



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

ASYLUM AND MIGRATION IN THE MAGHREB

2012



COUNTRY FACT SHEET:
TUNISIA

Copenhagen – December 2012
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Bibliographic Information

Title: Asylum and Migration in the Maghreb – Country Fact Sheet: Tunisia –
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Publisher: Euro-Mediterranean Human Rights Network – **Date of first edition:**
September 2010 – **Date of second edition:** December 2012 – 64 pages

ISBN: 978-87-91224-99-7

Language of origin: French – **Arabic translation:** Leïla Hicheri – **English
translation:** Michel Forand – **Translations Coordinator:** Jaime Guitart Vilches –
Layout and Design: Sarah Raga'ei (Studio Mostahfazan) – **Index terms:** human
rights, legal protection, migration, asylum, right to education, right to work,
right to health, detention, expulsion – **Geographical terms:** Mediterranean
countries / Maghreb

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Introduction

On 14 January 2011, after less than a month of mass demonstrations, the Tunisian people forced the collapse of a regime that had been in power for several decades. The Tunisian example led to similar protest movements elsewhere in the region, with Egypt, Libya, Yemen and now Syria following in its wake.

The political and social developments that took place in Tunisia and Libya led to fundamental changes in both countries with regard to migration trends and the profile of migrant and refugee populations. Indeed, the whole region has experienced radical changes in that regard when one compares the current state of affairs with the situation at the end of 2010.

Irregular (“illegal”) *emigration* is a dominant structural phenomenon in Tunisia as it is in the entire southern and eastern Mediterranean region. At the end of 2012, all the signs seemed to show that the countries on the north and south shores of the Mediterranean had brought this type of migration under control.

With the conclusion of readmission agreements between the region’s major transit and departure countries (Tunisia, Morocco, Algeria and Libya) and the major destination countries in southern Europe (Italy, Spain and France, in particular), of that European countries had managed to convince their southern neighbours to adopt migration policies that were in accordance with their interests to restrict the number of migrants and refugees entering the territory of the European Union. These agreements included the readmission into North African countries of any irregular migrant who had transited or was believed to have transited their territory, cooperation with Frontex in patrolling the waters of the Mediterranean and intercepting boats carrying migrants, and increased criminalisation of irregular migration.

At the end of 2010, for example, the Italian government recorded approximately 9,000 illegal migrants arriving by sea – only one fourth the number observed in 2008, and one third of that in 2007. The parties involved (Italy, Libya, Tunisia, the EU and Frontex) were effusive about the “exemplary cooperation” that had been demonstrated in the area of migrations and about the “effectiveness” of the measures adopted to intercept irregular migrants travelling from Libya and Tunisia to Lampedusa and other islands off the south coast of Italy. Tunisia and France, for their part, were looking forward to completing the implementation, in the course of 2011, of the “agreement on the coordinated management of migration flows” signed by the two countries in 2008.

Following the collapse of the Ben Ali regime and the escalation of the conflict in Libya, Tunisia was confronted with four migration waves whose scope was without precedent, affecting thousands of people. After January 2011, Tunisia was forced to adopt a new identity in the context of migration: not only did the country retain its historical role as a point of departure for migrants attempting to reach Europe, but it also began assuming a *new role as a host country* for migrants and refugees.

The **first wave of migrants was made up of young Tunisians** – mostly men – who immediately after the revolution were the first to take to the sea. In fact, one of the consequences of the fall of the regime was the total disorganisation of the security forces and a certain degree of loosening, if not quite a complete dissolution, of port control and maritime security. Smuggling networks took advantage of these developments and, in the space of three months (January-April 2011), led tens of thousands of young Tunisians to the island of Lampedusa, located about 100 kilometres north of Tunisia. The southeast, in particular the Zarzis region, close to Libya, became the venue for those wishing to reach Lampedusa. Ports on the east coast, between Sfax in the south and Cap Bon in the north, gradually developed a similar role.

Perhaps the most important cause of these mass departures was the presence in the country of a large population of unemployed or underemployed young graduates. While the former regime claimed the country had an unemployment rate of 14 percent (approximately 500,000 people), hundreds of thousands of Tunisians are underemployed and work in precarious jobs in industries such as tourism, construction, public works or manufacturing, in the parallel or clandestine economy, or in family-based agriculture. Given the lack of economic opportunities in Tunisia, many of those working in these precarious industries can be considered potential candidates for emigration. In April 2011, following a mass influx of Tunisians in Italy, the two countries signed an agreement whereby a large number of Tunisians held in camps (between 15,000 and 20,000) would receive a temporary six-month residency permit. However, this agreement led to a major crisis in relations between France and Italy and, in the context of porous southern borders in a time of “crisis”, put to the test EU states’ dedication to the principle of free movement within the Schengen Area.

The **second major migratory wave** occurred after the outbreak of civil war in neighbouring Libya in February 2011. The resulting deterioration in the security situation led to a mass exodus. According to the International Organization for Migration (IOM), 250 000 migrants, of whom 62 percent were Egyptians, fled towards the Egyptian border due to the war. Most migrants, however, were in western Libya and were forced to flee towards the Tunisian border (IOM, 2011). As such, in addition to the 5000 Tunisians who returned home because of the conflict, IOM reported that 350 000 migrants from third countries entered Tunisia. All were repatriated before the summer of 2011, except for those refugees and asylum seekers who remained, and who still remain at the time of writing, in the Shousha camp, Tunisia’s first refugee camp in decades.

This second wave of migrants was followed by a **third exodus, comprised mainly of Libyans**, often entire families, who began to flee the conflict in Libya and the NATO bombings at the end of March 2011. All in all, 800 000 Libyans entered Tunisia between March and the fall of the Gadhafi regime in October (INS, 2012). Libyan families took refuge mainly in southern Tunisia but also in the large tourist centres on the coast. In the south, they were hosted by Tunisian families because of the close social and cultural links between the people of southern Tunisia and western Libya. They received a significant amount of assistance from emerging civil society organisations: accommodation, food, health care and, for the children, the possibility of attending Tunisian schools.

International organisations (UNHCR, IFRC, national Red Cross and Red Crescent societies, IOM, etc.) provided a substantial degree of assistance and expertise in meeting the needs of these displaced populations, while also supporting the efforts of the local population and Tunisian NGOs on the ground.

Although most Libyan families returned to Libya when the war was over, a number of those who had close links to the fallen regime remained in Tunisia for fear of being prosecuted or targeted for reprisals. The people in this group form a new category of refugees, although they are not recognised as such by either international organisations or the Tunisian government. And yet it is essential to acknowledge the existence of these people in order to better anticipate their needs and the change in their status in the country, as well as their potential rights as refugees.

The fourth (and last) wave was made up of sub-Saharan migrants arriving from Libya, who during the war were forced onto boats by the Gadhafi regime. Gadhafi had argued that without Libya's cooperation, Europe – and especially Italy – would be submerged by illegal immigrants, a fact which he attempted to prove by forcing migrants aboard boats bound for Italy. While the majority of these migrants forced to leave Libya either reached Italy, drowned or disappeared at sea, some of the boats ended up on Tunisian shores or were towed to Tunisian ports after having been intercepted at sea.

While most migrants and Libyans who took refuge in Tunisia during the war in Libya have now returned to their countries of origin, Tunisia remains a major departure point for those trying to reach Europe via Lampedusa. Despite the relatively short distance separating the two, the trip is not without risks: UNHCR estimates that in 2011 alone, 1,500 migrants lost their lives in the Mediterranean, despite the large number of boats and vessels present in the area, seemingly offering many opportunities for rescue.

After the revolution, Tunisia embarked upon a reform process that should lead to greater protection of migrant and refugee rights. And indeed, the reform of legislation pertaining to the admission and exit of foreigners and to the movements of Tunisians at the border, as well as the drafting of a law on the right to asylum,

are signs of the beginning of a post-revolutionary turn towards the promotion and protection of human rights in the country.

Despite these positive developments, however, there are still some worrying signs of continuity with the Ben Ali era. Despite announcing a change of policies vis-à-vis neighbouring countries in the south in the wake of the Arab Spring, the EU, its southern European members, and the Tunisian government continue to adopt a security-oriented approach to migration issues, criminalising irregular migration and undermining the basic rights of refugees and asylum seekers as stipulated in the 1951 Geneva Convention on the status of refugees. Given this state of affairs, it is clear that Tunisian civil society must continue to play a decisive role in the promotion and protection of the rights of migrants, refugees and asylum seekers.

General Framework

Ratification of International Instruments

1951 Convention/1967 Protocol: Yes

Specify the date of ratification and any reservations:

The 1951 Geneva Convention came into force in Tunisia under the decree of 2 June 1955, which directed that the text of the convention be published in the official journal of Tunisia.¹ When the country was a French protectorate (from 1881 to 1956), the Law 54-290 of France, dated 17 March 1954 and authorising the ratification of the 1951 Geneva Convention was extended to also include Tunisia.

After independence (20 March 1956), in a letter dated 24 October 1957, the Tunisian government informed the Secretary General of the United Nations that it would assume succession of the French protectorate and abide by the Geneva Convention.²

When France, the former protectorate authority, adopted the Geneva Convention, it expressed a reservation to article 17 which was ipso facto extended to Tunisia by the decree of 2 June 1955, stipulating in article 1(2) that “in Tunisia the regulation pertaining to foreign workers that is the object of paragraph b of the second declaration is that of the abovementioned decree of 20 February 1930.” That reservation remains in effect.³

1967 Protocol: ratified by Law 68-26 (27 July 1968).⁴

Other comments

1954 Convention Relating to the Status of Stateless Persons: ratified by Law 69-27 (9 May 1969).⁵

1961 Convention on the Reduction of Statelessness: ratified by Law 2000-33 (21

¹ Journal officiel tunisien, 1955, No. 47 (14 June), p. 892.

² Boubakri (2007).

³ Ibid.

⁴ Journal officiel de la République Tunisienne [JORT], 1968, No. 31 (26 July), p. 862.

⁵ JORT, 1969, No. 19 (13 May), p. 580.

March 2000).⁶

Convention on the Protection of the Rights of All Migrant Workers: No

Explain

According to a 2004 study,⁷ there are several obstacles impeding ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. One of the major issues is the scope of illegal migration, which Tunisia continues to ignore in its legislation as reflected by the fact that there are no legal provisions regarding the status of migrants and that irregular migrants are often in a legal limbo, at least domestically. Family reunification for common-law spouses (and not just married spouses), as well as the transmission of surnames to children, are examples of matters that may also be in conflict with domestic legislation.

A recent study⁸ reviews the barriers to ratification in the legislation on migration, focusing in particular on the fact that the different categories of migrants, even illegal migrants, fall under the legal purview and protection of this convention,⁹ a stipulation rejected by the Tunisian government before the 14 January 2011 revolution.

The Tunisian government also defended its position by arguing that no Western country had ratified the convention.¹⁰

Other comments

After the January 2011 revolution, Tunisia ratified a number of new human rights instruments, including the Rome Statute of the International Criminal Court, the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture. This suggests that, given the new political environment, the ratification of the Convention on the Protection of the Rights of All Migrant Workers is a possibility.

Recognition of the jurisdiction of the Committee on the Protection of the Rights of All Migrant Workers: No

⁶ JORT, 2000, No. 24 (24 March), p. 679.

⁷ See Chekir, Ben Jemia and Boubakri (2004).

⁸ Mabrouk (2010).

⁹ This argument has also been developed in Ben Cheikh and Chekir (2008).

¹⁰ Interview with Abderazak Bel Hadj Zekri, research director of the Tunisians Abroad Office (Office des Tunisiens à l'Étranger).

Communications from other States Parties (article 76) No

Communications from individuals (article 77) No

Status of periodic reports:

Most recent periodic report submitted (date and reference) No

Concluding observations of the Committee (date and reference) No

Cooperation with the Special Rapporteur on the Human Rights of Migrants

Status of invitations to the Special Rapporteur:

No standing invitation (no standing invitation by Tunisia as part of special procedures).

Most recent visit by the Special Rapporteur:

At the invitation of the government, the Special Rapporteur carried out his first visit to Tunisia on 3-8 June 2012 to investigate the situation of the human rights of migrants in the country “within the broader context of the management of the external borders of the European Union (EU) in the Mediterranean region.” During his six-day visit, he visited Tunis, the port of Zarsis, the border crossing at Ras Jedir, places where migrants were detained- including prisons and reception centres- and the Shousha refugee camp.

