

The Legal and Practical Relevance of EU Mobility Partnerships: A comparative study of Morocco and Cape Verde

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***Abstract:** The aim of this paper is to discuss the influence of the negotiation power of a third country and its level of administrative capacity in the relevance of Mobility Partnerships for the development of the legal framework in a third country. This paper looks at the legal and practical relevance of Mobility Partnerships in third countries. Legal relevance touches upon the influence of Mobility Partnerships on the legal order of a third country whereas practical relevance relates to changes in behavior or practices of third countries' authorities. Following the conclusion of the Mobility Partnerships with Morocco and Cape Verde both countries have developed National Strategies on immigration and asylum and reformed (or plan to) their legal frameworks to ensure a proper implementation of these strategies. In both countries, the development of three new laws, on (im)migration, asylum and human trafficking has been proposed. First, this paper analyzes the hypothesis that two factors, the power of negotiation and the lack of administrative capacity, can influence the relevance of Mobility Partnerships on the legal frameworks' developments. Then, an analysis of the relevance of the implementation of Mobility Partnerships' projects is concluded. A comparative legal analysis of the development of the legal frameworks in Morocco and Cape Verde is combined with an empirical study of the stage of implementation of Mobility Partnerships' projects related to the support of the national strategies. This paper suggests that some projects that have been implemented in relation to the national strategies are legally relevant for both countries. Finally, this paper argues that the power of negotiation that a country gains from its geopolitical importance for the EU influences the measure to which a Mobility Partnership is relevant for the development of the legal framework in that country.*

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1. INTRODUCTION

EU Mobility Partnerships are non-binding legal instruments concluded between the EU, interested Member States and a third country. They are widely presented in the literature as soft law instruments or defined as being of “soft legal nature” or of “non-legal nature”¹. This paper discusses how Mobility Partnerships can influence the development of the legal framework of a third country through the implementation of its projects. This topic has not been significantly studied in the literature. For example, VerLoren van Themaat argues that, due to their non-binding nature, soft law instruments rarely lead to actual changes in the hard law framework of the third countries involved². However, despite its non-binding nature, several authors have observed that Mobility Partnerships can have concrete legal implications especially regarding visa facilitation and readmission³. This is an important issue as it touches directly on the sovereignty of the third country.

This paper aims to provide an overview of the evolution of the legal framework and policies in Cape Verde and Morocco and link these developments to concrete Mobility Partnership projects to discuss the existing connections between them. The first section discusses the hypothesis that two factors, the power of negotiation and the lack of administrative capacity, can influence the relevance of Mobility Partnerships on the legal frameworks’ developments. Subsequently, the paper will present an overview of the legal and political changes in relation to immigration that occurred in Cape Verde and Morocco since the conclusion of their respective Mobility Partnerships. Finally, the paper will discuss the relations between the developments and the implementation of Mobility Partnerships and test the hypothesis.

2. FACTORS INFLUENCING THE RELEVANCE OF MOBILITY PARTNERSHIPS

The relevance of Mobility Partnerships on the development of the legal framework of a third country can be referred to as external effects⁴. These external effects can be legal (new legal developments) or political. Brocza notes that various policy areas are covered by the Mobility Partnership tool such as migration policy, external security or labor market policy⁵. These areas are directly related to the different pillars of the Global Approach to Migration and Mobility (GAMM) which Mobility Partnerships aim to

¹ Sergio Carrera and Raul Hernandez I Sagrera, The externalisation of the EU’s labour immigration policy: Towards mobility or insecurity partnerships? (2009) CEPS Working Document 321 1, 28 and Sergio Carrera and Raul Hernández i Sagrera, Mobility Partnerships: “Insecurity Partnerships” for Policy Coherence and Migrant Workers human Rights in the EU, pp. 97-115 in Rahel Kunz, Sandra Lavenex and Marion Panizzon (eds.), *Multilayered Migration Governance: The promise of partnership* (2011) London, New York: Routledge 97. Panos Koutrakos, *European Foreign Policy: Legal and Political Perspectives* (2011) Edward Elgar Publishing 164-165; Bart Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A paradigm for coherence* (2012) London New York: Routledge 209-210.

² Pieter VerLoren van Themaat, *The Changing Structure of International Economic Laws: A Contribution of Legal History, of Comparative Law and of General Legal Theory to the Debate on a New International Economic Order* (1981) 233.

³ Sergio Carrera et al., Labour Immigration Policy in the EU: A renewed Agenda for Europe 2020 (2011) *Policy Brief No 240, CEPS* 1,6.

⁴ Van Vooren (n2) 181.

⁵ Stefan Brocza, Katharina Paulhart, EU mobility partnerships: a smart instrument for the externalization of migration control [2015] 15(3) *Eur J Futures Res* 1, 2.

materialize in practice. The first pillar of the GAMM⁶ covers mobility, legal migration and integration; the second pillar includes cooperation on border management, the fight against illegal migration and trafficking in human beings; the third pillar consist of international protection and asylum issues and finally the forth pillar comprises migration and development. The first three pillars are linked to topics covered by legal frameworks related to migration. Namely, legal and irregular migration relating to the rights to entry and stay in a country. Integration can be related to the socio-economic rights of migrants such as the right to work and the rights to education, health and housing. Asylum and human trafficking issues are related to the above-mentioned rights. Moreover, the conclusion of a Mobility Partnership suggests the willingness to negotiate an EU Readmission Agreement, even though there is no obligation to conclude one⁷. If concluded this will have a direct impact on the legal framework of the third country.

This paper argues that Mobility Partnerships' relevance on the development of a third country's legal framework and policies are influenced by two main factors: the power of negotiation and the administrative capacity. This paper argues that Mobility Partnerships have a differential impact on the third country's legal framework in accordance to these two factors.

2.1. Administrative capacity

Watson coined the concept of legal transplant and defined it as “the moving of a rule or a system of law from one country to another, or from one people to another”⁸. He explains the occurrence of legal transplants by the fact that they are cost-saving as it “saves time and effort” or by the “prestige” of the foreign model that gives legitimacy and legal authority to the transplanted law⁹. Legal transplants occur when a country “copy-pastes” a law from another country or as the result of the assimilation of existing legal ideologies for example. Miller points out that third countries lacking financial or human resources can be interested in adopting laws based on pre-existing laws¹⁰. Grajzl adds that transplanting laws is less costly than developing them¹¹. Moreover, according to Sacco, strong societies are incline to impose and disseminate their own values and institutions to weaker societies¹². For example, McMahon underlines that the EU already imposed the adoption of laws in Eastern Europe as preparation for eventual membership to the EU. She also gives the example of the International Monetary Fund using the same scheme in Indonesia, by making the receipt of funding

⁶ European Commission, the Global Approach to Migration and Mobility, COM(2011) 743 final, Brussels, 18 November 2011.

⁷ European Commission on Circular Migration and Mobility Partnerships between the European Union and Third Countries COM(2007) 248 final, Brussels, 15 May 2007 4.

⁸ Allan Watson, *Legal transplants. An approach in Comparative Law*, (1974) Edimburgh: Scottish Academic Press, 21.

⁹ Ibid; Allan Watson, Aspects of Reception of Law [1996] 44 *Am. J. Comp. L.* 335.

¹⁰ Jonathan Miller, A typology of legal transplants: using sociology, legal history and Argentine examples to explain the transplants process [2003] 51(4) *Am. J. Comp. L.* 839, 845-846.

¹¹ Peter Grajzl and Valentina P. Dimitrova-Grajzl, The Choice in the Lawmaking Process: Legal Transplants vs. Indigenous Law (2008). Available at SSRN: <https://ssrn.com/abstract=1130124> Accessed 14 April 2017.

