-criminal-court-sea-deaths/>> accessed 27 April 2025.

<sup>172</sup> 'Treaty on the Functioning of the European Union (TFEU) art 263' <[https://eur-lex.europa.eu/eli/treaty/tfeu\\_2008/art\\_263/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2008/art_263/oj/eng)> accessed 9 June 2025.

<sup>173</sup> *ibid.*

<sup>174</sup> Rafał Mańko, Action for annulment of an EU act, European Parliamentary Research Service (November 2019) 8.

<sup>175</sup> 'Treaty on the Functioning of the European Union (TFEU) art 267' <[https://eur-lex.europa.eu/eli/treaty/tfeu\\_2008/art\\_267/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2008/art_267/oj/eng)> accessed 10 June 2025.

their implementation before national courts, which may then refer questions to the CJEU for interpretation of EU law or to assess the validity of those measures.

The informal nature of the MoU would make it challenging to meet the admissibility requirements, particularly after the CJEU affirmed the lack of jurisdiction to annul the EU–Turkey statement, a similar form of informal instrument.<sup>176</sup> Şeker noted that, because the MoU lacks binding legal force, it would be difficult to treat it as an EU act that can be challenged.<sup>177</sup> However, she found that the financial provisions could be seen as giving the MoU the character of an act of the Commission that produces legal effects.<sup>178</sup> This analysis is also relevant to Article 277 of the TFEU,<sup>179</sup> which provides an indirect legal remedy if the Commission adopts implementing acts of general application, such as funding decisions, border cooperation programs, or operational measures based on the MoU.

Furthermore, Article 340 of the TFEU provides for the non-contractual liability of the EU, which may be pursued through an action for damages.<sup>180</sup> Additionally, Article 268 of the TFEU affirms the CJEU’s jurisdiction regarding compensation for damage.<sup>181</sup> However, the provision refers generally to the 'general principles common to the laws of the Member States' as the source of the substantive rules governing EU non-contractual liability.<sup>182</sup> For individuals, there is agreement that any natural or legal person, whether established in the EU or outside it, can

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<sup>176</sup> ‘CURIA - Documents, NF v European Council (Order) [2017] EGC T-192/16, ECLI:EU:T:2017:128’ <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=188483&doclang=EN>> accessed 9 June 2025.

<sup>177</sup> Emriye Özlem Şeker, ‘Judicial Review of the EU’s Informal Migration Instruments - Admissibility in the Case of the EU-Tunisia MoU’ (2024) Vol.23 Ankara Avrupa çalışmaları dergisi 377-378.

<sup>178</sup> *ibid.*

<sup>179</sup> ‘Treaty on the Functioning of the European Union (TFEU) art 277’ <[https://eur-lex.europa.eu/eli/treaty/tfeu\\_2008/art\\_277/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2008/art_277/oj/eng)> accessed 10 June 2025.

<sup>180</sup> ‘Treaty on the Functioning of the European Union (TFEU) art 340’ <[https://eur-lex.europa.eu/eli/treaty/tfeu\\_2008/art\\_340/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2008/art_340/oj/eng)> accessed 9 June 2025.

<sup>181</sup> ‘Treaty on the Functioning of the European Union (TFEU) art 268’ <[https://eur-lex.europa.eu/eli/treaty/tfeu\\_2016/art\\_268/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_268/oj/eng)> accessed 10 June 2025.

<sup>182</sup> Rafał Mańko, Action for damages against the EU, European Parliamentary Research Service Briefing (December 2018) 1.

bring an action for damages.<sup>183</sup> Nonetheless, the success rate is very low because the conditions for holding the EU liable for unlawful acts make it very difficult to obtain compensation.<sup>184</sup> Fink argues that although the action for damages is difficult to succeed due to strict conditions, it remains an essential tool for promoting institutional accountability and reinforcing the EU's fundamental rights obligations.<sup>185</sup>

Thus, legal scholars' analysis and arguments affirm that the EU and its Member States cannot evade responsibility by outsourcing migration control. Additionally, the EU legal system provides direct and indirect mechanisms for pursuing EU institutions for human rights violations under the MoU; however, there are challenges in meeting their requirements. In this light, to prevent further human rights violations and evasion of responsibility, the EU must refrain from entering into non-binding agreements, such as the MoU, and should terminate existing non-binding arrangements that lack human rights safeguards, monitoring and accountability mechanisms. These measures are essential to ensure that the EU's external actions remain consistent with its legal obligations and do not contradict its claimed role as a normative power.

### 3.5 Conclusion

The EU–Tunisia MoU reveals how securitizing migration can lead to the reinforcement of authoritarian rule rather than the protection of rights. By externalizing border control with a regime that frames migrants and their defenders as threats, the EU has become complicit in a system that punishes solidarity and weakens accountability. Not all EU institutions support the MoU, and some have raised concerns regarding its form and implementation in terms of human rights. However, the MoU remains in effect, with no concrete indication that it is under

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<sup>183</sup> *ibid* 3.