Most recent report of a visit by the Special Rapporteur (date and reference):

The report on the visit will be submitted by the Special Rapporteur in June 2013, at the next session of the Human Rights Council.

Has the Special Rapporteur addressed the government of the country? No

Most recent mission conducted by a Special Rapporteur in Tunisia:

Visit to Tunisia of the Special Rapporteur of the United Nations on torture and other cruel, inhuman or degrading treatment, 15-22 May 2011.¹¹

The previous visit to Tunisia of a Special Rapporteur was that of the Special

¹¹ See United Nations, Human Rights Council (2012).

Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, conducted from 22 to 26 January 2010.¹²

Other Relevant Instruments

International human rights treaties ratified or acceded to by Tunisia:

» ICCPR Ratified by Law 68-30 (29 November 1968) on 18 March 1969. ¹³ No reservation is attached; a declaration under article 41 of the covenant, relative to communications by other States Parties, was made on 23 June 1993. ¹⁴	Yes
» ICESCR Ratified by Law 68-30 (29 November 1968) on 18 March 1969. ¹⁵ No reservation or declaration is attached.	Yes
» CEDAW Ratified by Law 85-68 (12 July 1985) on 20 September 1985. ¹⁶ Tunisia has lifted the declaration made under article 15(4) as well as the reservations made under articles 9(2), 16 (1)(c)(d)(f)(g)(h), and 29(1), by Executive Order 2011-103 (24 October 2011). ¹⁷	Yes
» CRC Ratified by Law 91-92 (29 November 1991). ¹⁸ Three declarations and reservations were made relative to articles 2, 7 and 40(2)(b-v).	Yes
» CAT Ratified by Law 88-79 (11 July 1988). ¹⁹ No declaration or reservation is attached.	Yes
» ICERD	Yes

¹² In his interim report, the Special Rapporteur, while recognizing that some progress had been made with respect to the legal framework relating to countering terrorism, expressed concern about the gap between law and reality. Among other things, he noted the low number of prosecutions or other clear findings related to torture when compared to the frequency and severity of the allegations he received, and he endorsed the recommendations recently made to Tunisia by other UN human rights mechanisms: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9772&LangID=E>.

¹³ JORT, 1969, No. 51 (29 November), p. 1260.

¹⁴ See Tavernier (2002), p. 18.

¹⁵ JORT, 1968, No. 51 (29 November), p. 1260.

¹⁶ JORT, 1985, No. 54 (12 July), p. 919.

¹⁷ JORT, 2011, No. 82 (28 October), p. 2466.

¹⁸ JORT, 1991, No. 82 (3 December), p. 1890.

¹⁹ JORT, 1988, No. 48 (12 July), p. 1035.

Ratified by Law 66-70 (28 November 1966).²⁰ No declaration or reservation is attached.

Optional protocols

» ICCPR, 1st	Yes
» ICCPR, 2nd	No
» ICESCR	No
» CAT	Yes
Approved by Executive Order 2011-5 (19 February 2011). ²¹	
» CEDAW	Yes
Approved by Law 2008-35 (23 September 2008). ²²	

International Labour Organisation

C097: Migration for Employment Convention, 1949	No
C143: Migrant Workers Convention, 1975	No

ILO Conventions yet to be ratified:

59 ILO conventions have not been ratified by Tunisia:

C078: Medical Examination of Young Persons (Non-Industrial Occupations) Convention (1946)
C094: Labour Clauses (Public Contracts) Convention, 1949
C096: Fee-Charging Employment Agencies Convention (Revised), 1949
C097: Migration for Employment Convention (Revised), 1949
C102: Social Security (Minimum Standards) Convention, 1952
C110: Plantations Convention, 1958
C115: Radiation Protection Convention, 1960
C121: Employment Injury Benefits Convention, 1964
C128: Invalidity, Old-Age and Survivors' Benefits Convention, 1967
C129: Labour Inspection (Agriculture) Convention, 1969
C130: Medical Care and Sickness Benefits Convention, 1969
C131: Minimum Wage Fixing Convention, 1970

²⁰ JORT, 1966, No. 51 (29 November), p. 1673.

²¹ JORT, 2011, No. 12 (22 February), p. 181.

²² JORT, 2008, No. 49 (17 June), p. 1860.

- C139: Occupational Cancer Convention, 1974
- C140: Paid Educational Leave Convention, 1974
- C141: Rural Workers' Organisations Convention, 1975
- C143: Migrant Workers (Supplementary Provisions) Convention, 1975
- C144: Tripartite Consultation (International Labour Standards) Convention, 1976
- C145: Continuity of Employment (Seafarers) Convention, 1976
- C146: Seafarers' Annual Leave with Pay Convention, 1976
- C147: Merchant Shipping (Minimum Standards) Convention, 1976
- C148: Working Environment (Air Pollution, Noise and Vibration) Convention, 1977
- C149: Nursing Personnel Convention, 1977
- C151: Labour Relations (Public Service) Convention, 1978
- C152: Occupational Safety and Health (Dock Work) Convention, 1979
- C154: Collective Bargaining Convention, 1981
- C155: Occupational Safety and Health Convention, 1981
- C156: Workers with Family Responsibilities Convention, 1981
- C157: Maintenance of Social Security Rights Convention, 1982
- C160: Labour Statistics Convention, 1985
- C161: Occupational Health Services Convention, 1985
- C162: Asbestos Convention, 1986
- C163: Seafarers' Welfare Convention, 1987
- C164: Health Protection and Medical Care (Seafarers) Convention, 1987
- C165: Social Security (Seafarers) Convention (Revised), 1987
- C166: Repatriation of Seafarers Convention (Revised), 1987
- C167: Safety and Health in Construction Convention, 1988
- C168: Employment Promotion and Protection against Unemployment Convention, 1988
- C169: Indigenous and Tribal Peoples Convention, 1989
- C170: Chemicals Convention, 1990
- C171: Night Work Convention, 1990
- C172: Working Conditions (Hotels and Restaurants) Convention, 1991
- C173: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992
- C174: Prevention of Major Industrial Accidents Convention, 1993
- C175: Part-Time Work Convention, 1994
- C176: Safety and Health in Mines Convention, 1995
- C177: Home Work Convention, 1996

- C178: Labour Inspection (Seafarers) Convention, 1996
- C179: Recruitment and Placement of Seafarers Convention, 1996
- C180: Seafarers' Hours of Work and the Manning of Ships Convention, 1996
- C181: Private Employment Agencies Convention, 1997
- C183: Maternity Protection Convention, 2000
- C184: Safety and Health in Agriculture Convention, 2001
- C185: Seafarers' Identity Documents Convention (Revised), 2003
- MLC: Maritime Labour Convention, 2006
- C187: Promotional Framework for Occupational Safety and Health Convention, 2006
- P081: Protocol of 1995 to the Labour Inspection Convention, 1947
- P110: Protocol to the Plantations Convention, 1958
- P147: Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976
- P155: Protocol of 2002 to the Occupational Safety and Health Convention, 1981

Comments

Tunisia has been a member of ILO since 1956; it has ratified 58 ILO conventions, 51 of which are in effect. Tunisia has a low level of approval of universal, international or regional instruments designed to protect migrants.

African Union

Convention on the rights of refugees Yes

1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, ratified by Law 89-77 (2 September 1989).²³

Note: 1981 African Charter on Human and Peoples' Rights ratified by Law 82-64 (6 August 1982).²⁴

General comments

Tunisia's international undertakings constitute an incomplete legal framework in matters pertaining to the human rights of migrants, refugees and asylum seekers.

However, the situation has improved significantly since January 2011 with respect to human rights in general, thanks to the ratification of important instruments and the country visits by UN Special Rapporteurs.

²³ JORT, 1989, No. 60 (5 September), p. 1341.

²⁴ JORT, 1982, No. 54 (10 August), p. 1689.

Other international instruments to which Tunisia is a party:

Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified by Law 66-32 (3 May 1966).²⁵

United Nations Convention against Transnational Organized Crime, adopted by the UN General Assembly on 15 November 2000, ratified by Law 2002-63 (23 July 2002).²⁶

Protocol against the Smuggling of Migrants by Land, Sea and Air, ratified by Law 2003-6 (21 January 2003).²⁷

International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Executive Order 2011-2 (19 February 2011).²⁸

Other basic instruments to which Tunisia is not a party:

None

Other regional organisations:

Arab Maghreb Union (UMA), established by the Marrakesh Convention on 17 February 1989, ratified by Law 89-50 (14 March 1989).²⁹

²⁵ JORT, 1966, No. 20 (3 May), p. 523.

²⁶ JORT, 2002, No. 61 (26 July), p. 1712.

²⁷ JORT, 2003, No. 7 (24 January), p. 195.

²⁸ JORT, 2011, No. 12 (22 February), p. 180.

²⁹ JORT, 1989, No. 20 (21 March), p. 459.

A. Asylum

A.1. De Jure

Principal Legal Provisions Governing the Status of Refugees and Asylum Seekers

In the Constitution:

Article 17 of the Constitution of 1 June 1959 prohibited the extradition of “political refugees.”³⁰ That constitution was recently repealed by the Constituent Law of 16 December 2011, adopted by the National Constituent Assembly (ANC), which is charged with adopting a new constitution for Tunisia.

The first report of the ANC’s Constituent Commission on rights and freedoms, published last August, indicates that the Commission considered prohibiting the extradition of foreigners who are persecuted for their ideas or their beliefs. However, the draft of the future constitution contains no provisions pertaining to refugees.

In organic law:

No

In other laws (please provide details):

Because of the lack of specific laws dealing with the status of refugees in Tunisia, their status is governed by the general provisions of Law 1968-7 (8 March 1968) on the status of foreign nationals in Tunisia, and by Decree 1968-198 (22 June 1968), as modified by Decree 92-717 (20 April 1992), regulating the entry and residency of foreigners.³¹

³⁰ Article 17 of the 1959 Constitution provides that “extradition of political prisoners is prohibited.”

³¹ In addition, there are two references to the 1951 Convention on the status of refugees in Law 1975-40 (14 May 1975) on passports and travel documents, as amended and augmented by Law 1998-77 (2 November 1998), Law 2004-6 (3 February 2004) and article 24 of Law 1008-13 (18 February 2008), on travel documents for refugees, and article 34 of the same law on the non-refoulement obligation.

Other comments

Tunisia has been a party to the 1951 Geneva Convention for many years, but it does not yet have legislation on asylum describing specific administrative measures available to asylum seekers and refugees.

Some researchers believe the government's refusal to consider any protection request received from an asylum seeker is a political decision.³² Support for this argument is based on article 15 of the treaty establishing the Arab Maghreb Union, which says that "member states commit not to allow in their respective territories any activity or organisation threatening the security, territorial integrity or political system of one of the member states."

Since January 2011, however, the Tunisian government has adopted a positive stance on this question. A legislative bill is currently being drafted with support from UNHCR.³³

A.2. De Facto

Is there a government ministry or agency charged with making decisions on the status of refugees? No

In practice, do the authorities implement such a procedure? No

Explain

At the government's request, the United Nations High Commissioner for Refugees (UNHCR) began operating in Tunisia in 1957 to provide assistance to several thousand refugees who had arrived from Algeria. This operation was brought to an end in 1962 with the implementation of the voluntary repatriation programme. In 1963, UNHCR concluded an agreement with the Tunisian government on the establishment of an honorary mission based in Tunis. UNHCR's only official point of contact was the Ministry of Foreign Affairs.

Given the absence of specific legislation and an actual national procedure on asylum, on 16 January 1992 UNHCR signed an agreement with the government whereby, based on its mandate, it assumed responsibility for determining refugee status for asylum seekers (see below).

³² See, in particular, Laacher (2007), chapter 5.

³³ See United Nations, Human Rights Council (2012).

A.3. Role of UNHCR

Does UNHCR have an office or offices in the country? Yes

UNHCR has two offices:

- » A national office in Tunis (UNHCR official representation), staffed by a team of nine local employees and eight international employees. The Tunis office also coordinates missions carried out by a UNHCR technical regional centre for North Africa in the areas of refugee health and safety, as well as status determination.
- » A temporary operational office was opened in Zarzis following the mass entry of refugees from Libya, beginning in March 2011. This office has remained open to monitor the management of the Shousha camp for refugees and asylum seekers located near the border with Libya. As of April 2012, the office staff was comprised of 20 local employees and 12 international workers (UNHCR, 2012).

Indicate when the office(s) began operations and provide addresses and telephone numbers:

See the paragraph above on the circumstances surrounding the establishment of a UNHCR honorary representation in Tunisia in 1963.