¹² Rodolfo Sacco, Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II), [1991] 39 *Am. J. Comp. L.* 343, 398.

conditional on the adoption of a competition law¹³. Similarly, Hantrais discussed the possibility to “transplant” policies¹⁴. Arguably, the EU could disseminate its norms through “transplant” policy and legal transplants using Mobility Partnerships by supporting a third country in developing its legal framework.

Reslow and Vink identify administrative capacity as one of the reasons determining whether a third country will decide to participate in a Mobility Partnership or not¹⁵. However, they argue that this criterion is not sufficient in itself to make this determination. Miller argues that developing countries are usually lacking administrative capacity¹⁶. This paper discusses the hypothesis that a country with limited administrative capacities can have diverse ways of developing their framework depending on the existence of a negotiation power with the EU. If a country has negotiation power then the third country can receive funding and training to develop its capacities according to its needs. However, a country that has limited power of negotiation will depend on the capacity building provided on the initiative of the EU or a Member State. Consequently, capacity building can be focused in priority towards relevant areas for the EU such as border management. Moreover, the lack of resources coupled to the absence of choice in terms of capacity building potentially increases the chances of legal and policy transplants. The differential influence of administrative capacity on the relevance of a Mobility Partnership will depend on the third country’s geopolitical situation, including its power of negotiation.

2.2. Power of negotiation

There are two case scenarios for third countries, either the third country has a high geopolitical importance for the EU’s migration policy which gives it a strong negotiating position or it has low geopolitical importance giving it a weak negotiating position. The first question that should be answered is: when is a third country considered to have geopolitical importance for the EU? The EU wants to avoid illegal immigrants or asylum seekers from reaching its territory. To achieve this goal, the EU uses its policy of externalization of immigrants and refugees’ reception. Since over a decade, the EU externalised some of its migration control to neighbouring third countries to fight the entry of illegal migrants in its territory, converting them into EU’s “gate-keepers”¹⁷.

If a third country has low geopolitical importance for the EU, because for example it has low immigration fluxes towards the EU or because it is not located on a major migration route, then this country has a low level of negotiation power with the EU. The hypothesis is that with a low level of negotiation power, the Mobility Partnership is mainly used as a tool by the EU and Member States to impose their interests upon the

¹³ Kathryn McMahon, Developing countries and international competition law and policy pp. 252-282 in Julio Faundez and Celine Tan, *International Economic Law, Globalization and Developing Countries* (2010) Cheltenham : Edward Elgar.

¹⁴ Linda Hantrais, *International Comparative Research: Theory, Methods and Practice* (2009) Palgrave Macmillan. 45.

¹⁵ Natasja Reslow and Maarten Vink, Three-Level Games in EU External Migration Policy: Negotiating Mobility Partnerships in West Africa [2015] 53(4) *JCMS* 1, 11.

¹⁶ Miller (n10) 857.

¹⁷ Sandra Lavenex, Justice and Home Affairs and the EU’s New Neighbours: Governance beyond Membership? in Karen Henderson (ed), *The Area of Freedom, Security and Justice in the Enlarged Europe* (2004) Palgrave Macmillan UK 94.

third country which may only “take it or leave it”. If the third country decides to conclude a Mobility Partnership in this configuration its content will presumably be mainly influenced by the EU and Member States. Relations between the EU and the third country are often viewed as being one-sided where instruments such as Mobility Partnerships make development aid, trade relations and visa policies conditional upon cooperation by third countries with an EU agenda of migration control¹⁸. It is also generally agreed in the literature that Mobility Partnerships put more pressure on the third country than on participating Member States¹⁹. Reslow highlights the “take it or leave it” approach taken in the cases of Moldova, Cape Verde and Senegal, where the same Mobility Partnership text was unilaterally proposed by the EU to these third countries with little room for negotiations²⁰. Nevertheless, Reslow argues that third countries are prominent players in the EU’s migration policy²¹. Taking the example of Cape Verde and Senegal, she discusses the role of domestic preferences of a third country in its decision to participate in a Mobility Partnership with the EU and the cost/benefits calculation of their cooperation with the EU. One can envisage that the power structure would stay the same during the implementation of the Mobility Partnership so long as the EU interest in the third country in question remains the same. In this case, the projects that would be implemented would also be largely influenced by the EU and Member States, including projects having a relevance for the development of the legal framework of the third country.

If a third country has high geopolitical importance it will enjoy a negotiation power with the EU, which can be labelled as “reversed conditionality”²². The hypothesis follows that when using this negotiation power, the Mobility Partnership is used as a tool by the EU and the third country to achieve their objectives. In this configuration, the third country can influence the content of the Mobility Partnership. For example, the third country can push for the creation and implementation of specific projects benefitting its own interests. The projects having an influence on the development of the legal framework will in this case not only be influenced by the EU or its Member States but directly by the third country.

In practice, the application of conditionality by the EU has been limited with regard to southern Mediterranean countries²³. This can be explained by the importance of migration control in the region as well as, other strategic and security priorities which have made it difficult for the EU to adopt a strong position towards countries with which

¹⁸ Sergio Carrera et al., EU-Morocco Cooperation on Readmission, Borders and Protection: A Model to Follow? (2016) *CEPS Papers in Liberty and Security in Europe*; Sergio Carrera, Leonhard den Hertog and Joanna Parkin, EU Migration Policy in the Wake of the Arab Spring What Prospects for EU-Southern Mediterranean Relations? (2012) MEDPRO Technical Report 15; Brocza and Paulhart (n5).

¹⁹ Carrera and Hernandez I Sagrera (2009) (n1) 321; Carrera and Hernández i Sagrera (2011) (n1); Mohamed Limam and Rafaella Del Sarto, Periphery under Pressure: Morocco, Tunisia and the European Union’s Mobility Partnership on migration (2015) EUI Working Paper RSCAS 2015/75.

²⁰ Natasja Reslow, The role of Third Countries in EU Migration Policy: The Mobility Partnerships [2012] 14 *EJML* 393, 395.

²¹ *Ibid.* 394.

²² Fanny Tittel-Mosser, Reversed conditionality in EU external migration policy: the case of Morocco [2017] (manuscript under review).

²³ Rosa Balfour, EU Conditionality after the Arab Spring (2012) *European Institute of the Mediterranean* 16.

strategic cooperation was needed²⁴. The introduction of the ‘more for more’ conditionality together with the increased interdependence between the EU and the third country on border management and the fight against illegal migration, have shifted power relations. Certainly, the increased reliance of the EU on third countries to fight against illegal migration and cooperation on border control has a price; third countries are gaining a strategic position giving them the authority to impose their own conditions to the EU and Member States.