<sup>184</sup> *ibid* 8.

<sup>185</sup> Melanie Fink, 'The Action for Damages as a Fundamental Rights Remedy: Holding Frontex Liable' (2020) 21 German Law Journal 532.

reconsideration. There are legal pathways to ensure that the EU does not evade its responsibility for human rights violations due to the MoU, but meeting their conditions is challenging.

## 4 Externalization and the Shrinking of Civic Space: Evidence from Tunisia

This chapter examines how the MoU reinforced the criminalization of solidarity with migrants, increased risks for CSOs, and provided Tunisia with political and material backing for its restrictive measures. The EU's silence and support enabled the targeting of CSOs supporting migrants as part of its securitized migration agenda. Drawing on five in-depth interviews, I argue that the shrinking of civic space is not merely a parallel development to the MoU, but that the agreement has exacerbated it.

### 4.1 Repression of CSOs Supporting Migrants

Before the MoU, Dini and Giusa argued that the EU's approach to migration in Tunisia was already setting the stage for targeting parts of CSOs that confront the dominant migration framework.<sup>186</sup> What they call “uncivil society” includes those engaged in acts of resistance and disrupting efforts to contain movement, and that push the debate on freedom of mobility into the public space.<sup>187</sup> Additionally, Badalič argued that the EU benefited from Tunisia's systemic violations of human rights to prevent irregular migrants from reaching the EU.<sup>188</sup> Rather than addressing systemic violations, EU actors deliberately overlooked them to secure Tunisia's role in blocking migration toward Europe.<sup>189</sup> At the time, Tunisia was relying on the authoritarian-era laws to target irregular migrants; these laws remain in effect.<sup>190</sup> Hence, the legal

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<sup>186</sup> Sabine Dini and Caterina Giusa, *Externalising Migration Governance Through Civil Society: Tunisia as a Case Study* (Springer International Publishing 2020) 85.

<sup>187</sup> *ibid* 86-87.

<sup>188</sup> Vasja Badalič, ‘Tunisia's Role in the EU External Migration Policy: Crimmigration Law, Illegal Practices, and Their Impact on Human Rights’ (2019) 20 *Journal of International Migration and Integration* 85.

<sup>189</sup> *ibid*.

<sup>190</sup> *ibid* 96-97.

infrastructure needed to suppress migrants was already in place before the MoU, along with the tools that could be turned against those who support them.<sup>191</sup>

The shrinking civic space for CSOs supporting migrants is part of a broader trend across Europe and beyond. As della Porta and Steinhilper demonstrate, these CSOs are increasingly targeted through legal, administrative, and discursive tools that aim to delegitimize their work and marginalize them from the public sphere.<sup>192</sup> This is precisely what CSOs supporting migrants in Tunisia have faced, particularly after the signing of the MoU.

Almost ten months after the MoU was signed and following President Saïed's 6 May 2024 speech accusing migration CSOs of being traitors and foreign agents seeking to settle migrants in Tunisia, the authorities arrested Saadia Mosbah, President of the anti-discrimination association Mnemty,<sup>193</sup> known for combating racial discrimination and supporting refugees and migrants. Since then, according to Amnesty International, authorities have raided at least three organizations, arrested at least eight CSO workers and two former local officials, and launched criminal investigations into over forty individuals involved in migrant support work.<sup>194</sup> The charges include assisting the clandestine entry of foreign nationals, sheltering them, and facilitating their irregular entry, exit, movement, or stay.<sup>195</sup>

The arrested activists include<sup>196</sup> Mustapha Djemali, Director of the Tunisian Council for Refugees (CTR); Abderrazak Krimi, Project Manager at CTR; Sherifa Riahi, former Director

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<sup>191</sup> Natter (n 75).

<sup>192</sup> Donatella Della Porta and Elias Steinhilper, *Contentious Migrant Solidarity: Shrinking Spaces and Civil Society Contestation* (Routledge 2021) 1-15.

<sup>193</sup> International Commission of Jurists, *The Price of Complicity: Tunisia–EU Partnership Agreement Fuels Egregious Human Rights Abuses Against Refugees, Asylum-Seekers and Migrants* (ICJ, December 2024) 16 <<https://www.icj.org/tunisia-the-price-of-complicity/>> accessed 16 May 2025.

<sup>194</sup> 'Tunisia: Year-Long Arbitrary Detention of Human Rights Defenders Working with Refugees and Migrants' (*Amnesty International*, 7 May 2025) <<https://www.amnesty.org/en/latest/news/2025/05/draft-tunisia-year-long-arbitrary-detention-of-human-rights-defenders-working-with-refugees-and-migrants/>> accessed 16 May 2025.