The address of the UNHCR office in Tunis is as follows:

UNHCR
1053 Les Berges du Lac (Gouvernorat de Tunis)
Tel.: + 216 963383; fax: + 216 71963384
<http://www.unhcr.org/pages/49e486166.html>

Does UNHCR have an official legal status allowing it to operate in the country? Yes

Please provide details of the agreement and its main elements:

UNHRC began operations in Tunisia in 1957. In 1968, following an exchange of letters, the agency signed an agreement with the government granting it the status of honorary representation in Tunisia. Until mid-2011, UNHCR's presence in the country was limited to this honorary representation. On 18 June 2011, however, a headquarters agreement was signed by the two parties and ratified by Executive Order 2011-92 (29 September 2011).³⁴

³⁴ JORT, 2011, No. 75 (4 October), p. 2034.

The agreement allows UNHCR to open offices in the south of the country and to undertake regional missions to coordinate activities throughout North Africa.

Does UNHCR have free access to asylum seekers? Yes

Can UNHCR personnel move freely in the country? Yes

How does UNHCR proceed when conducting interviews with refugees (organisations, intermediaries, etc.)?

Before the 2011 agreement, UNHCR's office was located in the United Nations building in Tunis (also housing UNDP, UNFP, UNDSS and UNIC). Asylum seekers and refugees were received in an office located in the central Tunis premises of its operational partner, the Tunisian Red Crescent. This is where UNHCR, in its role as the agency responsible for determining refugee status, conducted interviews with asylum seekers and met with refugees between 1992 and 2011. According to the official in charge of the office, despite representations made to the Tunisian government, UNHCR was not allowed to travel to other regions of the country to register asylum seekers during this period.³⁵

Is UNHCR's staff allowed to visit the camps/detention centres housing asylum seekers?³⁶ Yes

Explain

After the outbreak of war in Libya in late February 2011, camps housing refugees, both foreign and Libyan, and asylum seekers were established in Tunisia for the first time since the end of the Algerian war in 1962. Hundreds of thousands of foreign workers and refugees poured into Tunisia from Libya, and several camps were prepared near the border with Libya to house these refugees and exiles in border towns and communities such as Bengardanne, Médenine, Tataouine, Remada and Dhehiba.

UNHCR assumed direct responsibility for managing the Shousha camp, situated at the border, and it is still in charge. The agency has given the Danish Refugee Council responsibility for the management and provision of services to the refugees and asylum seekers.

³⁵ Interview conducted in Tunis on 9 February 2010.

³⁶ There were no camps before the February 2011 uprising caused thousands of Libyan families and foreign families living in Libya to flee to Tunisia.

The Shousha camp is the only camp still in operation (as of 15 September 2012).³⁷ The camp raises an acute problem for Tunisia, UNHCR and civil society organisations in that it is still occupied by 2,500 to 3,000 refugees, although only part of the camp has been made habitable.³⁸ A fact that is seldom mentioned is that the refugees and asylum seekers living in the Shousha camp are not free to move around in Tunisia but must remain in the area around the camp (Bengardanne and Zarzis). For nearly 18 months, a number of these refugees have had no legal status in the country. The fact that they live outside the law is a problem in itself and increases their vulnerability.

In conclusion, one can say that there is now a satisfactory level of cooperation between the UNHCR office in Tunis and the Tunisian government and that UNHCR has unlimited access to the refugees in the camp.

UNHCR does not have any information confirming or disproving the existence of detention centres in which asylum seekers are allegedly held.³⁹ Nor does UNHCR have information, from official sources or from asylum seekers themselves, to suggest that asylum seekers have been intercepted before they could submit their asylum request. On the other hand, the UN agency did hear about a case of *refoulement* of an asylum seeker in 2009, and made the appropriate representations to authorities.⁴⁰

Before January 2011, the authorities never informed UNHCR that asylum seekers or refugees had been arrested, but relatives of those arrested sometimes did. Since the end of 2008, the agency has on four occasions visited asylum seekers or refugees who had been jailed for common-law offences, in order to allow them to complete their asylum application procedure.

In your view, does the current location of the UNHCR guarantee the free access of refugees to its office?

Yes

Explain

Before 2011, asylum seekers and refugees were received at the premises of the

³⁷ See notes below about exiled foreign workers and refugees arriving from Libya.

³⁸ See the recent data below.

³⁹ It was not possible, in the context of this study, to verify the question of detention centres for foreigners in Tunisia (see section B.2 below, on Irregular Entry, Exit and Residency).

⁴⁰ Tunisian legislation on foreigners does impose on the government the obligation to respect the principle of non-refoulement, as stipulated in article 34 of Law 1975-40 (14 May 1975) on passports and travel documents, as amended and augmented by Law 1998-77 (2 November 1998), Law 2004-6 (3 February 2004) and Law 2008-13 (18 February 2008).

Tunisian Red Crescent, located in central Tunis. The many volunteers of the Red Crescent active throughout Tunisia were trained to direct asylum seekers and refugees to UNHCR. The latter thus had free access to UNHCR's office.⁴¹ Since the signing of the headquarters agreement, UNHCR has been receiving refugees in its own premises, which makes access to its personnel easier. However, the location of its office in Les Berges du Lac, away from the city centre, may constitute an obstacle, especially since the address and contact information of the office are not available on the web.

Other organisations such as Caritas, whose office is located in the compound of Tunis cathedral in the city centre, help migrants regardless of their status and will also direct asylum seekers and refugees to UNHCR.

Does UNHCR carry out refugee status determinations and register refugees?

Yes

After large numbers of refugees and exiles began to arrive at the border with Libya in late February 2011, UNHCR conducted refugee status determinations for more than 3,000 asylum seekers in the Shousha transit camp thanks to the deployment of international experts. About 100 unaccompanied minors went through a status determination procedure. This fast-track procedure made it possible for camp occupants to obtain certificates confirming their refugee status. Women accounted for 20 percent of Shousha's population and 5 percent of heads of families.

Other groups have benefited from these special procedures and protection against several types of violence and exploitation (sexual violence, human trafficking, etc.).

UNHCR's activities aimed at asylum seekers include welcoming and registering them, determining their refugee status in terms of the agency's mandate and defining a durable solution for those who have been recognised as refugees.

Upon his/her first contact with UNHCR, the asylum seeker is given an information leaflet and an asylum application form. The applicant may fill the form immediately or bring it back after a few days, and may even receive assistance in filling out the form.

When the asylum seeker returns the application form, a UNHCR official briefly interviews the applicant to ensure the different sections of the form contain the proper information. After this, he issues a confirmation on UNHCR letterhead that an application has been filed. This confirmation is valid for three months, and is renewable, as needed.

⁴¹ According to UNHCR, it is also important to bear in mind that Tunisia's borders are tightly controlled through the country. The main asylum-seeking groups (nationals from Ivory Coast, in particular) are admitted into Tunisia regularly (no visa is required for stays of less than three months) and have access to UNHCR during this period.

A first interview is held with the applicant, and this is followed by UNCHR's decision on the asylum application.^{42,43}

If the decision is positive, the applicant receives a certificate on UNHCR letterhead confirming his/her refugee status; this certificate is valid for one year and is renewable.

If the application is denied, the asylum seeker may appeal the decision. In such cases, the applicant fills an appeal form and submits it to the agency within one month. The appeal procedure takes place before a UNHCR official and does not require the presence of an attorney. If the appeal brings forth new elements in the case, a second interview takes place; otherwise, the request is denied without further ado.

Once the applicant has received recognition as a refugee, UNHCR sends a copy of the refugee certificate to the Ministry of Foreign affairs (UNHCR's only official interlocutor). The refugee may apply for a residency permit from the Tunisian government at the police station closest to his/her place of residence.

How many refugees and asylum seekers are recognised as such by UNHCR at the moment?

At the end of 2011, the number of people in Tunisia falling under the purview of UNHCR stood at 4,670 refugees and/or asylum seekers. Between February and December 2011, approximately 3,500 refugees were registered and recognised by the agency, and relocation requests were made on behalf of all of them. More than 15 countries responded favourably to these requests or put alternative procedures in place. As of 1 September 2012, more than 2,000 refugees had been resettled in third countries. Hundreds of others are awaiting the conclusion of this process. (UNHCR, 2011, 2012)

Please indicate the total number of refugees and their distribution by country of origin, age group and gender:

⁴² Different officials are used at different stages of the asylum application process: one person is responsible for registering the applicants; another is responsible for interviewing them, and a third is in charge of making the decision.

⁴³ Until 2006, the determination was made by UNHCR headquarters in Geneva. Since then, the UNHCR office in Tunis has had enough staff to make the decision locally.

Number of people receiving UNHCR assistance in Shousha camp, 2011

Type of population	Country of origin	Total	Number of people helped by UNHCR	Women (%)	Less than 18 years old (%)
Refugees	Somalia	1,000	1,000	19	15
	Sudan	800	800	14	18
	Eritrea	600	600	16	14
	Others	700	600	40	23
Near-refugees	Libya	1,000	1,000	45	30
Asylum seekers	Ivory Coast	160	20	-	-
	Sudan	150	150	24	20
	Others	250	210	19	16
Repatriated refugees	All countries	10	10	-	-
Total		4,670	4,390		

Source: UNHCR, Global Report 2011: Tunisia.

Status at the Shousha transit camp as of 1 April 2012

Nationality	Asylum seekers	Refugees	Total	%	
				Refugees	Total
Somalia	31	913	944	31.9	31.2
Sudan	98	830	928	29.0	30.7
Eritrea	3	515	518	18.0	17.1
Iraq	0	293	293	10.2	9.7
Chad	21	243	264	8.5	8.7
Ivory Coast	4	11	15	0.4	0.5
Others	7	55	62	1.9	2.1
Total	164	2,860	3,024	100.0	100.0

Source: UNHCR, Newsletter Tunisia. April 2012.

Please specify the different types of procedure/status that are used (prima facie, etc.):

Two types of procedures have been used:

- Individual determination: asylum applications are reviewed on a case-by-case basis; this type was used exclusively until 2011;
- Prima facie determination: UNHCR used the prima facie determination procedure in the context of the massive influx of refugees from Libya following the protests of 17 February 2011, which later became an armed conflict.

Are the refugee status determinations made by UNHCR, including prima facie determinations, recognised by the local authorities? Yes

Indicate the legal foundation for this recognition:

The legal foundation for this recognition is found initially in the protocol concluded on 16 January 1992 between the Tunisian Foreign Affairs Ministry and UNHCR. The headquarters agreement signed by the two parties on 18 June 2011 and ratified by Executive Order 2011-92 (29 September 2011)⁴⁴ has replaced the 1992 protocol.

What are the concrete manifestations of recognition (residency card, access to jobs, education, health care, etc.)?

When refugee status is granted under the UNHCR mandate, the agency sends a copy of the certificate to the Foreign Ministry (UNHCR's only official interlocutor), which then forwards it to the Interior Ministry. The refugee can apply for a residency permit at the police station closest to his/her place of residence. Since there is no provision in national laws or regulations that recognises the status of refugee at present, the legislation governing foreigners is applied to refugees with respect to residency and employment. Before the political transformation that took place in 2011, only 40 percent of UNHCR-recognised refugees received a residency permit and were therefore recognised as residing in Tunisia legally. The other refugees benefiting from UNHCR protection were "semi-illegals" in the eyes of the Tunisian government. Although recognised by UNHCR, they were only tolerated by the authorities.⁴⁵

⁴⁴ JORT, 2011, No. 75 (4 October), p. 2034.

⁴⁵ See Laacher (2007), chapter 5. Laacher is of the opinion that the Tunisian government was guilty of a double denial: first, its refusal to acknowledge full rights in Tunisia to those who have been granted protection that was deemed necessary; and second, its refusal to recognise the full legitimacy of a decision made by an international body (UNHCR) and its more or less open treatment of its international, legally-binding obligations under the Geneva Convention as a minor or superfluous point.

Since the January 2011 revolution, virtually all refugee cases in the Shousha camp have been dealt with as relocation cases. As a result, since refugees are seeking relocation countries, data vary greatly and are unreliable.

The main rights issues for the refugees that remain in Tunisia – residency and work permits, in particular – are still unresolved. These difficulties will remain until a law on asylum is adopted and incorporated into domestic legislation, although access to health care and education services for refugees does not seem to pose a problem. (See below the section on specific aids.)

In addition to refugee status recognition, what other types of assistance does UNHCR provide to refugees (direct assistance, micro-projects, etc.) and how is this assistance delivered (local partners, procedures, etc.)?