3. CASE SELECTION AND METHODOLOGY

The aim of this paper is to discuss the influence of the negotiation power of a third country and its level of administrative capacity in the relevance of Mobility Partnerships for the development of the legal framework in a third country. The focus of this paper is on Africa. So far, four Mobility Partnerships have been concluded with African countries namely with Cape Verde (2008), Morocco (2013), Tunisia and Jordan (2014). Morocco and Cape Verde have been selected as case studies for several reasons. Cape Verde was considered as being the “best student” in the region because of its existing cooperation on migration and security issues. The latter played a significant role in the choice of the country as a Mobility Partnership beneficiary²⁵. The reasons why Cape Verde has been chosen as a pilot Mobility Partnership laid in its small size, its geographic location, its small population, the fact that it is not a big threat for migration flows and that it is culturally close to the EU because of its postcolonial ties with Portugal (Interview 38). Indeed, migration was not the primary reason to conclude the Mobility Partnership but rather the will of Cape Verde to cooperate on security issues such as the fight against transnational organised crime. In 2015, there were 108 721 Cape Verdeans in Europe most of them located in Portugal 57 636, France 22 292 and The Netherlands 11 997. These numbers have changed minimally since the conclusion of the Mobility Partnership²⁶. In 2005, there were 53 008 Cape Verdeans in Portugal, 18 180 in France, 11 532 in the Netherlands. On the other hand, Morocco has been considered by the EU as a “gate-keeper” for over a decade in the externalisation of its migration control to neighbouring third countries to fight the entry of illegal migrants in its territory²⁷. Being a “gate-keeper” means that a third country on the other side of an EU border would prevent migrants from entering the EU irregularly. Until 2008, the relations between the EU and Morocco were mainly focused on irregular migration. The pressure of irregular migration put the negotiation of the readmission agreement with Morocco at the center of their relations (Interview 29). Comparatively to Cape Verde, the population of Moroccans in Europe is tremendous. In 2015, there were 2 507 560 Moroccans in Europe mainly in France 926 466, Spain 699 800 and Italy 425 238.

Both countries have long standing relations with the EU and are known to be willing to collaborate with the EU on migration issues. Moreover, as both Morocco and Cape

²⁴ Jean-Pierre Cassarino, Informalising Readmission Agreements in the EU Neighbourhood [2007] 42 (2) *The International Spectator* 179, 191-192. <https://halshs.archives-ouvertes.fr/hal-01232695/document>. Accessed 13 January 2017.

²⁵ Carrera and Hernandez (2009) (n1) 21.

²⁶ United Nations, DESA, Population Division: international migrant stock 2005 and 2015. See: <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml> Accessed on 26 October 2016.

²⁷ Lavenex (n17) 94.

Verde are developing countries we can argue that they both are lacking administrative capacity. Morocco is a bigger country than Cape Verde with more financial and human resources and is generally considered as having a higher institutional development than Cape Verde. However, in terms of immigration, both countries were lacking administrative capacity when they concluded a Mobility Partnership. For example, they did not have a specific national institution designated to discuss immigration related issues and cooperation between different institutions on this question was scarce, to say the least.

However, these two countries are clearly different in terms of geopolitical importance for the EU. Morocco is used as case study as the country having a high negotiating power and Cape Verde as the country having a low negotiating power.

A total of 54 interviews were held in Belgium, France, Cape Verde and Morocco²⁸. The results of these interviews were used in the analysis of the development of the legal framework and policies in Morocco and Cape Verde, providing preliminary insights about the factors influencing these developments. Further data was obtained from primary sources (i.e.: Constitutions, laws, official statements, reports or newspaper articles) and secondary sources.

4. MOROCCO AND CAPE VERDE: THE CHANGES IN THE LEGAL FRAMEWORKS AND POLICIES

In this section, we are first going to analyze the changes in the legal framework (new laws) and then the policy changes. In the case of Cape Verde, the changes have been considered since 2008 and for Morocco since 2013. Since the celebration of the two Mobility Partnerships several legal developments occurred in both countries in migration, asylum, labour and penal laws.

4.1. The changes in the legal frameworks

Five different legal areas have been identified related to the different pillars of the GAMM as discussed in Section 2. These legal areas are: the right to enter and stay in the territory, asylum, human trafficking, readmission and visa facilitation and labour access.

4.1.1. The right to enter and stay in the territory

Until 2014, when the current Immigration Act was adopted, the legal status of foreigners was regulated by Decree 6/97, of 5 May 1997²⁹. On 6 November 2014, a new law³⁰ on entry, stay, exit, expulsion of foreigners and their juridical status was

²⁸ A list of interviews used in this paper can be found in Annex 1 and a full list of the 54 interviews is available upon request.

²⁹ Decreto-Legislativo n° 6/97 de 5 de Maio (regula a situação jurídica do estrangeiro no território nacional, estabelecendo os direitos, garantias e deveres, o regime de entrada, permanência e saída, a expulsão e a extradição, bem como as taxas, as infracções e sanções) B.O.C.V., I Série, n. 17.

³⁰ Lei n°66/VIII/2014 de 17 de Julho (Define o regime jurídico de entrada, permanência, saída e expulsão de estrangeiros do território caboverdiano, bem como a sua situação jurídica) BO IS n° 43 de 17 de Julho de 2014.

adopted. Decree-law 2/2015 clarifies its implementation³¹. Law 66/VIII/2014 is applied to everyone who enters and wants to stay in Cape Verde (Articles 3 and 4). It excludes refugees that are covered by the asylum law and diplomats and their families.

Law 36/V/97 is defining the statute of the Portuguese-speaking citizen in Cape Verde and grants several rights to citizens from countries member of the Portuguese speaking countries (CPLP). In relation to the entry into Cape Verde, Portuguese-speaking citizens qualify, for a multiple-entry and long-stay visa, and may also be exempted from a visa by a decision of the Government. Businessmen, scientists, researchers and artists are exempted of visa for stays under 30 days if accredited or recommended by their government or a national NGO (Article 6). The implementation of the statute of the Portuguese-speaking citizen was aiming at proposing a free movement zone between CPLP countries but in practice it has not materialized.

Moreover, it is important to note that, in 1979, Cape Verde signed an ECOWAS Protocol of Free Movement of people and rights to residency and establishment³². Article 2 of the Protocol allows all citizens from Economic Community of West African States countries to enter and stay in another ECOWAS country which lead to significant mobility within the region. With the adoption of a EU Readmission Agreement in 2012³³, Cape Verde tried renegotiating the Protocol and implement it in a more “flexible” way³⁴. Law 66/VIII/2014 requires the presentation of a passport and the proof of sufficient financial means which is to a certain extent interfering with ECOWAS citizens’ freedom of movement (without being illegal)³⁵. Indeed, if a member of an ECOWAS country cannot prove sufficient financial means he will be denied entry into Cape Verde even though according to the Free Movement Protocol he should be able to enter and stay in Cape Verde during 90 days. Moreover, requesting a passport for all entries is contrary to the clause of the Free Movement Protocol that provides the right to an ECOWAS citizen to enter Cape Verde with only a national identity card.

In Morocco, Bill 95-14 on migration aims at revoking Law 02-03 on migration and is still being drafted (Interview 6). Law 02-03³⁶ of 11 November 2003, currently regulates the entry and stay of foreigners as well as the exit of foreigners and nationals. Law 02-

³¹ Decreto-Lei n°2/2015 (Regulamenta o regime jurídico de entrada, permanência, saída e expulsão de estrangeiros do território caboverdiano, aprovado pela Lei n° 66/VIII/2014 de 17 de Julho) BO IS n° 1 de 6 de Janeiro 2015.

³² Protocolo sobre a Livre Circulação de Pessoas, o Direito de Residência e de Estabelecimento, Aprovado pela Lei n° 18/II/82, de 30 de Março, B.O.C.V., Suplemento, 7 de Maio de 1982.

³³ See *infra*.

³⁴ Odair Varela, Readmitidos e/ou Repatriados? Uma Re-leitura do Acordo de Readmissão de Cabo Verde com a União Europeia, 61-72 in Iolanda Evora, *Diaspora Cabo-Verdiana: Temas em Debate* (2016) Centro de Estudos sobre Africa, Asia e America Latina. E-book available at https://issuu.com/comunicacao_cesa/docs/livro_diaspora-cabo-verde_final Accessed 16 April 2017.; RadioTelevisão Caboverdiana, Cabo Verde defende aplicação flexível dos protocolos de livre circulação na CEDEAO, 21 May 2012 http://rtc.cv/index.php?paginas=21&id_cod=4221 Accessed 16 April 2017.; RFI Português, A livre circulação de pessoas e bens na CEDEAO está em debate em Cabo Verde, 24 May 2010 <http://pt.rfi.fr/africa/20100524-livre-circulacao-de-pessoas-e-bens-na-cedeao-esta-em-debate-em-cabo-verde> Accessed 16 April 2017.