<sup>195</sup> *ibid.*

<sup>196</sup> Tunisia's human rights organizations have established a website, Tunisian Solidarity, to provide information about colleagues arrested for their work and to express solidarity with those supporting migrants: <https://tunisiansolidarity.org/en/>.

of Terre d’asile Tunisie; Yadh Bousselmi, current Director of Terre d’asile Tunisie; Mohamed Joo, Administrative and Financial Director of the same organization; Salwa Ghrissa, Executive Director of the Association for the Promotion of the Right to Difference; and Imen Ouardani, former Deputy Mayor of Sousse. The latter was arrested for facilitating cooperation between the municipality and Terre d’asile Tunisie. In addition to Abdallah Said,<sup>197</sup> president of the Children of the Moon Association; and lawyer Sonia Dahmani, detained after publicly criticizing the mistreatment of migrants in Tunisia.<sup>198</sup>

This created a climate of fear among CSOs in Tunisia, especially those supporting migrants. Working in this field became increasingly risky, leading many activists to self-censor and act with extreme caution, which in turn limited their activities and weakened migrant solidarity efforts. However, in its 14 March 2025 reply to a UN Special Rapporteurs’ communication (AL TUN 6/2024)<sup>199</sup>, the Tunisian government denied targeting CSOs supporting migrants, framing the prosecutions as ordinary criminal cases conducted lawfully.<sup>200</sup> Moreover, it claimed continued cooperation with CSOs working on migration.<sup>201</sup>

Amid growing pressure and denial, capturing how those directly engaged perceived these developments became essential. To answer the central question of this thesis, *Has the EU–Tunisia MoU contributed to the shrinking civic space for Tunisian civil society organizations supporting migrants?*, I conducted five targeted, in-depth interviews: Two Tunisian human rights defenders, one Tunisian senior staff member of an international organization working

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<sup>197</sup> Luna Wolf, ‘No to the Criminalization of Solidarity: Freedom for Abdallah Said and All Prisoners in Tunisia, Sea-Watch’ (2 December 2024) <<https://sea-watch.org/en/freedom-for-abdallah/>> accessed 16 May 2025.

<sup>198</sup> ‘Tunisia: Further Information: Unjustly Jailed Lawyer Treated Inhumanely: Sonia Dahmani’ (Amnesty International, 16 December 2024) <<https://www.amnesty.org/en/documents/mde30/8851/2024/en/>> accessed 16 May 2025.

<sup>199</sup> UN Human Rights Council, Special Procedures, “AL TUN 6/2024” (Communications to Governments, 1 October 2024).

<sup>200</sup> Permanent Mission of Tunisia to the United Nations Office at Geneva, reply to the Joint Communication AL TUN 6/2024 from UN Special Rapporteurs (14 March 2025) UN Doc HRC/NONE/2025/SP/16 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=38930>> accessed 17 May 2025.

<sup>201</sup> *ibid.*



closely with migrant-focused CSOs, one Brussels-based EU advocacy officer, and one staff member of the EU Delegation in Tunisia. Their testimonies offer a rare, direct lens into the shrinking civic space for CSOs in the shadow of an externalization agreement. Some of them are anonymized at their request due to the real risk of retaliation or legal consequences.

## 4.2 Political and Discursive Drivers of the MoU

This section presents how the political and discursive environment surrounding the MoU reinforced Tunisia's crackdown on solidarity with migrants. Drawing on testimonies, it shows how the MoU was shaped by a convergence of authoritarian and the EU securitized agendas that deepened the targeting of migrants and their defenders.

Nadhim, the director of a Tunisian CSO focused on migrant rights, situated the MoU within the EU's policy of externalizing border control, arguing that it operates not as a technical agreement but as part of a global political shift shaped by the rise of right-wing populism across both the North and South.<sup>202</sup> What is being exported, in his view, is not just migration control but a broader agenda of exclusion and racism, the criminalization of CSOs, and the erosion of solidarity. He stressed that the MoU embodies this dynamic: it militarizes borders, but instead of sending armies, development aid is now used as leverage to contain mobility. “We are witnessing a convergence between right-wing regimes in both the North and South,” he noted, pointing to the MoU's role in escalating racial hostility in Tunisia. In this model, fear is the governing tool at home, while the EU externalizes its moral failures, delegating repression under the guise of cooperation.

According to Nadhim, although his organization has faced fewer administrative restrictions, it has been subjected to defamation and even death threats on social media. The organization has filed several legal complaints against unknown individuals who threatened staff members for

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<sup>202</sup> Interview with Nadhim (pseudonym, 25 April 2025) (online).

allegedly “legitimizing the settlement of migrants and demographic change in Tunisia.” He linked this narrative directly to President Saied’s February 2023 speech, which, in his view, laid the groundwork for the MoU and introduced, for the first time in Tunisia, a far-right discourse rooted in demographic fear. As he noted, Tunisia has never had a homogenous Arab identity but has historically been an open and diverse society shaped by migration.