The major migration crisis that took place along the Libyan-Tunisian border during the Libyan conflict (which lasted from 17 February until the end of October 2011) enabled UNHCR to test its capacity to respond to such a situation through the provision of services for large numbers of people and the deployment of a logistical system capable of matching the scope of these events (UNHCR, 2011a):

- UNHCR distributed more than 14,000 tents and emergency shelters and over 7,500 metric tonnes of food and non-food items to refugees and their families.
- UNHCR also built the infrastructure needed to provide access to potable water and sanitary facilities in Shousha camp.
- During the first nine months of 2011, UNHCR supported and coordinated the efforts of many national and international humanitarian organisations who provided medical care to those who had fled Libya during the conflict. During the month of Ramadan in 2011, UNHCR organised a food distribution campaign in favour of more than 40,000 Libyans living with Tunisian families. A portion of the costs arising from the stay of Libyan families with Tunisian families, especially in the cities and villages of the south, were paid by UNHCR (electricity, household water).
- After the end of the war in Libya, the consequent return of Libyan refugees, and the repatriation of all foreign workers to their countries of origin, UNHCR and its operational partners (Tunisian Red Crescent, Danish Refugee Council) provided the bulk of services at Shousha – accommodation, food, collective hygiene, medical care – to thousands of refugees and asylum seekers.

A.4. Hosting Libyan Refugees in 2011

In the wake of the revolutions that took place in Tunisia and Libya in early 2011, Tunisia experienced **four waves of migrants and exiles**:

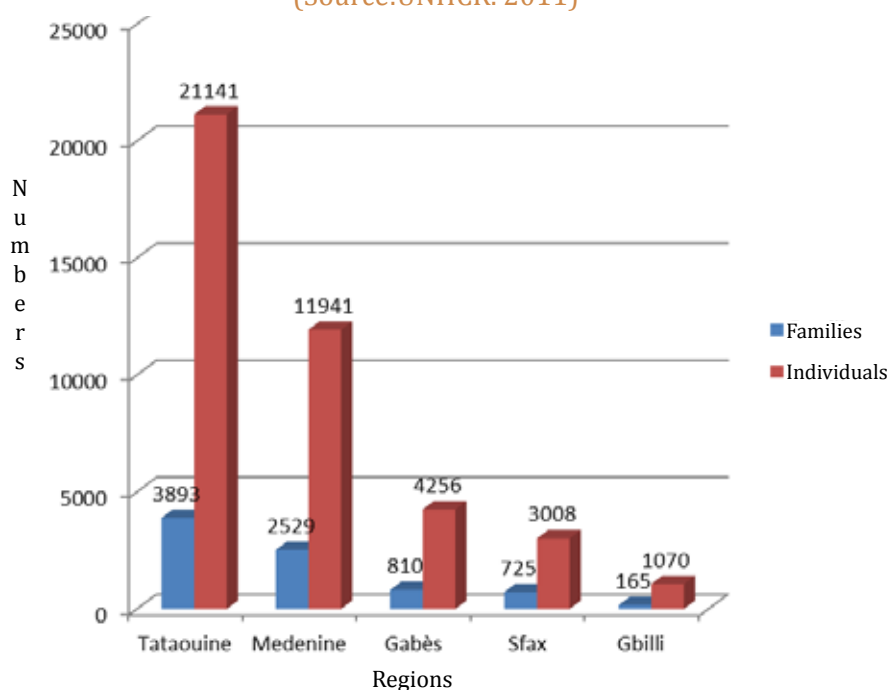
- An outgoing wave, with **tens of thousands of young Tunisians** leaving for Italy (more specifically, for the island of Lampedusa), helped by migrant trafficking networks. These traffickers took advantage of the collapse of the security and coastal surveillance systems after the flight of former president Ben Ali.
- An incoming wave of approximately **400,000 refugees and foreign workers** fleeing Libya following the outbreak of war between government and rebel forces in that country.
- A wave of **forced departures from Libya of workers from sub-Saharan countries** pushed to the sea by government forces. While many of these migrants reached Italy or drowned in the attempt,⁴⁶ some of the boats landed in Tunisia or were intercepted and forced into Tunisian ports.
- The fourth wave consisted primarily of **Libyan families fleeing from the war** and the NATO bombings, and taking refuge in Tunisia. As early as March 2011, thousands of people crossed the border into Tunisia; on 20-21 June, for example, 6,700 people were recorded at the Libyan border. During the summer, when the fighting worsened and reached the large cities in northwestern Libya, more than 100,000 Libyan family members were hosted by Tunisian families and civil society. That number continued to grow as the fighting got closer to Tripoli and the large coastal cities in the west, from Misrata to the Tunisian border.

Southern Tunisia, especially in the border areas, was the front line in greeting Libyan refugees. Based on the data obtained from humanitarian organisations such as UNHCR, it appears that 80 percent of refugees, generally of modest means, were hosted in towns and communities of the southern provinces. When the war was at its peak (July 2011), 8,122 families and 42,000 individuals were living in southern Tunisia. At the same time, tens of thousands of more affluent families and individuals went directly to the larger coastal cities and resort areas of central and northern Tunisia (Djerba, Greater Tunis, Nabeul, Sfax, Sousse, Hammamet, etc.).

⁴⁶ More than 1,500 people drowned or disappeared while attempting to cross the Mediterranean in 2011 (UNHCR, 2011).

Refugee families and individuals registered by UNHCR upon their arrival in Tunisian cities and villages (10 July 2011)⁴⁷

(Source: UNHCR, 2011)



While most of the Libyans who had fled to Tunisia returned to their country following the collapse of the regime, many others (believed to be in the thousands) remained behind because they were close to the dictator or had benefited from the dictatorship.⁴⁸ Because of the free movement of people between the two countries, it is not possible to produce a plausible estimate of their number at this time. What is certain is that a new category of “refugees” has emerged in Tunisia: pro-Gadhafi partisans who fear for their lives or risk being prosecuted if they return home. A number of them may remain in Tunisia while the more affluent among them are already trying to secure refugee status in Europe and North America.⁴⁹ Intertribal and interregional violence, as well as the “hunt for Blacks” have continued and at times intensified in Libya, leading to a further influx of refugees arriving as tourists as part of the flow of Libyans who travel back and forth between the two countries on a daily basis.

⁴⁷ Translation to english: Familles: Families; Individus: Individuals

⁴⁸ Tunisian officials (the prime minister, the human rights minister, the foreign minister) reported in July 2012 that at least 500,000 Libyans lived in Tunisia on a long-term basis, but they did not raise issues that might be associated with the presence of these people regarding their status in Tunisia or vis-à-vis their country of origin.

⁴⁹ A Tunisian association for the defence of Libyan refugees has been formed. It is headed by lawyers who defended some of the major figures of the Libyan government who had been arrested by the Tunisian authorities in the weeks preceding the collapse of the regime, including Khouildi Lahmidi (a member of Gadhafi’s inner circle) and Baghdadi Mahmoudi (former prime minister).

A.5. Rights of Refugees and Asylum Seekers

Does the existing framework provide effective protection for the rights of refugees and asylum seekers? Explain.

Given the vacuum that exists in domestic legislation with respect to asylum and refugee status, asylum seekers and refugees do not enjoy any specific rights. The laws that are applied to them are those which apply to foreigners in general.

Do status refugees have access to:

Residency cards

Only 40 percent have received such permits, by decision of the Interior Ministry. Access to residency permits is purely a chance occurrence.

Before the revolution, there were cases in which UNHCR-recognised refugees who had been given regular residency cards were expelled; sometimes whole families were deported (for example, an Ivoirian couple with an infant less than two months old).

The labour market

Restrictions apply, in compliance with the legislation on foreigners.

Health care

In partnership with a few others, the UNHCR Tunis office manages a health care programme for refugees that includes medical visits, provision of medicine, and support and follow-up in hospitals.

Education

The UNHCR Tunis office supports the schooling programme for refugee children in Tunisia and ensures that all children are regularly registered at school. It also ensures that all refugees, adolescents as well as adults, have access to counselling and guidance enabling them to obtain occupational training so as to become self-sufficient.

Comments

The residency card is the access key to all the other rights. The assistance provided by UNHCR (and Caritas as well) only serves to fill certain gaps and shows that refugee status is not sufficient to ensure access to basic economic and social rights.

There are no legal aid or support services for asylum seekers in the initial phase of asylum applications (interview preparation), nor are there any accommodation services for asylum seekers and/or refugees, including for those who are vulnerable. That situation is unchanged from the pre-2011 period.

B. Migration

B.1. Legal Entry and Residency

Are there laws governing entry into the country as well as residency and exit? Yes

If so, please provide the adoption date(s) and title(s) of the law(s):⁵⁰

Law 1968-7 (8 March 1968) on the status of foreign nationals in Tunisia.⁵¹

Decree 1968-198 (22 June 1968) governing the entry and residency of foreign nationals, as amended and augmented by Decree 92-716 (20 April 1992).⁵²

Law 1975-40 (14 May 1975) on passports and travel documents, as amended and augmented by Law 1998-77 (2 November 1998), Law 2004-6 (3 February 2004) and Law 1008-13 (18 February 2008).⁵³

Specific comments on the legislation from a rights perspective:

While remaining an emigration country, Tunisia is gradually becoming a country of transit and immigration as well.⁵⁴ This situation not only has an economic and social impact but it also has legal implications related to the rights of migrants who might decide to settle in the country.

There are no laws referring specifically to the protection of migrants, and the word “emigrant” does not appear in the legislation. The relevant laws are those pertaining to the status of foreign nationals and are strictly concerned with the conditions governing entry and residency, with an emphasis on fighting illegal immigration.⁵⁵

⁵⁰ The texts of the laws are available on the CARIM website: <http://www.carim.org/>.

⁵¹ JORT, 1967, No. 11 (8 March), p. 251.

⁵² JORT, 1968, No. 26 (28 June), p. 694; JORT, 1992, No. 26 (28 April), p. 493.

⁵³ JORT, 1975, No. 34 (20 May), p. 1069; JORT, 1998, No. 89 (6 November), p. 2180; JORT, 2004, No. 11 (6 February), p. 252. In addition to these general regulations, there are laws that specify the status and entry and exit applying to other foreigner categories (economic agents, business people, experts, European tourists, etc.).

⁵⁴ Officially, the only type of migration recognised by Tunisia is legal migration. Actual migration flows in the country are difficult to quantify (see figures below and the regional report).

⁵⁵ See, in particular, Ben Cheikh and Chekir (2008); see also Chekir, Ben Jemiaa and Boubakri (2004).

Law 1968-7 (8 March 1968) on the status of foreigners in Tunisia stipulates that entry into and exit from the country can only take place at specified border crossings, upon presentation of a passport or other travel document with the appropriate visa (articles 4 and 5). According to article 7, a visa is required except for nationals of states that have concluded bilateral agreements with Tunisia (some exceptions apply).

With respect to residency conditions, a temporary (one-year) residency card may be issued to foreigners who have been in the country for three consecutive months or six non-consecutive months during a one-year period (articles 9 and 10). A residency card valid for more than one year may be issued by special permission of the Interior Ministry (article 10).

The decree of 20 April 1992 allows the Interior Minister, in exceptional circumstances, to issue a temporary residency visa valid for two years for particular foreigners or groups of foreigners, and a renewable five-year visa for foreign investors.

A visa and a regular residency card may be issued to foreign nationals who have lived legally in Tunisia for five consecutive years, to foreign women married to Tunisian men, to foreigners with Tunisian children, to foreign nationals who have rendered notable services to Tunisia and to foreign nationals born in Tunisia who have lived in the country without interruption (article 13). The period of validity of the regular residency card is two years and is renewable (article 36 of the decree of 22 June 1968).

In either situation – temporary or regular residency – the government has discretionary powers and no appeal process is available to foreigners who have been denied a permit. However, a right to remedy against abuse of power is available in the administrative court under general law, according to the provisions of Law 72-40 (1 June 1972) pertaining to the administrative court.⁵⁶

Actual practices in this area are not controlled by the legislation. In cases of administrative abuses, a foreign national is unlikely to attempt to oppose the authorities for fear they might expel him or her. In any event, the slow pace of justice before January 2011 and the lack of judicial independence were such that the eventual cancellation of a decision by the administrative authorities had no effect in practice.

The law also requires residents providing accommodation to a foreigner under any arrangement, even if it is at no cost, to give their address to the police or the national guard. This obligation also applies to those in the accommodation industry (article 21 and 22), with criminal penalties awaiting violators (article 28).