³⁵ Article 4 of the Free Movement Protocol: Notwithstanding the provisions of Article 3 above, Member States have the right to refuse entry into their territories to any citizen of the Community entering the category of immigrants ineligible under their laws and regulations.

³⁶ Dahir n° 1-03-196 du 16 ramadam 1424 (11 novembre 2003) portant promulgation de la loi n° 02-03 relative à l’entrée et au séjour des étrangers au Royaume du Maroc, à l’émigration et à l’immigration irrégulières.

03 was presented to the Parliament at the same time as Law 03-03 on antiterrorism which amalgamated migrants and terrorists³⁷. The law is widely criticized because of its exclusively securitarian and repressive approach, its lack of protection for immigrants and refugees, its criminalization of irregular immigration and emigration and its implementation which is negatively biased against sub-Saharan Africans³⁸.

4.1.2. Asylum

Law 99/V/99³⁹ has been adopted on 19 April 1999 and frames the legal status of refugees and asylum seekers in Cape Verde. However, the Cape Verdean asylum system is not effective⁴⁰. Asylum was an issue which was not dealt with in its legislation except the brief mention of a right to asylum in Article 39 of the Constitution⁴¹. It should be noted that Cape Verde is not part of the Geneva Convention however, since it is bound by the 1967 New York Protocol it must nevertheless apply Articles 2 to 34 of the Convention. Law 66/VIII/2014 is more specific about the status of refugees. Article 13 specifies who is competent to deliver a travel document to refugees and Article 15 introduces the single travel document for refugees. However, even though the creation of a national asylum system is foreseen since 2012⁴², no new laws specifically on asylum have yet been adopted. A new law on asylum was proposed at the same time as Law 66/VIII/2014 but it has not been adopted (Interviews 38, 40, 42). The new asylum law could have put Cape Verde in line with its obligations arising from the 1967 New York Protocol and indirectly the Geneva Convention. The new law should also have guaranteed the access to a single procedure for the determination of refugee status and cover all the international protection needs⁴³.

In Morocco, Bill 26-14 on asylum is ready but since December 2015 its discussion in Parliament has been postponed. The reason for this rescheduling is a disagreement between the different ministries on the content of the law (Interview 9). Currently, there is still no specific legislation on asylum in Morocco. Decree 2-57-1256 of 29 August 1957 sets the modalities for the application of the Geneva Convention⁴⁴. According to Article 1 of Decree 2-57-1256, the *Bureau des Réfugiés et Apatrides* (BRA) ensures

³⁷ Abdelkrim Belguendouz, Immigration et émigration: la nouvelle loi marocaine pp. 11-15 in *Un siècle de migration Marocaines* 2005 Migrations n° 24 11 ; GADEM, Rapport sur l'application au Maroc de la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille, 2013 6 ; Abdeljabbar Arrach, The Moroccan new immigration policy and the constitutional protection of fundamental human rights of migrants, 6. Available at: <https://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws6/w6-arrach.pdf>.

³⁸ Abdelkrim Belguendouz (n37).; GADEM (n37); Euro-Mediterranean Human Rights Network, Analysis of the Mobility Partnership signed between the Kingdom of Morocco, the European Union and nine Member States on 7 June 2013, February 2014.

³⁹ Lei do Asilo (Lei 99/V/99, de 19 de Abril), B.O.C.V., I Série, n. 12, 19 de Abril de 1999.

⁴⁰ José Pina-Delgado, La regulación internacional de los flujos migratorios entre Cabo Verde y la Unión Europea (en especial hacia España) [2011] 28 *Revista de derecho migratorio y extranjería* 121, 135.; Constança Urbano de Sousa and José Pina-Delgado, Estudo sobre o quadro legislativo da política de Migração e Asilo na Republica de Cabo Verde (2013) MIEUX/ICMPD, 29.

⁴¹ Comissão nacional para os direitos humanos e a cidadania and UNDP, Relatório nacional de direitos humanos, Praia, 2010, 49.

⁴² Estratégia Nacional de Imigração, Aprovada pela Resolução do Conselho de Ministros nº 3/2012, de 23 de Janeiro, B.O.C.V., I Série, n° 3, 23 de Janeiro de 2012.

⁴³ Constança Urbano de Sousa and José Pina-Delgado (n40) 62.

⁴⁴ Décret n° 2-57-1256 du 2 safar 1377 (29 août 1957) fixant les modalités d'application de la convention relative au statut des réfugiés signée à Genève le 28 juillet 1951, 6 September 1957.

the judicial and administrative protection of those covered by the Convention. Article 2 adds that the BRA recognizes the quality of refugee to those corresponding to the definitions of Article 1 of the Convention. However, in practice, the Decree remained unfulfilled as the BRA was not operational since 2004 and did not receive any asylum requests. Following the discourse of the King Mohamed VI⁴⁵, Morocco reopened the BRA on 25 September 2013. Since then, the BRA is validating cases that have been granted refugee status by the Office of the United Nations High Commissioner for Refugees (UNHCR). This has an important consequence for asylum seekers as being recognised by the Moroccan government gives them access to a residency permit.

4.1.3. Human trafficking

Human trafficking was not specifically criminalized by the Cape Verdean Penal Code⁴⁶. In June 2015, a new Penal Code was adopted to address this issue⁴⁷. In the Bill, the Council of Ministers underlined that human trafficking was criminalized in many other countries but not in Cape Verde. They added that the United Nations Convention against Transnational Organized Crime and its three Protocols, that Cape Verde ratified, recommended the criminalization of these practices. Finally, the Council of Ministers argued that human trafficking should be criminalized by the new Penal Code. Law 94/VIII/2015 Article 3-2.3 and 3-3.12 give the government the authorization to include the crime of human trafficking to the new Penal Code. Moreover, Decree Law 6/97 did not make any mention about human trafficking but Law 66/VIII/2014 repairs this omission. Subsection IV regulates the authorization of residency for victims of human trafficking. Article 58 gives the right to residency to victims even if they entered the country illegally and do not fulfill the condition for residency. Additionally, Article 58-6 guarantees victims with insufficient means of subsistence as well as, access to urgent medical care. Article 97-3 punishes with jail employers who hire victims of human trafficking.

Contrary to Cape Verde, Morocco concluded a law specifically dealing with human trafficking⁴⁸. The UN Special Rapporteur on trafficking, during her visit to Morocco in June 2013, underlined the insufficient recognition of human trafficking and the need for Moroccan authorities to enhance the protection offered to the victims⁴⁹. Indeed, human trafficking issues only appeared in a law in 2007 when the Penal Code was amended. A law related to money laundering⁵⁰ introduced Article 574-2 of the Penal Code that includes in the definition of money laundering (given in Article 574-1) human trafficking and immigrants trafficking⁵¹. Moreover, none of these notions⁵¹ is defined in the law

⁴⁵ Discours de SM Le Roi À L'occasion Du 38ème Anniversaire de La Marche Verte | Maroc.ma <<http://www.maroc.ma/fr/discours-royaux/discours-de-sm-le-roi-loccasion-du-38eme-anniversaire-de-la-marche-verte>>. Accessed 25 July 2016.