This same speech was also central in the testimony of Messaoud Romdhani, a human rights defender and former executive committee member of the EuroMed Rights Network.<sup>203</sup> He pointed out that the February 2023 speech marked a serious rupture between the authorities and CSOs, as it openly echoed the rhetoric of the European far right, particularly in accusing migrants of threatening Tunisia’s demographic and cultural identity.

This reflects what Huysmans explains about how the authorities securitize migration.<sup>204</sup> Huysmans’ analysis focused on the European context, but the same securitizing discourse is now employed in North Africa, confirming Nadhim’s argument about the convergence between right-wing regimes across the North and South.

According to Romdhani, this speech provoked an intense backlash from CSOs, including street protests, in addition to a condemnation by the African Union, while also fueling a wave of racist violence and hate campaigns, notably against sub-Saharan migrants in southern Tunisia. This speech, Romdhani remarked, “paved the way for the MoU. It was signed at a moment of complete political closure in Tunisia, something von der Leyen<sup>205</sup> and Meloni<sup>206</sup> didn’t mind. For the European right, it was a timely opportunity, not a concern; human rights were never part of the calculation.”

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<sup>203</sup> Interview with Messaoud Romdhani (25 April 2025) (online).

<sup>204</sup> Huysmans (n 32).

<sup>205</sup> Ursula von der Leyen, President of the European Commission.

<sup>206</sup> Giorgia Meloni, Prime Minister of Italy.

As Amine, a Tunisian senior staff member at an international organization that works closely with migration CSOs, explained, the MoU was signed in a particular political and economic context.<sup>207</sup> Migrant arrivals were increasing, and some areas had seen clashes between migrants and citizens, with social media amplifying fears and tensions. He noted that around the same time, Tunisia had reached a deadlock with the International Monetary Fund (IMF), and Italy viewed economic collapse as a direct threat. To avoid instability, he continues, Italy sought to push for IMF support without conditions and backed Tunisia's budget. Italy, Amine added, also led the MoU negotiations, despite opposition at the time within the European Commission. According to him, Italy's efforts were driven by its interest in securing migration control, and its growing influence in Tunisia has unsettled other EU states.

As Amine explained, Tunisia lacks the capacity to secure its borders with Libya and Algeria, and the MoU helped boost its security capabilities. He added that it also signed separate agreements with both countries to reinforce land border control; thus, with tighter land and sea borders, Tunisia has become a trap for migrants. At the same time, he confirms, it rejects becoming a country of settlement and actively promotes "voluntary return."

Rebecca, a Brussels-based EU advocacy officer for an international organization, explained that the MoU was driven by the rising irregular migration from Tunisia to Italy following President Saïed's February 2023 speech, which incited hostility against migrants.<sup>208</sup> She added that in response, Italy pushed the EU to fast-track the deal, which had been under negotiation for some time, and the MoU was signed five months later. At the same time, Italy lobbied the IMF to release funding to Tunisia, fearing that economic collapse would fuel further migration.

According to Rebecca, the MoU marked a turning point in EU-Tunisia relations. She explained that before the deal, the EU publicly criticized Tunisia's democratic decline. After the MoU,

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<sup>207</sup> Interview with Amine (pseudonym, 3 May 2025) (online).

<sup>208</sup> Interview with Rebecca (pseudonym, 6 May 2025) (online).

such criticism vanished. She argued that the MoU contributed indirectly to the crackdown on migration-focused CSOs. She added that once Europe became politically reliant on Saied to block migration, it lost leverage and willingness to challenge his actions. Today, she explained, the European Commission avoids criticizing Saied publicly, aware that he could provoke a political crisis. She added that with the rise of far-right narratives across Europe, leaders like Meloni will not risk contradicting the strict migration approach by speaking out against Tunisia. Silence has become strategic for the EU and its member states.

Rebecca explained that her organization shut down its office in Tunisia after colleagues faced official investigations and growing risks. “Tunisia was no longer a safe place to operate,” she said. According to her, other international organizations have either closed or are prepared to relocate their teams as the civil society work, particularly on migration, has become a red line that brings serious consequences.

These accounts reveal that the MoU was shaped by a convergence of authoritarian closure, securitized migration policy, and the rise of official narratives against migrants and those who support them. Far from being a neutral policy tool, the MoU provided political cover to state-led anti-migrant rhetoric, expanded Tunisia’s role in containment, and allowed the EU and its Member States to advance their migration agenda at the expense of human rights principles.