⁵⁶ JORT, 1972, No. 23 (2 June), p. 743.

Foreign nationals who move must give prior notice to police, at least three days before, indicating both the former address and the new one.

These laws provide for penalties for those who do not comply with entry and residency conditions (see section B.2).

Instructions were issued at the beginning of the revolution to suspend the application of the 2004 law until it could be amended to reflect a concern for respect of basic human rights. Following the shipwrecks and disappearances at sea that caused the deaths of many illegal Tunisian migrants in early September 2012, the Ministry of Justice announced in a press release that it was considering the adoption of a law specifically aimed at controlling illegal migration in order to better combat migrant smuggling and human trafficking networks (Tunis Afrique Presse, 15 September 2012).

Is there a government ministry or agency in charge of migration issues?

Yes

A state secretariat for migration and Tunisians abroad (*Secrétariat d'Etat à la migration et aux Tunisiens à l'étranger*, or SEMTE) was established in December 2011 under the aegis of the Ministry of Social Affairs. It is the first time that a government body (ministry or agency) is mandated to focus its attention on migration issues.

Before the fall of the previous regime, migration in Tunisia was seen primarily as involving the emigration of Tunisians to other countries, as suggested by the name of the only official agency openly dealing with this matter, the Tunisians Abroad Office (*Office des Tunisiens à l'étranger*, or OTE), established in 1988.⁵⁷ OTE is still under the authority of the Ministry of Social Affairs and still does not deal, at least officially, with the question of immigrants in the country. The mandate of SEMTE seems to adopt a similar approach.

Since migration policy is also primarily concerned with combating illegal migration, it is the Interior Ministry, especially its border division, that is the most important government entity in this area.

⁵⁷ It should be pointed out in this regard that Tunisia and Italy have worked together to promote legal migration by adjusting Tunisian labour supply to the needs of the Italian labour market, in an effort to offer an alternative to illegal migration. In the same spirit, an agreement on immigration was signed with France on 28 April 2008 to provide for joint management of migration flows, facilitate the access of high-skilled Tunisian workers and others in occupations for which demand in France cannot be met, and increase the number of visas. The agreement is also concerned with fighting illegal immigration. The impact of these agreements has yet to be assessed, however.

Tunisia's migration experience in 2011 was unprecedented. It proved to be a test of the capacity of the people and the government to welcome and manage with a reasonable degree of efficiency successive waves of incoming and outgoing migrants and refugees. Initially, immediately following the collapse of the former regime, they had to deal with the irregular departure of approximately 40,000 young Tunisians attempting to reach Italy. Thanks to the assistance and efforts of the community and of international organisations, they then proceeded to host hundreds of thousands of foreigners (workers, refugees and asylum seekers) who were fleeing the war in Libya soon after it began in February 2011, followed a few weeks later by similar numbers of Libyan refugees - an exodus that lasted several months.

Even today, Tunisia is again facing a recurring problem - namely, illegal departures of dozens of boats carrying young people, women, minors and even families, mostly Tunisian, many of whom perish at sea and never reach the Italian island of Lampedusa, even though it is so close.

These experiences and these tragedies are a measure of the challenges and the stakes facing Tunisia now, demonstrating that there is a need for a national debate on the principles, priorities and goals that should guide the development of a migration policy based on good governance on migration issues.

Do other bodies contribute to the implementation of security measures (customs, gendarmerie, police, armed forces, etc.)?

Yes

Please indicate the relevant contacts:

In addition to the Interior Ministry, several government ministries deal with issues affecting various aspects of migrations:^{58,59}

- Ministry of National Defence (because Tunisia has been under a state of emergency since 14 January 2011);
- Ministry of Social Affairs;
- Ministry of Employment and Occupational Training;
- Ministry of Human Rights and Transitional Justice;
- Ministry of Investment and International Cooperation;
- Ministry of Regional Development and Planning;
- Ministry of Women's Affairs;
- Ministry of Youth and Sport;
- Ministry of Culture;

⁵⁸ List from the website of the Tunisian government: www.ministeres.tn.

⁵⁹ See Ben Cheikh and Chekir (2006).

- Ministry of Education;
- Ministry of Higher Learning and Scientific Research;
- Ministry of Transport;
- Ministry of Tourism;
- Ministry of Commerce and Craftworks;
- Ministry of Health.

Are official statistics on the number of migrants in the country available?

Yes, but they are insufficiently detailed, incomplete and outdated.

Please give details on the sources of the information and on the compilation method:

The National Institute of Statistics (INS), the government's statistical service, produces, processes and distributes general statistical data as well as data on migration, in particular through the General Population and Housing Census (RPGH), which is conducted every 10 years.⁶⁰ The last census took place in 2004.

Please provide data (if possible, the total number of migrants, breakdowns by nationality, gender and age):

Foreign nationals present in Tunisia

Nationality	Number in 2004	%
Algerian	9,610	27.3
Moroccan	6,363	18.1
Libyan	1,725	4.9
Egyptian	676	1.9
Palestinian	652	1.9
Other Arab	2,164	6.1
Ivoirian	609	1.7 ^a
Other African	2,408	6.8 ^b
Asian	430	
French	4,612	13.1
Italian	1,560	4.4

⁶⁰ www.ins.nat.tn.

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German	1,000	2.8
Other European	2,495	7.1
Other nationalities	878	2.5
TOTAL	35,200	100

Source: *Data from the 2004 census, published in Bel Hadj Zekri (2009).*

- a The increase in the number of Ivoirians was due to the transfer of the African Development Bank headquarters from Abidjan to Tunis at the time of the crisis in Ivory Coast.
- b This number includes nationals from Senegal (360), Mali (222), Niger (129), Nigeria (117), Burkina Faso (86), Chad (63), etc.

Legal migrants in Tunisia are mainly from other Maghreb countries. Algerians tend to be concentrated in construction and vehicle maintenance, while Moroccans are found mainly in gardening, crafts and sewing.

Africans residents in Tunisia are there on a temporary legal basis (e.g. students,⁶¹ athletes) or have remained illegally after exhausting their legal residency. However, comprehensive data on the movements and presence of Africans are lacking.

The tourism industry employs workers from the Maghreb and sub-Saharan Africa, many of whom do not have the proper authorisations because of the difficulty in obtaining working permits.

The 2004 census contained a limited module on emigration, focusing on departures for foreign countries and returns from foreign countries between 1999 and 2004. The module contained nine questions dealing with the following:

- number of migrants in the household;
- their identity;
- family relationship with the head of household interviewed;
- gender;
- age;
- year of emigration;
- main reason for leaving;
- current country of residence.

The results based on the data extracted from this module showed the limitations of the census. The data must be used with caution because they come from households in which members have emigrated while other members remained behind in Tunisia. They do not include cases where entire families have emigrated. Nor do the data

⁶¹ The number of African students registered in Tunisian universities, especially private ones, has been growing.

make it possible to distinguish between those who emigrated legally (family reunification, studies, technical cooperation, etc.) and those who left under irregular circumstances. Over the five-year period (1999-2004), 75,000 people left while 22,000 returned, leading to a negative balance of 53,000 individuals. During this same period, the Tunisian community abroad grew by 200,000 persons. Even if one takes natural growth of this population into consideration, the INS data would be equal to only half the assumed flows.

The INS also publishes the yearly *Annuaire statistique de la Tunisie*, a compendium of data provided by the different government departments. The set of data on movements of people at the border (entitled "Tourism and communication") is reliable and informative. It makes it possible to measure net migration flows of resident and non-resident Tunisians, as well as foreigners.

Are other statistical data available (estimates, etc.)? Yes

Specify the sources of the information and the compilation method:

The Tunisians Abroad Office publishes a database of Tunisian residents in foreign countries (*Banque de données des Tunisiens résidant à l'étranger*, or TRE). The data are obtained from Tunisian diplomatic representations abroad (embassies, general consulates and consulates). They reveal a detailed portrait of the Tunisian community abroad divided into several categories (country of residence, gender, age group, occupation, education level, unemployment, demographic trends, etc.).

Please provide data:

With 1.2 million Tunisian residents abroad in 2011⁶² – equivalent to 11 percent of the country's resident population – Tunisia remains one of the main departure countries in the Euro-Maghreb region.

The number of TRE has grown from 321,000 in 1977 to 437,000 in 1987, 845,000 in 2004, 1,058,000 in 2008 and 1.2 million at the end of 2011. The average increase grew from approximately 11,600 per year during the 1977-87 period, to 24,000 per year over the period 1987-2004, to 53,000 over the period 2004-08, then to approximately 60,000 between 2008 and 2012 (TRE, 2011).

The 1.2 million figure recorded at the end of 2011 implies average growth of the number of TRE that is equal to 3.7 percent per year over the past decade – a rate three times greater than the rate of demographic growth of the resident

⁶² Consular Affairs Branch of the Foreign Ministry and Tunisians Abroad Office.

population in Tunisia during the same period, which was only 1.2 percent annually. This strong increase is due not only to the natural increase in the TRE population but, to a much greater extent, to the influx in foreign countries of growing numbers of Tunisian emigrants (students, families, illegal migrants).

Among TREs, 82.6 percent live in European countries, and half of those are in France, which remains the principal host country for the Tunisian community abroad, with 58.3 percent. Coming far behind are Italy (13.4 percent), Libya (7.9 percent) and Germany (7.8 percent).

The number of Tunisians living in Italy has grown steadily since the 1990s, reaching 140,000 individuals in 2008. This group is composed mainly of unaccompanied workers: family emigration to Italy remains modest.

Over the past 30 years, Tunisian emigrants seem to have diversified somewhat their countries of destination, with slightly greater numbers going to the Gulf region (Saudi Arabia, the United Arab Emirates and Qatar, in particular) and to North America (Canada and the United States).

The emergence of the United States and Canada as new destination countries since 1985 is noteworthy. Tunisians emigrating to those countries are mainly young people with more advanced education and training, or students seeking better training or working conditions.

Tunisians residing in Arab countries represent only 13.2 percent of the total number of emigrants – a proportion that has been declining steadily in recent years. This decline has mainly been felt in Algeria and in some of the Gulf states.

Other comments

According to a 2006 study for the ILO, encompassing Morocco, Algeria and Tunisia, there are multiple sources of data on international migrations in those countries, but there is no consistent approach for gathering, processing, analysing and distributing the data.⁶³ The data on legal migrations are the most widely mined by researchers. The data on foreign nationals residing in the three countries, on the other hand, are used mainly for security purposes and are generally not made public. Similarly, data on foreign workers are often incomplete. In the case of both emigration and immigration, illegal situations are kept under cover. Data on illegal migrants are non-existent by definition. It is only when individual migrants are questioned or arrested by law enforcement that some information can be obtained on this category of migrants, but it remains ambiguous and incomplete.

⁶³ Musette et al. (2006).

B.2. Illegal Entry, Exit and Stay (undocumented)

Are there laws providing for penalties for illegal entry, exit or residency in Tunisia?

Yes

Laws that spell out the conditions governing the entry, exist and residency of foreign nationals (see above) also provide for penalties for those who fail to comply with those conditions.⁶⁴

Please provide the relevant references and describe the nature of the sanctions:

Law 1968-7 (8 March 1968) on the status of foreign nationals in Tunisia provides for penalties (imprisonment and fines in articles 23 to 28) for those who fail to comply with the conditions set for entry and exit, with visa and residency permit regulations or with the period of validity of these documents, as well as for those who present forged documents, or who provide false information.

In addition, Law 1975-40 (14 May 1975) on passports and travel documents, as amended and augmented by Law 1998-77 (2 November 1998), Law 2004-6 (3 February 2004) and Law 1008-13 (18 February 2008), contains sanctions for Tunisians who leave the country without travel documents and non-Tunisians entering Tunisia illegally. In particular, Law 2004-6 (3 February 2004) focuses on illegal emigration and immigration, as well as transit migration. The aim is to fight illegal migration from different angles, in particular by penalising those who make it possible (individuals, businesses, etc.).

Generally speaking (see details below), Law 2004-6 (3 February 2004) has increased penalties in cases of actual or attempted illegal migration. Articles 38 to 54 (a total of 17 articles) deal with sanctions, whereas in the original 1975 legislation, there was only one such provision (article 35), concerning only Tunisians. The new law is aimed at several different potential offenders in the context of illegal migration and makes no distinction between Tunisian and foreign migrants in this respect. Offences under the law are defined very broadly and penalties are very heavy, varying between 3 and 20 years' imprisonment along with fines varying between TND 8,000 and TND 100,000. These penalties are doubled in the case of second offenders.