⁴⁶ Código Penal aprovado pelo Decreto Legislativo N° 4/2003 de 18 de Novembro de 2003.

⁴⁷ Decreto-legislativo n°4/2015 (Altera o Código Penal, aprovado pelo Decreto-legislativo n.º 4/2003, de 18 de novembro) BO I Série n°69 11 de Novembro de 2015.

⁴⁸ Dahir n° 1-16-127 du 21 kaada 1437 (25 août 2016) portant promulgation de la loi n°27-14 relative à la lutte contre la traite des êtres humains.

⁴⁹ Nations Unies, Rapport de la Rapporteuse spéciale sur la traite des êtres humains, en particulier les femmes et les enfants, Joy Ngozi Ezeilo, 1 April 2014, A/HRC/26/37/Add.3.

⁵⁰ Dahir n° 1-07-09 du 28 rabii I 1428 (17 avril 2007) portant promulgation de la loi n°43-05 relative à la lutte contre le blanchiment de capitaux.

⁵¹ Article 574-2: "The definition provided for in the preceding Article shall apply to the following offenses: [...] human trafficking, immigrants trafficking, [...]"

which makes it difficult if not impossible to sanction. Law 27-14 on human trafficking influenced the modification of the new Penal Code that was adopted in June 2016. Indeed, it added a new section specifically on human trafficking in the Penal Code, introducing 14 new articles.

4.1.4. EU Readmission Agreement and Visa Facilitation Agreement

Morocco has signed bilateral readmission agreements (of nationals only) with Spain, France, Germany, Italy and Portugal⁵². Morocco is notorious for not willing to commit to an EU Readmission Agreement (EURA) including third country nationals. The pressure of illegal migration puts the negotiation of an EURA with Morocco at the center of its relations with the EU (Interview 29).

Cape Verde is part of the African, Caribbean and Pacific countries (ACP) and party to the Cotonou Agreement which includes Article 13 stipulating a return and readmission obligation⁵³. Moreover, Cape Verde has concluded two bilateral readmission agreements (not including third country nationals) with France and Spain⁵⁴. Cape Verde concluded a visa facilitation agreement for short term visas and an EURA respectively in October 2012 and in April 2013 and both are currently in force. The negotiations of a readmission agreement have been taking place even though Cape Verde neither signed the Geneva Convention of 1951 on the status of refugees nor has the capacity to receive returned migrants. They do not have the practical facilities nor do they have a clear idea of how to create such facilities (Interview 37). The fact that Cape Verde is divided in different islands, with different airports, creates complex circumstances and would require high financial means to replicate the same facilities on several islands. There has so far not been any case of readmission registered since the entry into force of the EURA (Interviews 33, 37). However, with the conclusion of the EURA, Cape Verde is committing itself to working to strengthen the control of illegal immigration towards Europe⁵⁵. Given that Cape Verde is part of ECOWAS, and that the citizens of this region have the right of residence and establishment in any Member State, the signing of an EURA can lead to some issues. Countries that are members of ECOWAS are not allowed to expel citizens from this region, which means that Cape Verde would not be allowed to return third country nationals to their countries if they are part of ECOWAS. This situation led Cape Verde to modify its application of the Free Movement Protocol making it more difficult to enter the country even for ECOWAS citizens. There is a clear contradiction in the application of the EURA and ECOWAS Protocol and Cape Verde seems to favor the application on the EURA.

4.1.5. Access to labour

⁵² Morocco concluded a readmission agreement with Germany (1998), Spain (1992), France (1983), Italy (1998), Portugal (1999) and Malta (2002).

⁵³ Partnership agreement 2000/483/EC between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000.

⁵⁴ France (2008) and Spain (2007).

⁵⁵ Odair Varela (n34) 69.

Law 65-99⁵⁶ on the Labour Code regulates the conditions of foreigners working in Morocco (Articles 516 to 519); including access to labour for foreigners requiring a working visa. Article 516 states that every employer who wants to recruit a foreign employee must receive an authorization from the Moroccan authorities. Before being allowed to hire a foreigner, a job advertisement must be published in two newspapers publishing more than 10 000 copies, in French and in Arabic⁵⁷. The applications are sent to the newspaper which then transfers them to the *Agence Nationale pour la Promotion de l'Emploi et des Competences* (ANAPEC). After reviewing the candidacies, the ANAPEC writes a report in which it tells if there is a suitable Moroccan profile for the position or not. If there is no suitable Moroccan candidate, the authorization is given in the form of a visa appended to the work contract⁵⁸. There are some cases in which this authorization is not required⁵⁹. Since 2015, the process was eased for some high-level profiles and very specific positions, as well as for the renewal of an authorization for a same position with the same employer⁶⁰. Moreover, new dispositions have been taken since the entry into force of the National Strategy on Immigration and Asylum; every regularized migrant can, normally, work legally without requiring a prior attestation from the ANAPEC.

In Cape Verde, until the development of the new Law 66/VIII/2014, the access to the labor market for migrant workers used to be inadequately regulated. Indeed, Decree Law 6/97 does not mention any specific disposition. The Labor Code is important in this regard; the Labour Code of 2007 indicates that migrant workers need an authorization⁶¹, in the form of a visa, to be allowed to work (Article 283). Article 280 stipulates that only migrants residing regularly in the country can work, however in practice this is not applied as to a large extent its application depends on the regime of entry and permanence of the Law on Foreigners⁶¹. Moreover, these stipulations are arguably in contradiction with the ECOWAS Protocol of Free Movement. Contrarily to Morocco, there is no regime of national preference and regular migrants can apply in the same way Cape Verdeans do. Article 15-2 grants equal rights to migrant workers

⁵⁶ Dahir n° 1-03-194 du 11 septembre 2003 portant promulgation de la loi n° 65-99 relative au code du travail, publié au Bulletin officiel n° 5210 du 6 mai 2004.

⁵⁷ Clair Escoffier, Droits Economiques et Sociaux des Migrants et des Réfugiés dan le région Euromed : Accès aux soins de santé et au marché du travail, Euro-Mediterranean Human Rights Network (2008) 100.

⁵⁸ Ministère de l'Emploi et de la Formation Professionnelle, Gestion des flux migratoires legaux des salariés par le departement de l'Emploi : rapport d'activité 2004/2008, MEFP/DE/DI/SEM/01/09.

⁵⁹ Senegal, Algeria and Tunisia can directly apply for a registration card with the "labour" mention if they can prove the existence of a labour contract in the three month of their entry in Morocco. See: Convention d'établissement entre le Royaume du Maroc et la République du Sénégal signée à Dakar le 27 mars 1964 et ratifiée par le décret royal n°108-65 du 17 chaabane 1385 (11 décembre 1965), publiée au Bulletin officiel n° 2773 du 22 décembre 1965 ; Convention d'établissement entre le Maroc et la Tunisie, signée à Tunis le 9 décembre 1964 et ratifiée par le décret royal n°208-66 du 14 safar 1386 (3 juin 1966), publiée au Bulletin officiel n° 2808 du 24 août 1966 ; Convention d'établissement entre le Maroc et l'Algérie, signée le 15 mars 1963 et ratifiée par le dahir n°1-69-114 du 26 moharrem 1389 (14 avril 1969), publiée au Bulletin officiel n° 2945 bis du 15 avril 1969. Similarly, the spouse and minor children of a French citizen holding a residency card and a working visa are exempted of this obligation See: Dahir n° 1-95-227 du 2 août 2011 portant publication de l'Accord en matière de séjour et de l'emploi fait à Rabat le 9 octobre 1987 entre le Royaume du Maroc et la République française, publié en français au Bulletin officiel n° 6080 du 6 septembre 2012. The annex to the decree of 9 February 2005 exempts some other categories of workers Arrêté du Département de l'Emploi n° 05.350 du 29 Di El Hijja 1425 (09 février 2005) et son annexe n° 1395.05 du 22 Chaoual 1426 (25 novembre 2005).