### **4.3 Drying Up the Springs: Repression Post-MoU**

As shown in Chapter Two, President Saied’s consolidation of power has created an environment where legal tools are weaponized to silence dissent, and CSOs are reframed as a threat to national identity and sovereignty. The MoU aligned with this domestic logic, offering material resources and international legitimacy in exchange for curbing migration. Within this framework, the shrinking of civic space became a predictable outcome of policies designed to deter migration, while reinforcing Tunisia’s refusal to become a country of settlement. Backed

by EU funding and political support through the MoU, Tunisian authorities adopted a strategy designed to strip migrants of solidarity, sending a clear message to them: if you come to Tunisia, you will be left on your own, and anyone who tries to support you will face serious consequences. The testimonies presented here reveal how the EU–Tunisia partnership empowered state institutions to criminalize solidarity under the pretext of defending sovereignty, even when the services offered were non-political and purely humanitarian.

As Nadhim explained, the MoU produced four interconnected outcomes. First, it militarized the borders and intensified repression against migrants attempting to cross to Europe. Second, it reinforced an anti-migrants campaign within Tunisia, through the rise of racist discourse in the absence of a legal framework that protects them. Third, it resulted in what he called “double repression”: internal crackdowns in Tunisia and forced returns from Europe. And fourth, it targeted CSOs, aiming to eliminate sources of support for migrants, whether legal, financial, or humanitarian, to push them toward return, often under coercive conditions. As he put it, the objective was clear: to ensure that Tunisia is neither a country of transit nor one of settlement. To ensure this, what he described as a well-known authoritarian practice had to take place: “drying up the springs,” cutting off solidarity networks so that migrants are left without assistance, and the CSOs that support them are silenced or dismantled, even when they are not engaged in advocacy but simply providing basic services. He concluded, “All these investigations and arrests targeting CSOs staff are a direct consequence of the MoU.”

In a parallel account, Romdhani offered a similar assessment, emphasizing that the wave of rights violations against sub-Saharan migrants following the MoU sparked widespread condemnation from Tunisian CSOs. Many organizations, he noted, began to describe Tunisia as a *de facto* border guard for Europe. He argued that this framing created discomfort not only for the Tunisian authorities but also for the EU. As a result, according to him, the Tunisian government began to view CSOs working on migration and anti-racism as obstacles to

implementing the MoU. In response, he continues, it moved to restrict their activities and repress their members, especially those providing shelter or support to migrants, because their work both challenged the state's racist narrative and exposed the hidden costs of the MoU's enforcement.

Further insight comes from Amine, who explained that the crackdown following the MoU has affected a specific category of CSOs: those providing direct services to migrants. He distinguished two types of CSOs working in the migration field: advocacy groups and service providers. The latter, including CSOs providing shelters and humanitarian assistance, have become increasingly subject to state repression. He affirmed that, under Tunisian law, any individual or entity that shelters a foreigner without notifying the authorities may face imprisonment for up to four years. He added that international organizations, such as the United Nations High Commissioner for Refugees (UNHCR), operate under formal agreements with the Tunisian state, including EU-funded contracts that specify the number of migrants to be supported, but it is the local CSOs implementing these agreements on the ground who have become highly vulnerable.

One example Amine highlighted is the case of "Terre d'Asile Tunisie", an organization initially accused of money laundering but later cleared by an expert report. Despite this, its former director, along with the director and the administrative and financial director, remains in pre-trial detention under the charge of unauthorized settlement of foreigners. According to Amine, the prosecution argued that the organization had housed more migrants than permitted under its agreement with UNHCR. As Amine put it, local CSOs staff took personal risks to protect vulnerable individuals, including women and children, who needed shelter and basic care.

Nadhim described a growing climate of fear and silence among targeted CSOs in the post-MoU period. He explained that many of them initially kept quiet after being investigated, trusting

security officials who promised the cases would soon be closed. But the investigations persisted, and more arrests followed. “We don’t know the exact number of detainees,” he said, “and we keep discovering more we didn’t even know about.” This silence, driven by fear of retaliation, reveals how the space for migrant solidarity work has not only shrunk but become increasingly risky.

#### **4.4 Strategic Silence: The EU’s Political Choice Under the MoU**

This section shows how, under the MoU’s implementation, the EU’s political silence and inaction allowed repression against CSOs supporting migrants to deepen, despite the clear risks and growing rights violations.

Nadhim was critical of the EU’s funding practices, arguing that support is directed mainly toward organizations facilitating the voluntary return of migrants, rather than those defending their rights. He rejected the notion of “voluntary return” under coercive conditions, stating, “There is no such thing as voluntary return when the ground is burning beneath you.” He also highlighted a troubling pattern: many CSOs whose staff were later investigated or detained had participated in consultations with the EU and received EU funding. He added that the European Commission is aware of all the details and developments, but remained silent and chose not to intervene. He recalled that in a closed meeting, the Commission stated: “We won’t interfere. This allows us to keep supporting what remains of civil society outside prison.”

