

**Submission by the United Nations High Commissioner for Refugees**

**For the Office of the High Commissioner for Human Rights' Compilation Report**

**Universal Periodic Review: 3rd Cycle, 27th Session**

**TUNISIA**

**I. BACKGROUND INFORMATION**

Tunisia acceded to the *1951 Convention relating to the Status of Refugees* in 1957 and its *1967 Protocol* in 1968 (hereinafter jointly referred to as the *1951 Convention*). Tunisia acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1969 and to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 2000. Tunisia also ratified the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (the *1969 OAU Convention*) in 1989.

In spite of having acceded to the abovementioned Conventions, Tunisia does not yet have a domestic legal framework governing asylum and refugee issues. Consequently, refugee status determination (RSD) is still conducted by UNHCR under its mandate. Following the change of regime in 2011, the newly established Tunisian authorities decided to look into the possibility of adopting a national law on asylum with a view to take responsibility for granting refugee status and providing protection. Moreover, on 18 June 2011, UNHCR signed a Cooperation Agreement with the Tunisian Government, fully recognizing the role and mandate of UNHCR in Tunisia.

As of 1 July 2016, there were 688 refugees and 41 asylum seekers in Tunisia. The majority of refugees are Syrians (541) and the rest represent some 23 nationalities, including Algerians, Palestinians, Sudanese, Somalis and Eritreans. Women represent 41 per cent of the caseload and children 34 per cent. Urban refugees in Tunisia are settled across the country, with most of them living in northern and central Tunisia. Tunisia is not a major country of asylum. Its refugee and asylum-seeker population remains modest. However, the country is facing important migration challenges, due to its location and the unstable regional environment. Moreover, conflicts affecting sub-Saharan Africa have led to increased arrivals of asylum-seekers to Tunisia, in particular Central Africans, Eritreans, Somalis and Sudanese. Many of these people arrive through Libya either by land or by sea. In this regards, seven boats were rescued at sea in 2015, amounting to 938 persons, among them 147 asylum-seekers.

While the transitional political period ended with the adoption of the January 2014 *Constitution* and the organization of legislative and presidential elections in December of the same year, Tunisia is still experiencing severe difficulties, particularly with regard to its economic performance. Moreover, the southern and western regions are still facing pre-

revolution socio-economic challenges. Additionally, national security considerations are high on the agenda of the Tunisian authorities, in light of the situation in Libya and its impact on Tunisia.

Despite a context in which security concerns are always viewed by the authorities as the most important criterion in decision making, UNHCR has succeeded in increasing the protection space in Tunisia and maintaining a good level of cooperation with all relevant authorities.

## II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

### Positive developments linked to 2<sup>nd</sup> cycle UPR recommendations

**Linked to 2nd cycle UPR recommendation no. 114.8:** “Take all necessary measures in order to eliminate violence against women and children, including through consolidation of the legal system with respect to human trafficking counter-measures (Japan).”<sup>1</sup>

UNHCR welcomes the presentation of a draft law on *Prevention and Fight against Trafficking* before the Assembly of People’s Representatives, the Government’s legislative branch, in 2016. It is being examined by its Committee of Rights, Freedoms and External Relations. The process of preparing this draft law has been led by IOM, and UNHCR is part of the steering committee that follows up the adoption process before the Assembly.

**Linked to 2nd cycle UPR recommendation no. 114.72:** “Ensure that the new Constitution fully guarantees, without discrimination, the respect of all human rights enshrined in the international instruments to which Tunisia is a party. That the National Constituent Assembly seize the opportunity to incorporate into the new Constitution those fundamental rights and guarantees enshrined in the international treaties which it has ratified (France, Brazil).”

UNHCR notes with appreciation that the newly adopted *Constitution* of January 2014 contains a provision (Article 26) on the right of asylum and the principle of *non-refoulement*. This provision also foresees the adoption of a national legislation on the matter and reinforces UNHCR’s protection objectives in Tunisia. In this regard, UNHCR is supporting the Tunisian authorities in preparing this national legislation which will be an important component of the human rights protection framework that the country is progressively setting up since the 2011 Revolution.

**Linked to 2nd cycle UPR recommendation no. 114.78:** “Formally codify in domestic law its international legal commitments, and repeal or amend incompatible repressive laws (Australia).”