⁶⁰ Note conjointe (Intérieur-Emploi-Industrie-DGSN-ANAPEC-AMDI) relative à la mise en place d'une procédure spécifique d'octroi de titre de séjour pour les investisseurs étrangers et compétences rares (septembre 2015).

⁶¹ Constança Urbano de Sousa and José Pina-Delgado (n40) 13.

vis-à-vis national workers. The Labour Code was modified in 2010 and 2016⁶² however the dispositions about migrant workers have not been amended yet even though the National Immigration Strategy aims to conclude a law limiting the access of foreigners to employment depending on the needs of the labour market⁶³. It should also be noted that Cape Verde has concluded a bilateral agreement with Portugal giving Portuguese citizens equal treatment with its natural persons, including the free exercise of professional activities⁶⁴. Similarly, Article 10 of Law 36/V/97 gives the right to a Portuguese-speaking citizen domiciled in Cape Verde to access any private economic or professional activity, on the same terms as a national.

4.2. The policy changes

Both Cape Verde and Morocco developed a National Policy on Immigration that led to the launch of a National Strategy for Immigration (and Asylum in the case of Morocco). The main aim of these new policies and strategies is the integration of migrants.

4.2.1. Migrant integration

In Cape Verde, before the launch of the National Immigration Policy (NIP) there were nearly no policies related to migrants' integration and the actions of the different institutions involved lacked consistency⁶⁵. The National Immigration Strategy (NIS) is tasked with translating the objectives and principles of the NIP. The main axis of the strategy are data and research; dialogue, solidarity and partnership; investment and economic activity; migrants' integration and coherent national policies on migration⁶⁶. In 2012, the National Immigration Strategy was adopted by the Government of Cape Verde⁶⁷ impacting several areas of migration law and shaping Cape Verdean policy towards immigration and emigration. The primary areas impacted by the implementation of the NIS focused on increasing immigration control and improving the protection of migrants' rights including for migrant workers and victims of trafficking⁶⁸. The NIS explicitly mentions that it is expected to reinforce and sustain cooperation between agencies and regional cooperation with the aim to better fight irregular immigration⁶⁹. Even though Decree-Law 6/97 already regulated the entry and stay of foreigners it was not applied in practice and the NIS aims at changing that. This leads to two major changes for foreigners. First, they are now required to enter with a passport (in the case of ECOWAS citizens their national ID was previously accepted) and they must prove sufficient means of subsistence. Moreover, the procedure to renew residency documents is a lot more difficult as more documents are required and the price of the procedure is higher. Finally, to favor migrants' integration, the NIS aims

⁶² Decreto-Legislativo n°5/2010 (Altera o Código Laboral) BO I Série n°22 de Junho de 2010; Decreto-Regulamentar n°1/2016 (Altera o Código Laboral) BO I Série N°6.

⁶³ Estratégia Nacional de Imigração (n42) 26-28.

⁶⁴ Aprovado pelo Decreto-Lei n° 524-I/76, publicado no Diário da República I, 3º Suplemento, n° 155, de 05/07/1975.

⁶⁵ UCI/OFII, Estudo Diagnóstico: Identificação das necessidades dos imigrantes no processo de integração social em Cabo Verde (2014) 29.

⁶⁶ Ibid 30.

⁶⁷ Estratégia Nacional de Imigração (n42).

⁶⁸ ICMPD and IOM, (2015), A Survey on Migration Policies in West Africa, 119-120.

⁶⁹ Estratégia Nacional de Imigração (n42) 29.

at facilitating family reunification, improving the access to health and social services and providing Portuguese language lessons. The NIP and NIS are the starting point for practical intervention in the management of immigration and the actions to be taken are included in an action plan for 2013-2016⁷⁰. The Directorate-General for Immigration (replacing in 2014 the Immigration Coordination Unit created in 2011) is a central mechanism for coordinating, integrating, monitoring, regulating and evaluating immigration policies.

In 2013, major changes in Morocco's position towards migration and asylum occurred. First, in July, the National Human Rights Council (CNDH), the Interministerial Delegation for Human Rights (DIDH) and the International Organisation for Migration (IOM) in Rabat, published a critical paper on the state of migrants' rights in Morocco⁷¹. In addition, the CNDH published a report putting forth measures to improve the situation of refugees and asylum seekers, of irregular migrants and the fight against human trafficking⁷². The conclusions of this report were presented to the King Mohammed VI on 9 September 2013, the next day the King announced a series of "High Orientations". In October, the Moroccan Ministry for Moroccan Residents Abroad and Migration Affairs (MCMREAM) was created as the first national institution treating with migration issues. On 6 November, the King called for a new global policy on immigration and asylum and recognised Morocco, for the first time, as a country of immigration declaring that there was a need to review the migration and asylum policy. The Moroccan policy on immigration and asylum indicates a disruption from a securitarian perspective towards a more 'humanist' approach. It is in the frame of this new policy that the National Strategy for Immigration and Asylum (NSIA) was launched in December 2014. This strategy will be supported by three new laws, on migration, human trafficking and asylum. The NSIA has been divided into 27 specific objectives and 81 actions that have been defined in eleven programmes⁷³. A significant component of the NSIA is the integration of the newly regularised migrants and refugees. The component includes measures concerning the access to the labour market, to basic health system and access to education.

4.2.2. The regularization of irregular migrants and access to citizenship

In Cape Verde, a Decree-Law⁷⁴ on the extraordinary regularization of irregular migrants was adopted in parallel to the new law regulating the entry, stay and exit of migrants on November 2014. Following the adoption of this law, irregular migrants who had entered Cape Verde before 17 November 2011 and were in an irregular situation had 90 days to apply for a residence permit. If at the end of this period, the immigrant was still in an irregular situation they could face expulsion from the territory A new bill⁷⁵

⁷⁰ UCI, Plano de Acção 2013 – 2016 da Estratégia Nacional de Imigração (2013).

⁷¹ CNDH (2013), *Foreigners and Human Rights In Morocco for a Radically New Asylum and Migration Policy*, Rabat.

⁷² Ibid. 8-11.

⁷³ *Stratégie Nationale d'Immigration et d'Asile*, 2014, <http://www.marocainsdumonde.gov.ma/fr/le-minist%C3%A8re/affaires-de-la-migration/strat%C3%A9gie-nationale-dimmigration-et-dasile>. Accessed on 13 August 2016.

⁷⁴ Decreto-Lei n° 1/2015 (Estabelece as disposições necessárias á regularização extraordinária de cidadãos estrangeiros que se encontrem em situação irregular no território nacional) BO IS nº 1 de 6 de Janeiro de 2015.

⁷⁵ Proposta de Lei que define as condições de atribuição, aquisição, perda e reaquisição da nacionalidade cabo-verdiana de abril 2013.

on nationality was adopted by the government in Cape Verde in September 2013 to make the naturalization process clearer for regularized migrants. Migrants' access to the nationality used to be quite easy but the bill proposed to raise the requirements for naturalization on grounds of marriage, by requiring five instead of three years of marriage prior to the application (Article 10 of the nationality bill). Finally, the bill has not been accepted by the Parliament and therefore the nationality law has not been modified since 1992. Compared to Morocco the possibility to be naturalized and access citizenship in Cape Verde is much higher.