The interviewee from the EU Delegation in Tunisia echoed this,<sup>209</sup> and acknowledged that current funding is mainly limited to border control and voluntary return, two areas explicitly requested by the Tunisian authorities. While asserting that human rights are a core concern across all EU external partnerships, she admitted that there is no specific mechanism for

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<sup>209</sup> An online interview with a representative of the EU Delegation in Tunisia (anonymous at the interviewee’s request), 16 May 2025.

monitoring civic space under the MoU. Instead, she explained, the EU relies on general tools such as project reporting, external evaluations, and site visits.

The EU Delegation staff member framed the EU's position as one of necessary compromise. She explained that suspending funding to Tunisian authorities could lead to more deaths at sea and leave migrants without basic services. In her words, "we have to compromise," because suspending support would harm migrants directly. This logic turns repression into a regrettable but acceptable cost of the containment of migration. She cited political sensitivity, the need to preserve dialogue, and official assurances from Tunisian authorities that investigations would be conducted and perpetrators held accountable. She admitted that public criticism is deliberately mild to avoid backlash that could close the remaining channels of communication. She was referring to a recent statement,<sup>210</sup> not about the civil society trials, but concerning another political case.

This cautious position reflects what the EU Delegation staff member described as a political necessity. She explained that open confrontation with the Tunisian authorities could jeopardize fragile cooperation and undermine the implementation of the MoU. When I asked why the EU remains silent while its own CSO partners face arrest, she responded: "We are unable to go further," citing institutional limits and the need to respect internal affairs. However, she confirmed the issue had been raised in closed meetings. She also emphasized that the prosecutions were officially based on charges such as money laundering, not on support for migrants. When I pointed out that the charges included assisting migrants, as reported by

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<sup>210</sup> Auswärtiges Amt, 'Federal Foreign Office on the Convictions in the So-Called "Conspiracy Case" in Tunisia' (*German Federal Foreign Office*) <<https://www.auswaertiges-amt.de/en/newsroom/news/2715128-2715128>> accessed 13 June 2025.



Amnesty International,<sup>211</sup> to settle in the country, she continued to insist that they were not related to supporting migrants, but rather to “trafficking.”

This diplomatic balancing act reveals a more profound contradiction at the heart of the EU’s engagement: CSOs are invited to consultations and relied upon to implement services, yet left without meaningful protection when they are targeted. Rather than supporting its partners, the EU has adopted a position that allows shrinking civic space to proceed while maintaining formal cooperation with Tunisian authorities to contain migration.

Rebecca explained that the MoU has effectively stripped the EU of its influence to demand reforms in Tunisia. She recalled a senior EU official insisting, in a closed meeting, that “cooperation on migration with Tunisia is non-negotiable,” a stance that places containment above all else. She added: Tunisia’s proximity, unlike that of more distant countries such as Libya or Egypt, makes it central to EU priorities.

Rebecca concluded that individual arrests drew little concern from the European Commission. However, she noted internal EU doubts, raised by the Parliament and the Ombudsman, about the MoU’s legality and lack of safeguards. In response to this pressure, the Commission hired a non-rights-based institute to assess the risk of abuse; however, there is no transparency regarding its mandate or whether the findings will be made public.

Rebecca highlighted the suspension of UNHCR’s asylum registration in Tunisia and the absence of any mechanism to receive new claims. According to her, the government now openly signals that asylum seekers are no longer welcome, saying that it intends to adopt a new asylum law, similar to Egypt’s model. A Tunisian security officer reportedly told her: “The EU doesn’t want the migrants. Fine. We won’t allow demographic change in Tunisia.” Such

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<sup>211</sup> ‘Tunisia: Year-Long Arbitrary Detention of Human Rights Defenders Working with Refugees and Migrants’ (n 194).

remarks reflect how the pressure to contain migration has been internalized by state actors, reinforcing exclusionary policies under the guise of sovereignty and demographic maintenance.

When I asked the EU Delegation staff member about the European Commission's unpublished risk management exercise conducted before signing the MoU, she declined to comment, citing confidentiality. She did not explain what this confidentiality means in practice, especially when signing an agreement that could affect migrants' rights.

She described the MoU as having delivered positive results, pointing to reduced irregular arrivals in Europe and fewer deaths at sea. Yet, this framing overlooks the broader implications for migrants' rights in Tunisia and the civic space available to the CSOs that assist them. Thus, the EU moved ahead with the MoU implementation despite internal concerns, the absence of transparent safeguards, and growing restrictions on the ground, treating the containment of migration as a sufficient justification for political silence.