The very broad definition of offences not only contradicts the principle of the legality of offences and penalties, which requires that offences be defined in precise

⁶⁴ There are also other laws, in particular those concerned with transportation (by air, by sea or overland).

terms, but it also places those migrants defined as illegal in a situation where their basic human rights will be violated. The law criminalises mutual assistance between irregular migrants as well as any support given to them by Tunisians.

It must be pointed out, however, that the fate of this law is uncertain. While, as pointed out previously, its application has been suspended, recent events have prompted some people to demand that the law be used against human smugglers and trafficking networks, in particular. The recent tragedy that took the lives of nearly 100 young Tunisians on the night of 6-7 September 2012 has led to even louder voices being heard in support of a return to strict enforcement of the provisions of this law.

What sanctions or measures exist against unauthorised entry or exit?

Article 33 of Law 1975-40, amended by the law of 3 February 2004 stipulates that “subject to reciprocal agreements and special treaties, any foreign national wishing to be admitted into Tunisia must have a passport or another official, valid travel document.”

“Such travel document must have an entry visa issued by a diplomatic or consular mission of Tunisia, subject to reciprocal agreements or special treaties.”

Article 34 states that “travellers wishing to enter or leave Tunisia must do so through one of the border crossings that have been specifically established for that purpose and are included on a list established by joint decision of the Interior Ministry and the Finance Ministry.”

“Any Tunisian national who does not comply with these provisions may be penalised as provided for in article 35 of the present law.” Article 35 provides for prison sentences ranging between 15 days and six months and/or fines ranging between TND 30 and TND 120; these are doubled in cases of recidivism.

Discretionary powers in relation to expulsion and detention:

Several legislative provisions provide for the expulsion of foreign nationals who are in breach of the laws. Article 34 of Law 75-40 stipulates that “subject to the application of international conventions in effect, and in particular of the 1951 Geneva Convention on the status of refugees, anyone who is not a Tunisian national and who has failed to comply with the provisions of the present law will, upon action by the police authorities, be expelled from Tunisia’s territory, without prejudice to the penalties provided for in paragraph 1 of article 23 of Law 1968-7 of 8 March 1968.” Article 23(1) sets prison sentences of one month to one year and fines of between TND 6 and TND 120 for non-compliance by a foreign national with the rules governing entry or exit.

Article 50(1) stipulates that “any foreign national found guilty of the offences described in the present chapter must be expelled from the Tunisian territory as soon as he has served his sentence.”⁶⁵ In addition, article 18 of Law 1968-7 stipulates that “the secretary of state of the interior may issue an expulsion order against any foreign national whose presence in Tunisia represents a threat to law and order.” Given that law and order is a legally vague concept, any attempt to appeal an arbitrary expulsion order would be a difficult task.

Before the January 2011 revolution, the expressions “holding centre” (“*centre d’attente*”), “detention centre” (“*centre de détention*” and “*centre de rétention*”) and even “hosting centre” (“*centre d’accueil*”) were used without anyone having a clear idea of what they referred to or being able to seek more information on the ground.⁶⁶ The ICRC, which was the only international organisation with access to all prisons and detention facilities in Tunisia between 2005 and 2011 as part of a confidential, bilateral dialogue with the government, acknowledges that it visited, at the same time as other vulnerable persons, foreign nationals held in prison for regular offences (a category that encompassed violations of the legislation on the entry, exit and residency of foreign nationals) as well as in “detention centres” – evidence that such facilities existed. The ICRC was unable to specify the number of these facilities (“spread across the country”), the number and type of people kept in them (“significant degree of turnover”), the duration of the stays (“brief”), etc.⁶⁷

A project funded by the European Commission (as part of the AENEAS 2004 programme) was initially intended, in partnership with IOM and the Tunisian Interior Ministry, to improve conditions in these facilities. However, this focus was later abandoned and the project shifted to awareness-raising on legal migration and development - this time in partnership with the Ministry of Social Affairs. This development demonstrates once again the authorities’ refusal to acknowledge the existence of illegal migration in Tunisia before January 2011.

⁶⁵ In other words, this provision sets out a double penalty.

⁶⁶ Reports by an Algerian newspaper (El Watan, 4 July 2009) that there were 11 secret camps in Tunisia where Algerian harragas were being kept were not documented by the ICRC and could not be verified on the ground.

⁶⁷ LTDH (Tunisian Human Rights League) has expressed concern about Tunisians who have been sent back to Tunisia from Europe and are serving prison sentences under Tunisian law. Under the bilateral readmission agreement signed by Italy and Tunisia on 9 August 1998, Tunisia must readmit Tunisians and any others who are not nationals of UMA member countries if it is established that they reached Italy by transiting through Tunisia or after residing in Tunisia. As this agreement was implemented in virtual secrecy, there are legitimate questions about the actual readmission procedures and the treatment received by those who have been readmitted. The issue of “diplomatic assurances” given under sometimes informal bilateral agreements between EU states and third countries was examined in a recent report by Amnesty International titled *Dangerous Deals*. Using the example of a Tunisian man expelled from Italy back to Tunisia in June 2008, the report showed that these agreements circumvent international treaties banning torture.

Procedure governing expulsion decisions:

Article 50 (mentioned above) provides for expulsion but there are no legal provisions describing the procedure to be followed or any guarantees to be given to foreign nationals subject to expulsion. There is no legislation on escorting people to the border.

If an expulsion order is issued, does the law make provision for any appeal procedure?

Given the absence of any law on escorting expelled foreign nationals to the border, there are no specific procedures in place for expulsion. It is possible to launch an appeal against an expulsion order in the administrative court on the grounds of abuse of power.⁶⁸ In practice, however, this possibility has never been resorted to by foreign nationals targeted by an expulsion order.

Ban on returning to Tunisia:

Article 50(2) provides that “a foreign national found guilty under this law is banned from entering Tunisia for 10 years if the sentence concerns a general offence. This ban is unlimited if the sentence concerns an offence under the present chapter.”

At the same time, article 49 stipulates that “the court may impose administrative monitoring or banishment from specified places, for a maximum of five years, against Tunisian nationals who have committed offences under the present chapter.”

Does the law provide for exemptions from such penalties for particular categories of migrants?

On the subject of entry into and exit from Tunisia, article 33 of the law stipulates that “subject to reciprocity agreements or special agreements, any foreign national wishing to enter Tunisia must have a valid passport or other official travel document.”

Such travel document must have an entry visa issued by a diplomatic or consular mission of Tunisia, subject to reciprocity agreements or special treaties.”

Similarly, article 34 provides for the expulsion of foreign nationals who enter Tunisian territory at points other than officially designated border crossings, “subject to the application of international treaties in effect, in particular the 1951 Geneva Convention on the status of refugees.”

⁶⁸ As a rule, the Tunisian bureaucracy enjoys absolute discretionary powers in enforcing the laws pertaining to the entry and residency of foreign nationals. If a residency permit is denied, the foreigner has no special right of appeal and enjoys no guarantee against arbitrary expulsion.

In addition to all this, there are exemptions for organisers who report untoward activities to the authorities. Under article 46 of Law 1975-40 as amended, “any member of an organisation or any participant in an agreement who takes the initiative of reporting to the authorities... information that leads to uncovering offences described in this chapter before they occur, to preventing their occurrence, to limiting their repercussions, or to the discovery or arrest of some or all of the perpetrators, will be exempt from the penalties provided for in the present law.”

Are there sanctions penalising those who provide assistance (shelter, transportation, etc.) to migrants who have entered or reside in Tunisia illegally? Yes

Please describe these sanctions:

The law of 3 February 2004 amending the law of 14 May 1975 is not aimed only at smugglers⁶⁹ or network organisers⁷⁰ or even the leaders and agents of legal entities.⁷¹ Article 38 of the law of 1975 as amended provides for 3 years in prison and a fine of TND 8,000 for “anyone who has provided information towards, prepared, facilitated or assisted, or has been involved in or has organised in any fashion whatsoever, even on a volunteer basis, the illegal entry into or exit from Tunisia of an individual by land, by sea or by air, either at points of entry and exit or at other points.”

Article 39 provides for 4 years’ imprisonment and a fine of TND 10,000 for “anyone who has sheltered persons entering or leaving Tunisia illegally, or the perpetrators of the offences described in this chapter, or has provided them with accommodation, or has hidden them or worked to ensure their escape or prevent their discovery or their punishment. Anyone providing them with any type of transportation will be subject to the same penalties.”

In addition, article 45 provides for 3 months’ imprisonment and a fine of TND 500 for “anyone who, even if covered by the obligation of professional secrecy, fails immediately to report to the proper authorities information or activities that

⁶⁹ Article 40 (of the law of 14 May 1975 as amended) provides for 5 years’ imprisonment and a fine of TND 12,000 for “anyone who has knowingly transported one or several persons in order to allow them to enter or leave Tunisia illegally by any means whatsoever.”

⁷⁰ Article 41, which provides for 6 years’ imprisonment and a fine of TND 20,000, stipulates that “an agreement or organisation is deemed to exist through a simple decision, coordination and resolution between two or several persons,” making it a crime to take part in, lead, or be a member of organisations or agreements formed within or outside in Tunisia with a view to preparing or committing these offences.

⁷¹ The penalties apply to the leaders and agents of legal entities if their personal liability can be established. A legal entity is subject to a fine of TND 60,000 if it is established that it has profited from the offence (article 51).

have come to his attention regarding the performance of an offence described in the present chapter.⁷² The forebears, descendants, brothers and sisters, and spouse of the person are exempted from the provisions described in the foregoing paragraph.”

B.3. Rights of Migrant Workers

Are there laws protecting the rights of migrant workers?

The employment of foreign workers is regulated by articles 258-269 of the Labour Code.⁷³ Article 263 of the code stipulates that foreign workers enjoy the same rights as Tunisian workers.

Explain

According to the ILO,⁷⁴ the goal of Tunisia’s immigration policy is to meet the needs of Tunisian businesses and foreign businesses operating in Tunisia for workers with qualifications or specialised skills that are lacking on the domestic labour market. The fact that the legal status of migrants in Tunisia is based mainly on political, economic and social considerations has implications for their enjoyment of basic rights. The vulnerability of the foreign worker is made greater by the fact that, in addition to being a foreigner, he is in an uneven working relationship.

Provide details on the relevant laws, including dates of adoption and scope:⁷⁵

According to article 7 of the Labour Code (as amended by Law 1996-62 of 15 July 1996), the employment of foreign workers is regulated by the provisions governing the entry, residency and work of foreign nationals in Tunisia. In other words, the employment of foreign nationals falls under Law 1968-7 (8 March 1968) on the status of foreign nationals as well as other laws dealing with specific categories of foreigners (such as articles 258-269 of the Labour Code). In addition to general regulations on the access of foreign nationals to Tunisia, there are restrictions on access to the labour market.

⁷² For example, a foreign national who is in Tunisia illegally cannot be treated by a physician or defended by a lawyer, not only by law but also, in large measure, de facto as well.

⁷³ The Labour Code was enacted by Law 66-27 (30 April 1966); see JORT, No. 21, 10 May 1966, p. 758.

⁷⁴ See ILO (2005). The ILO document is based on information provided by the Ministry of Interior and Local Development, the Ministry of Employment and the Tunisians Abroad Office in response to the ILO survey on migrations conducted in 2003. According to that response, the government intended to examine closely ILO Conventions 97 and 147 with a view to making a decision on their ratification. As of December 2012, however, the two conventions had yet to be ratified.

⁷⁵ The discussion that follows is largely based on Hakim (2007).

All foreign nationals seeking paid work in Tunisia must have an employment contract and a residency card indicating that they are authorised to work for pay in Tunisia.

The employment contract of foreign workers is for a specified duration and subject to restrictions on renewal. Contrary to the employment contracts of Tunisian workers, which are simply based on a mutual agreement, the contract of a foreign worker must be in writing and follow a pre-established model. It must also include some mandatory details, such as the economic sector and the region in which the worker will be employed, thus setting down his occupational and geographic parameters (articles 259 and 262 of the Labour Code). Thanks to these formal requirements, the employment contract is one of the favourite tools used to control and monitor foreign nationals in the domestic labour market. As the foreign worker is attached to a specific employer in a specific occupation for the duration of the contract, the authorities can easily exert that control if needed.

Other details are available in ILO (2005).