In Morocco, the regularisation of asylum seekers in November 2013 as well as the launch of the regularisation campaign held from January to December 2014 were direct consequences of its new migration policy. Indeed, following its launch, two main developments occurred: the UNHCR in Morocco started examining asylum claims and issuing refugee cards to successful applicants (Interview 9) and a regularisation campaign for migrants was introduced. The categories of migrants affected by the regularisation procedure were set in a Circular of 16 December 2013⁷⁶. A second regularisation period for migrants was launched by the King on 15 December 2016 and is based on the same criteria than the first regularisation period. It should be noted that the existence of these regularisation periods do not mark the end of the arrest and detention of irregular migrants. After the regularization of several thousand migrants in 2014, innovative programs related to migrants' access to education, vocational training, work, housing and health were launched. Finally, it should be noted that the Moroccan Nationality Code has not been modified since the regularization periods making it almost impossible for regularized migrants to be granted citizenship.

5. INTERCONNECTIONS BETWEEN MOBILITY PARTNERSHIPS, NATIONAL STRATEGIES AND LEGAL DEVELOPMENTS

5.1. The relations between the Mobility Partnership and the NSIA and NIS

It is important to understand the causality between the Mobility Partnership and the NSIA (Morocco) as well as the sequential order of developments. The Mobility Partnership was concluded first. Shortly after, the King launched a series of new policies on immigration and asylum that would later be materialised under the NSIA. Even though the EU had pushed for this direction for several years (Interview 6), it was globally accepted by all the interviewees that the Mobility Partnership did not influence the new policy orientations. The launch of the NSIA seemingly implies a complete reversal of the position of Morocco during the negotiations of the Mobility Partnership. It is however hardly possible to dismiss all EU influence in Morocco's policy change. Indeed, looking at the content of the new migration policy it is rather in line with EU's push on these issues. The understanding that the EU takes a reactive position, by supporting its implementation *a posteriori*, rather than a proactive role is shared both by the EU and Moroccan interviewees, officials and academics (Interviews 5, 6, 7, 13, 16 and 17).

⁷⁶ Circulaire conjointe régissant l'opération exceptionnelle de régularisation de la situation de séjour des étrangers, 16 December.

In the case of Cape Verde, the situation is very different and the EU clearly took a more proactive approach. The development of the NIS is the fruit of distinct phases in which the EU had been involved in since the conclusion of the Mobility Partnership. At the time of the conclusion of the Mobility Partnership, Cape Verdean migration policy was inexistent (Interview 32). In 2009, a diagnostic report was elaborated identifying the needs of Cape Verde in Asylum and Migration matters. Then in 2010 another report was presented containing proposals for the NIP. Finally, in 2014 a study was made in order to identify immigrants' needs for integration. The approval of the NIP and NIS was a turning point in the management of immigration in Cape Verde. In fact, these two instruments create political, strategic and action targets for the various services and actors involved⁷⁷. As a matter of fact, these different steps have been linked to Mobility Partnerships projects as will be shown in the following section.

5.2. The relations between the Mobility Partnership and the legal and policy developments

Following up the last argument, the Mobility Partnership with Cape Verde included several diagnostic studies to help the local administration develop their inexistent immigration policy and legal framework. From March to April 2009 The Netherlands conducted a “needs assessment in order to chart Cape Verde’s problems and needs in relation to asylum and migration”⁷⁸. This corresponds to the first diagnostic report leading to the NIP. Then, the International Centre for Migration Policy Development (ICMPD) implemented a project under the MIEUX facility funded by the European Commission. The project aimed at “developing the Cape Verdean national comprehensive migration policies with a view to reducing irregular migration and maximizing migration benefits”. In the frame of this project the NIS and Action Plan were developed, “which will pave the way for future interventions related to the improvement of legal and institutional frameworks”. We can clearly see the relations between the development of the NIS and Action Plan and the Mobility Partnership. A second MIEUX project has been implemented aiming at reviewing and developing the national immigration legal framework. In this project, the experts reviewed the current legislative framework and assessed its consistency with the NIS and other instruments. They provided support and coordinated the legislative proposal drafting process and prepared and reviewed a final proposal for the main legislation to replace Law 6/97 and all related legislative documents. In other words, this project led to the development of Law 66/VIII/2014 on entry, stay and expulsion of foreigners. Another project aims at supporting Cape Verde in the implementation of the Palermo Convention and its Protocols in relation to human trafficking. It has been translated in the legal framework through the development of new dispositions in the revised Penal Code and the new Law 66/VIII/2014. Finally, on asylum issues, a project has been proposed to develop an asylum system but to date this has not been translated into legal developments.

Interestingly the Moroccan NSIA is also based on the adoption of three laws on migration, asylum and human trafficking. As we have seen previously only the law on human trafficking has been concluded. Two MIEUX projects are included in the Mobility Partnership and aim at strengthening the capacities of the Moroccan authorities in the

⁷⁷ UCI (n70) 10.

⁷⁸ This example as well as the following used in this section will be taken from the scorebaord of Cape Verde from September 2014 and the scoreboard of Morocco from September 2015.

implementation of the NSIA. The first project concerns the support of the drafting of a strategy for the reception and integration of refugees. The ICMPD works with the CNDH and the MCMREAM in the mapping of the integration of refugees and the creation of a refugee profile. The second MIEUX project on human trafficking has been interrupted since 2014. The aim of the project was to support the drafting of a Protocol on human trafficking, but the new law on human trafficking had to be adopted first (Interview 18). Now that the new law has been adopted the MIEUX project could be restarted, but it is unclear if it has been. The project “Promoting the integration of migrants in Morocco” is key and has clear political effects for immigrants and refugees in Morocco as it aims at supporting the MCMREAM with the implementation of the NSIA. It includes activities directly aimed at supporting the implementation of the NSIA, on several aspects such as access to health care for regularized migrants and the access for migrants’ children to public education. Finally, one of the pillar of the Sharaka project aims at building the capacity of the ANAPEC in the field of labor migration. This project influenced the lifting of the authorization requirement for access to labour for migrant workers.

Concerning the EURA and visa facilitation agreement, they are clearly the result of the Mobility Partnership. One of the precondition to conclude a Mobility Partnership is the commitment of the third country to negotiate an EURA. In concrete terms, the negotiation of an EURA can be a strong bargaining chip for a third country and allows it to negotiate a broader spectrum of positive incentives through the Mobility Partnership. Such a situation where the third country takes over the bargaining initiative and demands financial and political support in return for cooperation with the EU can be seen as ‘reversed conditionality’. This phenomenon thus provides third countries a more equitable position and the ability to counterbalance the disadvantages linked to their cooperation with the EU.

The next section analysis how the power of negotiation, and the administrative capacity, can influence the relevance of the Mobility Partnership on legal developments in the third country.

5.3. The influence of negotiation power and administrative capacity on legal developments

In the first section, we developed two hypotheses of factors influencing the relevance of Mobility Partnerships. The first hypothesis concerned the power of negotiation. Cape Verde is a stable and democratic country and has been included by the United Nations in 2007 to the group of middle income countries⁷⁹. Leaving the group of least developed countries meant higher economic pressures on the country. Indeed, this new categorisation lead to the loss of aid funding from several Member States. Moreover, the country lost their privileged rights to access the EU market⁸⁰. Cape Verde is economically dependent from the EU and the Mobility Partnership can be a new way to access funding (Interview 32). Migration, due to its insignificant size, was not the

⁷⁹ Committee for Development Policy Expert Group Meeting, Review of the list of Least Developed Countries, Monitoring the progress of graduated countries: Cape Verde, New York, 16-17 January 2011 1, 1.