Amine observed that the EU has grown increasingly cautious in its dealings with President Saied, avoiding any action that might provoke a hostile response. He added that in closed meetings, EU officials claim to exert pressure on the Tunisian government, yet no public stance has been taken to ease the crackdown on CSOs supporting migrants. Even when CSOs funded by the EU have had staff arrested, Brussels has remained silent. He attributes this to the EU's recognition of its limited leverage and the regime's resistance to external influence. He added that while the EU maintains regular consultations with CSOs, the chilling repression has already had an impact, especially on those who provide shelter for migrants, leading to further deprivation for migrant communities.

Amine noted that although licenses for shelter services are technically available, many organizations have retreated due to the risks of criminalization, which have consequences for

migrants in need of assistance. In some cases, he added, CSOs housed more migrants than stipulated in their contracts. He assumes that this was done with the EU's prior approval, given its strict compliance standards. Yet when those same organizations faced prosecution, the expected support never came. As Amine put it, the EU's silence in the face of legal targeting has left its implementing partners exposed. As explained above, the EU Delegation staff member denied that the charges against detained CSO staff, including the EU's partners, included assisting migrants to settle in Tunisia.

Romdhani reflected on the EU's shifting stance, highlighting how little weight human rights now carry in Europe's migration diplomacy. He argued that the public role played by Ursula von der Leyen in endorsing the deal, despite widespread violations, gave a green light to the Tunisian authorities to escalate repression. In his view, the silence following the arrests of migrant rights defenders confirmed that, unlike during the Ben Ali era, EU pressure for rights compliance had vanished. He added that between May and July 2023, migrants were forcibly expelled from their homes and dumped in desert areas, yet this did not deter Brussels from finalizing the MoU. Romdhani saw this as symbolic of a broader hypocrisy: while the MoU includes a passing reference to rights, its implementation proceeded amid political closure, racist violence, and CSO criminalization. European states, he argued, no longer react to arrests of CSO workers, and Tunisian civil society now feels increasingly abandoned, facing authoritarian repression without meaningful domestic or international support. He concluded that the official claim that "Tunisia is not Europe's border guard" is not credible, just as the consequences of its policies daily contradict the EU's rhetorical commitment to rights.

The EU Delegation staff member maintained that funding could be suspended in cases where human rights violations are confirmed. However, when I asked about reports by international human rights organizations documenting such violations, she explained that suspending funding could have negative consequences, such as reducing support for migrants or increasing

deaths at sea. This position reflects a dilemma in which continued support is justified despite acknowledged risks, presenting the ongoing partnership as the least harmful option. When I asked how the EU ensures compliance with non-refoulement obligations, particularly in light of Tunisia's stated refusal to become a country of settlement, she emphasized that the EU operates within the limits of its tools and must respect the sovereignty of partner states. Regarding the timing of the MoU's signature amid rising violence and racism against migrants, she said she had no explicit knowledge of the situation at the time. These responses suggest that the EU's stance is not based on a lack of information, but rather on a broader strategy, in which securitizing migration and externalizing border control take priority over ensuring rights-based conditionality.

Nadhim, Romdhani, Amine, and Rebecca all underscored a consistent and alarming pattern: the European Commission has deliberately remained silent in the face of escalating repression to safeguard the implementation of the MoU, even as CSO workers, including the EU's partners, have been investigated, arrested, or forced to shut down. For Nadhim, this silence reflects a calculated choice: rather than confronting violations, the Commission opts to preserve what remains of civil society outside prison walls, even if that means allowing repression to continue. Romdhani described this position as a political endorsement that sends a clear signal to Tunisian authorities that rights violations would not trigger consequences. Amine highlighted the contradiction between the EU's ongoing consultations with CSOs and its failure to protect them when they are targeted, particularly those it directly funds. Rebecca confirmed that once migration control became a political priority, it overrode any meaningful commitment to civil society or rights safeguards. Their testimonies converge on a clear conclusion: EU silence is a deliberate instrument of externalization that strips migrants of essential protection and services, enabling the shrinking of civic space for their supporters under the guise of cooperation.

## 4.5 Conclusion

The evidence presented in this chapter demonstrates that the MoU significantly contributed to shrinking civic space for CSOs supporting migrants. While it did not initiate this trend, the MoU reinforced existing legal frameworks and political narratives that allowed Tunisian authorities to intensify their crackdown on CSOs and human rights defenders. Through funding and political backing, the EU facilitated migration containment efforts, indirectly enabling restrictions on civil society activities and contributing to the Tunisian government in criminalizing CSO staff involved in migrant support.

The testimonies analyzed throughout the chapter revealed that the MoU provided critical political legitimacy, resources, and international cover for state repression at a pivotal moment of authoritarian consolidation in Tunisia. The MoU accelerated the criminalization of solidarity. Even CSOs providing legal services or basic humanitarian aid faced prosecution as a direct consequence of this policy shift.