UNHCR commends efforts taken by the Government of Tunisia towards adopting a national protection framework on asylum. In 2011, the Ministry of Justice was asked by the Government to prepare a draft law on asylum. The Center for Legal and Judicial Studies of the Ministry of Justice initiated the drafting process leading to the preparation of two draft texts; a draft law transposing the main provisions of the *1951 Convention* into national

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<sup>1</sup> “Report of the Working Group on the Universal Periodic Review: Tunisia”, A/HRC/21/5, 9 July 2012, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/63/PDF/G1215063.pdf?OpenElement>.

legislation, and a draft decree setting up a national commission in charge of conducting RSD and providing protection and assistance to refugees. These texts were then shared with other concerned Ministries for comments and possible amendments. An inter-ministerial working group was set up, which met a number of times between 2012 and 2013. UNHCR provided comments on the texts in September 2014 and was informed in May 2016 that the draft texts were referred back to the cabinet of the Ministry of Justice following finalization by the Center for Legal and Judicial Studies. The Ministry of Justice shared the text with the Prime Minister's office for a final round of comments from all concerned ministerial departments.

### **III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Challenges linked to outstanding 2<sup>nd</sup> cycle UPR recommendations**

##### **Issue 1: Favourable Protection Environment**

**Linked to 2nd cycle UPR recommendation no. 114.78: “Formally codify in domestic law its international legal commitments, and repeal or amend incompatible repressive laws (Australia).”**

Despite the positive developments mentioned above, the national legal protection framework in Tunisia is still incomplete. The national asylum law is still under consideration at the level of the Prime Minister's office, to which it has been referred in June 2016 by the Ministry of Justice following finalization by the Center for Legal and Judicial Studies. In the absence of a national asylum law, registration and RSD is conducted by UNHCR and refugees do not have access to residency documents. They also face difficulties in formally accessing employment.

The need to make progress on the development of a national asylum law was also made by the Special Rapporteur on the human rights of migrants, in paragraph 75 of his report of 3 May 2013.<sup>2</sup> It has been reiterated recently in paragraph 34 of the list of issues in relation to the third periodic report of Tunisia transmitted by the Committee on Economic, Social and Cultural Rights in March 2016.<sup>3</sup>

##### **Recommendations:**

UNHCR recommends that the Government of Tunisia:

- a) Finalize the ministerial adoption process of the law on asylum; and
- b) Transfer the law on asylum to the Assembly of Peoples' Representatives.

#### **Additional protection challenges**

##### **Issue 2: Legal framework relating to the detention of foreigners**

The legal framework relating to the detention of foreigners is unclear. There are no known texts providing a legal basis for the detention of foreigners found to be irregularly in Tunisia

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<sup>2</sup> Special Rapporteur on the human rights of migrants, Mission to Tunisia, A/HRC/23/46/Add.1, 3 May 2013, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/23/46/Add.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/23/46/Add.1).

<sup>3</sup> UN Committee on Economic, Social and Cultural Rights, *List of issues in relation to the third periodic report of Tunisia*, E/C.12/TUN/Q/3, 31 March 2016, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FTUN%2FO%2F3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FTUN%2FO%2F3&Lang=en).

or regulating the deprivation of liberty of foreigners prevented from entering Tunisia at the border, notably including at the airport of Tunis Carthage.

The main administrative detention center for foreigners, Wardia, is located in the capital, Tunis. The center is under the authority of the Ministry of Interior and is managed by the National Guard. Access to a lawyer or review of the detention decision by a judge is not ensured. Some external actors carry out regular visits to the center, such as the Tunisia Red Crescent, the International Committee of the Red Cross or the Office of the High Commissioner of Human Rights.

While Tunisian authorities do not systematically arrest and detain refugees and asylum-seekers merely on the basis of their lack of formal legal status in Tunisia, it can happen that other foreigners, eventually in need of international protection, are arrested for illegal stay or entry. The possibility for them to challenge the detention decision is made difficult by the unclear legal framework relating to the detention of foreigners. The possibility to invoke international protection concerns or other international human rights instruments is also limited in a context where Tunisian authorities are sometimes inclined to link the movement of foreigners with security threats to the country. The detention conditions are generally considered adequate, as noted by the Special Rapporteur on the human rights of migrants in paragraph 64 of his report of 3 May 2013<sup>4</sup>.

At the Tunis Carthage airport, there is no specific facility for holding persons denied entry into the Tunisian territory. Such persons are usually held in the transit zone of the airport until an appropriate solution is found. Access to the transit zone by external actors is not ensured, as the transit zone is located in a regulated area of the airport beyond immigration controls. The ability of individuals held in these zones to articulate international protection needs or other concerns is therefore limited.