⁸⁰ Ministério dos Negócios Estrangeiros, *Balanço da Presidência Portuguesa do Conselho da Uniao Europeia*, 1 de Julho a 31 de Dezembro de 2007, 150.

primary reason to conclude a Mobility Partnership but rather the will of Cape Verde to cooperate on security issues such as the fight against transnational organised crime. Therefore, Cape Verde has a low negotiation power as they are not determinant partners for the EU's fight against migration and in a financially dependent position. In Morocco things are different. Given that the EU prioritises the control of migration, third countries with important migration flows, located on a strategic migration route, that cooperate with this control agenda gain a more strategic position to negotiate their own conditions. In concrete terms, accepting to become a "gate-keeper" and the negotiation of an EURA can be strong bargaining chips for such third countries. Morocco is using its position as a "gate-keeper" and the negotiation of an EURA as bargaining chips with the EU giving it a prominent power of negotiation.

We argue that countries with low negotiating power will be more influenced in the development of their legal framework than a country with a high power of negotiation. In the case of Cape Verde, the development of the NIP and NIS are clearly influenced by the EU at each steps of its development. Related laws on migration and human trafficking being adopted are also clearly influenced by the EU. It should be noted though that an official of the general direction of immigration (DGI) argues that even though the Mobility Partnership helped the development of the NIS it is not the reason why the NIS exists but the national interest (Interview 34). Interestingly though, the NIS and the relative laws adopted are aiming at fighting illegal migration. The NIS mentions the interest of Cape Verde, the EU and Member States to manage migration jointly⁸¹. The high dependence of Cape Verde towards the EU also played a decisive role in signing the EURA⁸². The EURA has been pushed by the EU because of the existence of Free Movement Protocol with ECOWAS (Interview 36). Carmen Barros from the DGI argues that "some of the concrete results of the Mobility Partnership contributed to Cape Verde in the sense the country now has more knowledge about immigration. However, these results can also have contributed to the EU: a proper functioning immigration policy contributes to the objective of fighting against irregular migration, as well as a proper implementation of the readmission agreement"⁸³. In the case of Morocco, the new laws supported by the Mobility Partnership are part of the NSIA and are in line with the policy and strategy put forth by the King. The influence on the development of the legal framework is double. Interestingly here the new laws are not aiming at fighting irregular migration but rather at providing a better integration of immigrants.

As for the lack of administrative capacity, we could argue that both countries being developing countries they are somehow lacking administrative capacity compared to the EU. However, the situation in both countries differs according to their negotiation potential. In Cape Verde, a Cape-Verdean official argued that reports made through the Mobility Partnership support government policies helping them to identify issues that they could not have put forward without assistance (Interview 32). A high number

⁸¹ UCI (n70) 22.

⁸² Linde-Kee van Stokkum, *More Mobility for Development! Policy Coherence for Development in practice: making the EU Mobility Partnership a tool for development in Cape Verde* (2015) Foundation Max van der Stoel 47.

⁸³ Ibid.

of proposed projects are linked to capacity building mainly related to border control and the fight against irregular migration (12 projects). This could indicate that the capacity building provided to Cape Verde is influenced by the EU's priorities and not the primary needs of Cape Verde. However, according to a Portuguese official, the fight against irregular migration was needed by Cape Verde as it went from being a transit country to a receiving one (Interview 33). A Cape-Verdean academic argues that in the frame of the Mobility Partnership the interests of Cape Verde are linked to those of other EU Member States (Interview 40).

Moreover, in such a context the level of legal transplant or "copy-paste" of legislation is high because it is less costly for Cape Verde. Moreover, they have little alternative but accepting EU's priorities in terms of capacity building. According to a Cape-Verdean academic, the legal developments are defined by the Mobility Partnership and EU and Member States that implement the related projects (Interview 40). A former Cape-Verdean ambassador goes further and argues that legal developments are highly influenced by Portugal (Interview 45). He adds that creating a new law is too costly for Cape Verde due to its islands configuration with diverse needs and they are depending and used to "transfer" (copy-paste) legislations. On the contrary, Morocco has more leverage to negotiate funding and capacity building in their areas of interests and needs. For example, using 'reversed conditionality' Morocco can argue that without the EU funding its projects it could not implement the NSIA which is not in the interest of the EU and therefor puts pressure on them to fund the projects Morocco considers as a priority.

6. CONCLUSION

The purpose of the current study was to determine the influence of the negotiation power of a third country and its level of administrative capacity in the relevance of Mobility Partnerships for the development of the legal framework in a third country. This paper argues that Mobility Partnerships are relevant for the development of the legal framework and policies of a third country. In the cases of Morocco and Cape Verde the Mobility Partnership has clearly influenced the development of laws related to the entry and stay of foreigners, human trafficking and to some extent asylum. Both Mobility Partnerships have also influenced the implementation of National Strategies in relation to migration and more precisely to the integration of immigrants. These strategies all lead to the opening of exceptional periods of regularization of migrants as well as improvements in the access to labour and labour rights for regular migrants in addition to other socio-economic rights. The most obvious finding to emerge from this study is that the power of negotiation that a country gains from its geopolitical importance for the EU influences the measure to which a Mobility Partnership is relevant for the development of the legal framework in that country. In the case of Morocco, the EU acted *a posteriori*, supporting the Morocco's existing national orientations. In the opposite case of Cape Verde, the EU has had a proactive role, heavily influencing the content of the Mobility Partnership and the development of the legal and policy framework of Cape Verde in a more asymmetrical way. Having little power of negotiation and low administrative capacities Cape Verde is tightening its legislations and borders to fight more efficiently against irregular migration. An implication of this is the increased chance to rely to legal transplants or "copy-paste"

of legislation by third countries in a similar situation. The existence of a legal transplant could interfere with the relevance of the Mobility Partnership and could be an explanation to the occurrence of a legal development even though a Mobility Partnership exists. Therefore, no generalization can be made and an in-depth analysis of the third country's context should be conducted in parallel to the examination of the implementation of the Mobility Partnership. Understanding interconnections between a Mobility Partnership, legal and policy developments, the geopolitical and the national context of a third country are essential. Further research, using different case studies, could be conducted to determine the influence of the negotiation power of a third country and its level of administrative capacity in the relevance of Mobility Partnerships.

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ANNEX 1: INTERVIEWS LIST

- 5 AMERM, University Mohammed V, Rabat, 12 January 2016
- 6 EU Delegation, Rabat, 13 January 2016
- 7 EU Delegation, Rabat, 13 January 2016
- 9 UNHCR, Rabat, 15 January 2016
- 13 Moroccan Ministry of Labour, Rabat, 19 January 2016
- 16 MCMREAM *, Rabat, 21 January 2016
- 17 Spanish Embassy *, Rabat, 22 January 2016
- 18 ICMPD, Brussels, 13 May 2016
- 29 DG Home Affairs, Brussels, 26 October 2016
- 30 DG Near, Brussels, 27 October 2016
- 32 Direção Geral das Comunidades, Praia, 23 February 2016
- 33 Centro Comum de Vistos/ Portuguese Consulate, Praia, 23 February 2016
- 34 Direcção Geral da Imigração*, Praia, 24 February 2016
- 36 Direção Geral das Comunidades /CAMPO, Praia, 24 February 2016
- 37 IOM, Praia, 24 February 2016
- 38 EU Delegation*, Praia, 25 February 2016.
- 40 Institute of Social and Legal Sciences of Cape Verde, Praia, 26 February 2016
- 42 CNDH*, Praia, 26 February 2016
- 45 Former Cape Verdean Ambassador, Praia, 16 November 2016

*Two respondents attended.