Crucially, the EU's strategic silence in the face of escalating rights violations underscores a deliberate political choice. Despite clear evidence of repression, the European Commission continued to frame Tunisia as a strategic partner, placing border control above human rights protection. This silence, maintained despite ongoing funding and regular consultations, severely undermined the EU's credibility, leaving civil society increasingly vulnerable. Moreover, by denying the connection between arrests of CSO staff and their migrant support activities, the EU effectively distanced itself from moral accountability and political responsibility.

In sum, the MoU did not merely coincide with shrinking civic space; it actively enabled and justified it. The resulting environment in Tunisia is one where solidarity is penalized, human

rights are sidelined, and civil society is left unprotected. Understanding the shrinking civic space in Tunisia requires recognizing the EU's direct and structural role in enabling this shift.

## 5 Conclusion

When the EU securitizes migration, as Huysmans explains, by framing migrants and asylum seekers as a security threat rather than a human rights issue, this leads to the intensification of outsourcing border control to third countries to deter the perceived threat. In doing so, the EU relinquishes its normative commitments in external relations, particularly in promoting democracy and human rights. It not only overlooks authoritarian practices and tolerates democratic backsliding and human rights deterioration without an appropriate response, as would be expected under Manners' concept of normative power, but also provides human rights abusers with financial and material support to contain migration. This policy has a severe impact on the human rights situation in third countries, particularly on the rights of migrants.

The case of the MoU demonstrates that these policies extend beyond migrants' rights and into the civic space, which is increasingly shrinking, especially for civil society actors supporting migrants. This thesis has demonstrated that the shrinking of civic space for civil society actors supporting migrants is not an incidental consequence of the EU's externalization of migration control but a direct and foreseeable outcome of this policy approach. It should not be seen as collateral damage, but as a foreseeable outcome of these policies. According to the interviewees, the convergence of interests between the EU and Tunisia reinforced Tunisian policies that criminalize solidarity with migrants and target CSO staff. Despite documented evidence of human rights violations and shrinking civic space, the EU not only continues to implement the MoU but also remains silent in the face of this deterioration and the targeting of activists, as a conscious choice to maintain its relationship with the Tunisian authorities because it views this partnership as essential to curbing migration. The EU's failure to uphold its human rights commitments in Tunisia erodes its credibility among local civil society actors, casting doubt on the integrity of its external human rights agenda.

Some limitations warrant acknowledgment. First, limited access to official Tunisian governmental documents and perspectives meant that the analysis relied primarily on the accounts of civil society actors and EU representatives, which may introduce biases or leave gaps in understanding the rationale and decision-making of state authorities as a whole. Second, although this research demonstrates the significant role of the MoU in shrinking civic space, it recognizes that other political, economic, and social dynamics, beyond the scope of this study, also shape the environment facing Tunisian civil society. Finally, the qualitative insights gained from interviews, while valuable, are based on a small and targeted sample that may not capture the full diversity of experiences across the broader landscape of civil society organizations. Future research should address these issues by incorporating a wider range of perspectives and stakeholders.

The research further demonstrates that the EU institutions hold differing stances on the implementation of the MoU. The Commission led the process and maintained cooperation with Tunisia, despite the UN human rights experts and international human rights organizations documenting and warning of its human rights implications. On the other hand, the Parliament has expressed concerns about the MoU's compatibility with the EU's external action principles. Additionally, the Ombudsman not only raised concerns regarding the MoU's human rights implications but also called on the Commission to suspend migration management contracts when there is evidence of human rights violations resulting from the implementation of its projects. The Ombudsman also called on the Commission to establish complaint mechanisms for individuals to report alleged violations of their human rights in the implementation of EU-funded projects in Tunisia. This presents an institutional conflict between the concept of securitizing migration, on which the Commission relies, and the concept of EU normative power, which the Parliament and Ombudsman seek to uphold, though with limited influence.



The informal externalization agreements, such as the MoU, serve to limit or circumvent legal liability for human rights violations; however, there is growing legal resistance and available mechanisms to hold the EU accountable. Legal scholars are developing analyses and advancing legal arguments to establish legal responsibility for human rights violations under externalization policies. Additionally, the EU legal system provides direct and indirect mechanisms for pursuing legal accountability of the EU; however, the requirements for admissibility and establishing legal standing remain challenging. This requires reviewing and reforming the current procedures within the EU legal system to ensure that concrete remedies are available to victims of human rights violations linked to EU policies. Additionally, the EU should reform its external migration policies to ensure genuine rights-based conditionality and accountability. If it fails to do so, it risks entrenching authoritarian practices, violating migrants' rights, and further shrinking civic space in its partner countries. Eventually, it will increasingly undermine the EU's role as a normative power.

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