In addition, a work permit is a prerequisite for the hiring of a foreign worker. According to article 8 of Law 1968-7 (8 March 1968) on the status of foreign nationals, no foreigner may practice an occupation or work for compensation in Tunisia unless he is authorised to do so by the relevant secretary of state. Such authorisation takes the form of a visa placed on the employment contract and is also required for the renewal of the contract. The authorisation must be placed on the worker's residency card. It is granted provided that various conditions are met, such as the legal status of the worker in Tunisia and the absence in the country of the skills brought by the worker in the relevant economic sector (article 258(2) of the Labour Code).⁷⁶ The legislation does not spell out a specific procedure to be followed in granting work authorisations, which results in a protracted process and gives the bureaucracy a significant degree of power.

Any employer who has hired a foreign worker must enter details about the worker in a special registry within 48 hours (article 261 of the Labour Code). Thus the legislation gives the employer a role in the exercise of control over foreign

⁷⁶ A number of considerations may impose restrictions on the hiring of foreign workers. For example, preferential treatment is given to workers from countries of the Arab Maghreb Union (UMA) and workers who are nationals of countries with which Tunisia has signed bilateral agreements on labour and social security (some European countries and others in the Gulf region). In addition to the 1989 multilateral convention (which established the UMA but was not implemented), Tunisia has signed a number of bilateral treaties with its Maghreb neighbours (Libya, Algeria and Morocco). With respect to the Tunisia-Morocco treaty of 1973, which confers "national treatment" to Moroccan workers on the labour market, the Cour de cassation (court of appeal) deems that this principle is valid only if workers meet the requirements set out in the Labour Code and other regulations dealing with the employment of foreign workers. This means that Moroccan workers in Tunisia are subject to ordinary law under articles 258ff of the Labour Code (Cour de cassation, Civil Chamber, judgment no. 71841.99, 8 October 1999 [unpublished]; reaffirmed in judgment no. 6587 of the Cour de cassation, 7 February 2005 [unpublished]).

workers. The employer must also inform the minister responsible for employment of the departure of any foreign workers employer in his business (article 262 of the Labour Code).

Non-compliance with these requirements attached to the employment contract and the work permit results in the contract being declared null and void. This outcome is not explicitly provided for in the legislation but is a product of jurisprudence.⁷⁷

According to article 263 of the Labour Code, “foreign workers enjoy the same rights and are subject to the same obligations attached to labour relations as are applicable to Tunisian workers.”

In principle, migrant workers with legal status (whether as permanent residents or temporary workers) are supposed to benefit, on an equal footing with domestic workers, from such measures as employment and compensation terms, leave, minimum working age, apprenticeship, occupational training, as well as employment security and occupational health and safety. They are also supposed to have the right to join a labour union and to benefit from the outcome of collective agreements. They have the right to send their children to schools in the public system and enjoy the same rights as Tunisians in matters of social security. And finally they are supposed to have access to the justice system in a language they understand.

In practice, however, implementing equality of treatment between foreign and Tunisian workers is not easy. First, the foreign worker who is the victim of discrimination does not have access to provisions specifically enabling him to win his case in a court of law without being the target of reprisals by his employer. Second, discrimination raises problems related to the burden of proof: the foreign worker must submit evidence of discrimination, which is difficult to do. And finally, there is no specific civil or criminal penalty attached to violations of article 263 of the Labour Code.

Do these laws also protect illegal migrants?

No

Explain

Tunisian legislation does not address the issue of illegal migrants and does not, contrary to the 1990 Convention, recognise human rights for migrants but treats them as foreign nationals subject to strict conditions regulating entry, residency, work,

⁷⁷ For example, the Cour de cassation revoked the employment contract of a foreign worker who had obtained a visa from the Employment Minister, on the grounds that his residency card did not have the work authorisation, as required by articles 258 and 259 of the Labour Code (Cour de cassation, Civil Chamber, judgment no. 59828, 2 February 1998, published in the Bulletin civil de la Cour de cassation, 1998, p. 98). Unlike in ordinary law, the nullity of a foreign worker’s employment contract is absolute and a matter of public policy, resulting in the non-application of basic labour rights. In this case, the foreign worker was unable to receive any compensation for abusive termination of employment.

and social security. Foreign workers who (in theory) enjoy the same rights and are subject to the same obligations as Tunisian workers are those who have an employment contract and a residency permit authorising them to work in Tunisia. These rights are available only to those with legal status. Workers without legal status, on the other hand, have no rights.⁷⁸

Articles 264-269 of the Labour Code contain penalties for foreign workers and their employers as a means of discouraging them from engaging in illegal work relationships. While the employer will only face monetary penalties (fines), the foreign worker who is illegally employed may face criminal penalties (fine and prison) as well as administrative sanctions (expulsion).

According to the ILO,⁷⁹ migrant workers who are employed illegally enjoy protection against sexual, ethnic or racial harassment, but they are not protected by laws governing the minimum working age, access to justice, forced labour and the prevention of occupational hazards and illnesses. They also do not have union rights.

Are these laws in compliance with the Convention on the Rights of Migrant Workers? Are the rights of migrant workers adequately protected by domestic legislation? No

Explain

Tunisia has a weak record with respect to the ratification of international and regional instruments designed to protect migrants.

Tunisia has ratified none of the ILO conventions on migrant workers (see above), nor has it ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (see comments above).

At the regional level, Tunisia has not ratified the ILO conventions aimed at protecting Arab workers in another Arab country. This low level of approval is reflected in the inadequate level of legislation protecting migrant workers.

Other comments

As mentioned in section C.1 (Presence and Activities of Civil Society), while UGTT, the main labour union in Tunisia, has long been concerned with the situation of

⁷⁸ See Ben Cheikh and Chekir (2008).

⁷⁹ See ILO (2005).

Tunisian migrant workers abroad and their situation after they return to Tunisia, it is only recently (2007) that it has begun to show concern for the issue of foreign migrant workers. This awareness has been growing concurrently with the on-going transformation of Tunisia from a country of emigration to a country of transit and immigration.

According to the ILO,⁸⁰ there is a procedure in place to regularise the situation through a board composed of members from several ministries. The following conditions are deemed sufficient to warrant the regularisation of illegal migrant workers: adequate employment; length of residency in the country; absence of a criminal record; social-benefit coverage during the period of illegal residency; being born in Tunisia; being born of a Tunisian woman; being married with a Tunisian. These are very narrow conditions; in the absence of data, it is difficult to say whether this process is followed in practice and whether it remains a theoretical possibility.

B.4. Role of the IOM

Are there IOM offices in the country? Yes

Please provide details and the date of inception of IOM activities:

There is an IOM office in Tunis which began operations in 2001:

OIM
 Résidence Tej El Bouhaira
 Appartement n° 5, 2eme étage
 Bloc Emeraude, Rue du Lac Malaren
 BP 77 Les Berges du Lac, 1053 Tunis
 Tel.: + 216 71 860 312
<http://www.iom-tunisie.org>

Does the IOM have legal status in the country (headquarters agreement, etc.)? Yes

Provide details on the type of agreement:

The IOM signed a headquarters agreement with the Ministry of Social Affairs, solidarity and Tunisians Abroad (MASSTE) in 2001. The Tunis office was the first IOM mission in the Maghreb.

⁸⁰ ILO (2005).

Is IOM personnel allowed to move freely in the country? Yes

Is the IOM allowed to visit migrant camps?

The only known (and acknowledged) camp is the camp for refugees and asylum seekers located at Shousha on the border with Libya. There are no camps for migrants in the legal sense. The only detention facility for illegal migrants is at El Ouardia (a southern suburb of Tunis), but it is not designated as a camp.

Neither international organisations nor even prison visitors are allowed to visit or assist migrants detained in this centre.

Is the IOM allowed to visit detention centres for migrants? No

The IOM does not have access to migrants in detention in Tunisia because there has been no request for such a visit from the Tunisian government. The IOM intervenes in response to requests from governments, and this matter is not part of the agreement signed with the Tunisian authorities. The issue of illegal migration is also not part of the agreement because the IOM is exclusively concerned with legal migration.

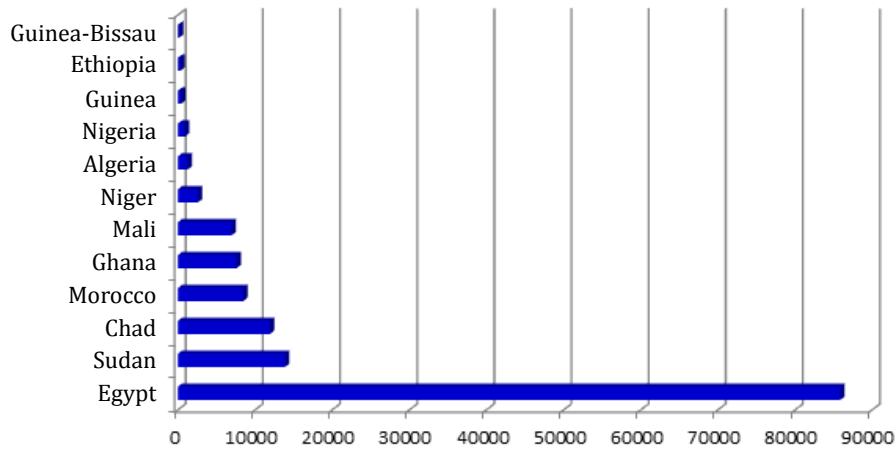
What are the different types of assistance offered by the IOM? By what means is the assistance delivered (local partners, procedures, etc.)?

Before 2011, the IOM's assistance was provided on a case-by-case basis. The assistance consisted in helping to obtain travel documents and organise the travel itself in the context of two types of programmes: voluntary return, and relocation (especially to Canada, the United States and Australia, in cooperation with UNHCR).

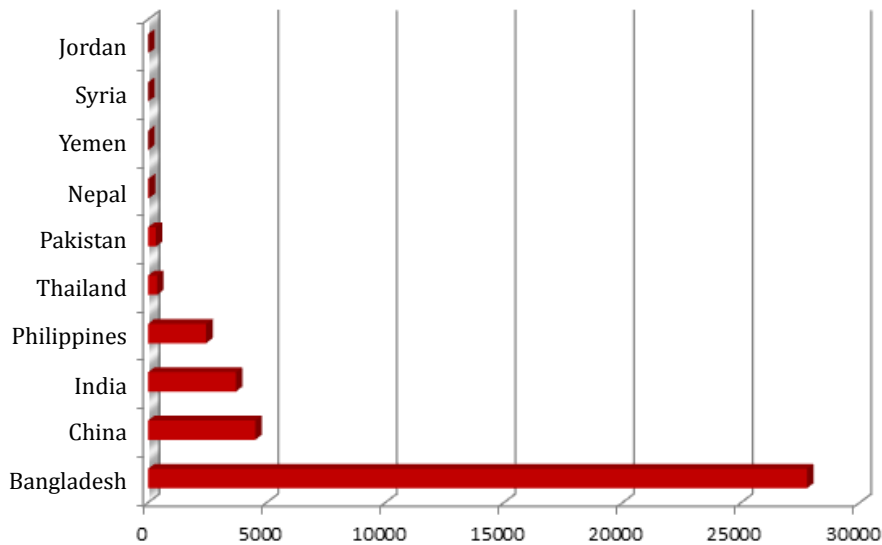
With the outbreak of war in Libya in February 2011, however, the IOM became the linchpin of relief and assistance operations aimed at foreign migrant workers and refugees who poured from Libya immediately after the beginning of hostilities.

The IOM coordinated welcoming services and then repatriation for more than 400,000 nationals of third countries. More than 80,000 refugees and exiles benefited from the medical services offered during this major migration crisis.

Number of african migrants who arrived in Tunisia and were repatriated in two months (March-April 2011). IOM 2011.



Number of asian migrants who arrived in Tunisia and were repatriated in two months (March-April 2011). IOM 2011.



The IOM also helped to coordinate the logistics for the relocation of more than 800 refugees between March and December 2011. It has continued to offer this type of assistance in 2012, with plans to relocate 2,400 refugees.

Before the political changes that took place in 2011, the number of migrant repatriations and refugee relocations carried out by the IOM was very small (20 operations en 2009).

Does the IOM organise voluntary-return operations from the country under study?

Yes

Specify the number of persons returned, by country, for the past five years if possible:

As noted above, before 14 January 2012 the number of persons repatriated or relocated by the IOM in Tunisia was between 20 and 30 per year. Following the beginning of the conflict in Libya, the IOM organised the return of more than 400,000 people from third countries. See above for the number of persons per country of destination.

The assistance provided for voluntary returns includes a portion for reintegration upon return.

Other comments

Except in times of crisis, IOM activities are limited to the implementation of a large number of technical assistance programmes and a few pilot projects in areas such as co-development, labour migration and support for dialogues on migrations.

The following are examples of such projects (IOM, 2012):

- Dialogue on Migration in the Western Mediterranean;
- Engaging the Tunisian Youth to Achieve the Millennium Development Goals (Youth, Employment and Migration);
- Study on the contribution of Tunisians living abroad to the economic and social development of Tunisia (TIDO);
- Joint UN programme of support to the national response to AIDS 2009-2011;
- Integrated programme on migration and development in Tunisia;
- Programme to Promote the Development of Out-Migration Areas in Tunisia ("Migration and Microcredit" project);
- Systems reconciliation for the joint management of migrations;
- Institutional Strengthening of Migration Management Capacities of Tunisian Trainers for a Better Socio-professional Integration of Tunisian Emigration Candidates;
- Stabilizing At-risk Communities and Enhancing Migration Management to Enable Smooth Transitions in Egypt, Tunisia and Libya;
- Labour market information systems and labour migration.

C. Civil Society Organisations

C.1. Presence and Activities

Please list civil society organisations of all types that are active in the areas of migration and asylum (as all are active in both areas). Please provide a brief description of their activities and main priorities.

There were no civil society organisations specialising in migration and asylum in Tunisia before 14 January 2011, nor were there any migrant organisations.

Since January 2011, several groups specialised in migration and asylum have been established.

- **Tunis Centre for Migration and Asylum (CeTuMA):** This new non-governmental organisation with an academic bent has several goals:
 - » Developing a framework for discussing, making proposals and taking action in the areas and on the issues linked to migrations and asylum on the south shore of the Mediterranean in general and in the Maghreb in particular;
 - » Contributing to debates in the public arena and with institutional actors, with a focus on improving migration and asylum governance in the country;
 - » Launching awareness-raising and information campaigns aimed at local communities, on hosting and assisting migrants, refugees or asylum seekers who transit through Tunisia and the region or who decide to settle in the country, as well as on the protection of their rights and those of their families.

In partnership with the EMHRN and the Heinrich Boll Foundation, CeTuMA has organised international conferences on the rights of migrants and refugees, on freedom of movement in the Euro-Mediterranean region and on Tunisia's policies on migration.

- **Tunisian Forum on Economic and Social Rights (FTDES):** This organisation has been very active on two fronts:
 - » At the Shousha camp for refugees, FTDES has coordinated activities aimed at supporting and defending refugees and asylum seekers in the camp.

- » It has been active in defending the families of illegal Tunisian migrants who were lost at sea after the shipwrecks and accidents that took place in March 2011 and early September 2012.

With the support of civil society organisations in Tunisia and even in Europe, FTDES has been attempting to secure the agreement of the Tunisian government on establishing a board of enquiry on the shipwreck that took place during the night of 6-7 September off the Italian island of Lampedusa, in which between 90 and 100 migrants were reported missing (out of a total of 140-150 persons who were on the boat).

- **Association of Families Victim of Illegal Immigration (AFVIC) “HARQA”**

This group has not been able to develop independent activities in efforts to achieve its goals. It often takes part in activities carried out by FTDES.

Two other organisations have emerged but, as far as is known, have not launched any public activities: a Tunisian branch of **France Terre d’Asile** and the **Tunisian Migration and Asylum Council**.

Some organisations provide material assistance to migrants:

- **Caritas:** This is the social-service branch of the Church; it has no legal status in Tunisia and is only tolerated, although it has been in the country for 20 years. Its activities are conducted discreetly and, since it does not have a promotional leaflet, are mainly known by word of mouth. A pastor and a representative of the Catholic Church take care of refugees (in the broad sense). They greet migrants in their small premises in central Tunis. In February 2010, Caritas received about 50 persons each week.⁸¹ The organisation provides guidance and material assistance (clothing, food, in some cases an air ticket for the return trip).
- **Tunisian Red Crescent:** This is the operational partner of UNHCR in Tunisia: UNHCR used the Red Crescent’s office in downtown Tunis to receive refugees and asylum seekers and examine their asylum applications (registration, interviews). The Tunisian Red Crescent provides medical and social assistance to asylum seekers and refugees.

⁸¹ Some persons come for the first time, while others come for follow-up attention, and as a result the numbers are not an accurate indication of the flows of migrants. It does seem, however, that fewer new migrants have come to the Caritas office in recent months (when this information sheet was being finalised). The interviewee indicated that migrant flows were definitely greater between 2000 and 2005, but did not provide specific figures and stated they were persons in transit through Tunisia.

Other organisations try to incorporate migrants into their advocacy activities focused on human rights (LTDH) or the rights of workers (UGTT), or on raising awareness or providing training (IADH).

- **Tunisian Human Rights League (LTDH):** The league became interested in migration issues, especially after the emergence of illegal emigration. Its interest was displayed for the first time in a statement issued in 2002 following the death of illegal migrants. The position expressed in this statement, which highlighted the tragedies associated with illegal migrations and condemned the attitude of European countries and their decision to give priority to security concerns, has remained the LTDH position. The league also organised two seminars, including a large gathering in June 2003 devoted to new migrations and new issues in the Mediterranean, leading to the adoption of a series of recommendations.

LTDH was prevented from acting independently under the former regime, and was unable to undertake advocacy activities on this subject. However, its local branches attempted to tackle concrete cases by providing assistance to victims of migration.

- **General Union of Tunisian Workers (UGTT):** One of the goals adopted by this labour union is to be particularly attentive to the needs of migrant workers, especially Tunisian migrants faced with integration difficulties and neglect of their rights and their role in host countries. Since the 1970s, UGTT has been concerned with Tunisians abroad and those who have returned to Tunisia.

The analyses conducted by the union, in particular by its international relations department, are attempting to enlighten Tunisia's path towards being a transit and an immigration country. Since 2007, UGTT's annual conferences have included discussions associated with the new types of migration. UGTT's 2007 conference in Hammamet, which dealt with new trends in emigration in the Mediterranean region, addressed, among other things, issues linked to the emigration of sub-Saharan Africans and the policies of Maghreb countries as transit and immigration countries. The November 2008 conference, also held in Hammamet, was devoted to the causes and consequences of the brain drain from countries of the South. UGTT has now adopted a networking dynamic and its approach is based on statements, recommendations and a true action plan.

- **EMHRN** opened an office in Tunis in 2011, with migration as a full component of its mandate and activities. The Network's Rights of Migrants, Refugees and Asylum Seekers Working Group actively pursues a policy of supporting and assisting local NGOs in developing advocacy and awareness-raising activities

on the problems associated with the rights of migrants, refugees and asylum seekers.

- **Arab Institute for Human Rights (AIHR):** The mission of this regional NGO based in Tunis is to promote human rights in the Arab region through research, documentation, training and information. The AIHR is not directly active in the field of migration in Tunisia, but it does undertake, in partnership with UNHCR, activities to raise awareness and educate about the rights of refugees and asylum seekers, in particular in government and among journalists and NGOs.

Other organisations may on occasion deal with isolated cases of migrants and refugees if they fall within the scope of their action, by supporting migrant women (ATFD and AFTURD).

- **Tunisian Association of Democratic Women (ATFD):** This NGO addresses migration in the context of its efforts to combat violence against women and through welcoming young women who seek protection due to private choices they have made. Since the opening of its drop-in and support centre for battered women in 1993, AFTD has been helping migrant women coerced into returning to Tunisia to enter into a forced marriage. In 2003, the association prepared a guide for women travelling to Tunisia, containing the texts of laws pertaining to marriage, divorce, violence, freedom of movement and protection from any and all violations of women's physical and psychological well-being.
- **Association of Tunisian Women for Development Research (AFTURD):** This association looks at migration from a gender perspective. As part of its support and guidance services, it has dealt with isolated cases of foreign battered women in a family setting. AFTURD is also a partner in the European project MESURE (Safe Migrations). Its involvement in the project has focused on research and the preparation of a book of stories based on the lives of migrants in Tunisia and Italy.

Other comments

Since 14 January 2011, Tunisian civil society has achieved a significant degree of freedom of action. This has enabled the different actors to act freely and to conduct activities aimed at supporting the rights of migrants, refugees and asylum seekers.

C.2. Violence against Migrant Women

Are there organisations focusing on the issue of violence against women refugees or against migrant women by providing prevention and rehabilitation activities?

Yes, but these activities are mainly focused on Tunisian migrant women.

Please provide details on these organisations and on their activities.

As mentioned above, AFTD manages a drop-in and support centre for battered women and has assisted Tunisian migrant women coerced into returning to Tunisia to enter into a forced marriage. In addition, AFTURD has had to deal with isolated cases of battered foreign women in family settings as part of its support and guidance services for women.

D. Reporting on the Rights of Migrants, Persons with Refugee Status and Asylum Seekers

D.1. Regional Reports by regional and/or International Organisations

Research conducted as part of this project as well as field investigations have revealed that a number of reports describe migration flows and itineraries to, from, and through Tunisia, but few specifically address the issue of violations of the rights of migrants, refugees and asylum seekers (see the list of references). In addition, these violations are seldom mentioned in the annual reports of major human rights organisations.

The Tunis-based Arab Institute for Human Rights undertakes, in partnership with UNHCR, activities to raise awareness and educate about the rights of refugees and asylum seekers, in particular in the government and among journalists and NGOs. However, it has not yet succeeded in making lawyers and judges aware of these issues. Aside from refugees, the rights of other foreign nationals do not seem to be the object of any education or awareness-raising campaigns. And while a number of Tunisian lawyers are actively involved in the defence of human rights, it is difficult to find any who are involved in the defence of foreign nationals in the country.

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D.2. Violence against Migrant Women

Are there reports on the problem of violence perpetrated against refugee and migrant women in the country?

No

Please provide a list of the most important reports with details such as the date of publication, the title, the source organisation, and the web address (URL) of the report, if available.

There are no reports on this subject, to the best of AFTURD's knowledge.

Based on interviews by project members with NGOs and other actors, as well as the reports mentioned above, please describe the types of violence faced by refugee and migrant women in the country.

ATFD has assisted (Tunisian) migrant women coerced into returning to Tunisia to enter into a forced marriage as well as women who face problems in the private sphere.

AFTURD deals with isolated cases of ill-treated foreign women in family settings.

Appendix I: Civil Society Organisations Active in the Area of Migration and Asylum in Tunisia

Name	Status	Nature of activities/ services	Target population	Address, etc.
Centre de Tunis pour la migration et l'asile (CeTuMA)	NGO	Advocacy, awareness-raising, assistance	Refugees, migrants, asylum seekers, women, children, minors	26, rue d'Angleterre 1002 Tunis Tel.: +21697496811 +21653496810
Forum tunisien des droits économiques et sociaux (FTDES)	NGO	Advocacy, awareness-raising	Local populations, including migrants, with focus on economic and social rights, shipwrecks	17, avenue Habib Thameur 1st floor 1001 Tunis Tel.: +21671257664/665
Caritas	Tolerated	Guidance and material assistance	Refugees and migrants	4, rue d'Alger 1000 Tunis RP Tel.: +21671257648 caritasmig@planet.tn caritas.tunisie@evechetunisie.org
Tunisian Red Crescent	National member of the International Federation of Red Cross and Red Crescent Societies	Medical and social assistance	Asylum seekers and refugees	19, rue d'Angleterre 1000 Tunis Tel.: +21671320630 hilal.ahmar@planet.tn
Association tunisienne des femmes démocrates (ATFD)	National NGO	Support and guidance services for battered women	Women	112, avenue de la Liberté 1002 Tunis Tel.: +21671890011 Femmes_feministes@yahoo.fr

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Name	Status	Nature of activities/ services	Target population	Address, etc.
Association des femmes tunisiennes pour la recherche sur le développement (AFTURD)	National NGO	Support and guidance services for battered women	Women	Cité SPROLS, Rue 7301, Bloc 09, App. 01, El Menzah 9 1004 Tunis Tel.: +21671870580/ +21671609473
Ligue tunisienne des droits de l'Homme (LTDH)	National NGO	Advocacy, ad hoc support for victims of human rights violations	Victims of human rights violations	21, Rue Baudelaire 1005 El Omrane, Tunis Tel.: +21671959596 contact@ltdh-tunisie.org
Union générale des travailleurs tunisiens (UGTT)	National labour union	Advocacy	Workers	29, Rue Med Ali 1000 Tunis www.ugtt.org.tn



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Publication of this report was made possible thanks to the generous support of the European Commission, the Danish International Development Agency (Danida) and the Swedish International Development Agency (Sida).



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