**Recommendations:**

UNHCR recommends that the Government of Tunisia;

- a) Clarify or establish adequate legal provisions regulating the administrative detention of foreigners with a view to ensuring: access to free legal aid and other external actors; intervention of a judicial authority to review the administrative detention decision; and the right of detainees to raise international protection concerns.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
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<sup>4</sup> Special Rapporteur on the human rights of migrants, Mission to Tunisia A/HRC/23/46/Add. 1, , 3 May 2013, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/23/46/Add.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/23/46/Add.1)

## ANNEX

### Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

#### TUNISIA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Tunisia.

#### I. Universal Periodic Review (Second Cycle – 2012)

Recommendations	Recommending State/s	Position <sup>6</sup>
<b>Discrimination against women</b>		
114.3. Ensure that the principle of equality between men and women is clearly formulated in the new Constitution and apply it in practice through concrete measures; Consider including provisions to ensure equality of men and women as well as the protection and promotion of women's rights in its new Constitution;	Switzerland; Botswana	Supported
116.4. Remove the remaining reservation to the Convention on the Elimination of All Forms of Discrimination against Women and align its national legislation, including the Civil Code, with this Convention to give women equal rights in matters of inheritance and guardianship of children;	Norway	Noted <sup>7</sup>
<b>Violence against women and children</b>		
114.4. Include women's rights in the new Constitution, including legislation on measures to eliminate all forms of violence against women;	Netherlands	Supported
114.6. Continue its efforts to develop provisions and mechanisms to ensure the protection of women from violence, and allow them to enjoy fundamental rights and freedoms (Angola); Put in place the necessary legislation to eliminate gender-based violence (Denmark); Consider the adoption of policies and laws to prevent and combat violence against	Chile	Supported

<sup>5</sup> All recommendations made to Tunisia during its 2st cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Tunisia" (9 July 2012), A/HRC/21/5, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TNSession13.aspx>.

<sup>6</sup> Tunisia's views and replies can be found in: *Addendum* (13 September 2012) A/HRC/21/5/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TNSession13.aspx>.

<sup>7</sup> *Addendum*: "With regard to the question of equality in relation to inheritance rights, the Government of Tunisia reiterates its commitment to safeguarding the advances achieved by Tunisian women and strengthening their rights. The draft of the new Constitution approved by the National Constituent Assembly's Commission on Rights and Freedoms enshrines the equality of all citizens in respect of their rights and responsibilities. However, the complexity of this issue means that the conditions for a national consensus on the subject are unlikely to arise at present. (4.)"

women;		
114.7. Continue cooperation with civil society organizations to reduce the phenomena of violence against women;	Jordan	Supported
114.8. Take all necessary measures in order to eliminate violence against women and children, including through consolidation of the legal system with respect to human trafficking counter-measures;	Japan	Supported
<b>Prevention of torture</b>		
115.12. Adopt a national mechanism for the prevention of torture, which should have access to all places of detention, and abrogate the law providing for a statutory limitation regarding acts of torture; Expedite the establishment of an independent national mechanism for the prevention of torture and bring the law on torture in line with international standards, including by repealing the statute of limitations;	France; Czech Republic	Supported
<b>SOGI</b>		
116.5 Abolish legislation discriminating on the basis of sexual orientation, in order to guarantee the same rights to all citizens, including LGBT persons;	Spain	Noted
117.2. Modify or repeal Article 230 of the Penal Code in order to decriminalize same-sex relations of consenting adults.	Austria	Noted
<b>Compliance with international human rights obligations</b>		
114.72. Ensure that the new Constitution fully guarantees, without discrimination, the respect of all human rights enshrined in the international instruments to which Tunisia is a party	France, Brazil	Accepted
114.78 Formally codify in domestic law its international legal commitments, and repeal or amend incompatible repressive laws	Australia	Accepted

## **II. Treaty Bodies**

### **Committee against Torture**

Concluding observations (13 May 2016) [INT/CAT/COC/TUN/23914](#)

#### **Violence à l'égard des femmes**

39. Tout en saluant les efforts pour lutter contre la violence à l'égard des femmes (par. 6 g) ci-dessus), et le nouveau projet de loi qui, selon les informations fournies par la délégation, abrogera les dispositions pénales permettant l'arrêt des poursuites en cas de mariage avec la victime et en cas de désistement de la victime de sa plainte, la Comité regrette l'absence de données statistiques claires, ventilées par le type d'infraction, permettant de déterminer la proportion de plaintes qui ont donné lieu à des poursuites et des condamnations dans des cas de violence liées au genre, ainsi que sur les mesures de réparation (art. 2, 12, 13, 14 et 16).

40. **L'Etat partie devrait :**

- (a) **Accélérer l'adoption de la loi contre la violence à l'égard des femmes et s'assurer que celle-ci érige en infraction pénale toutes les formes violence à l'égard des femmes, en ce compris les violences au sein de la famille et le viol conjugal, et modifie les dispositions du Code pénal afin d'éliminer toute possibilité d'impunité pour les auteurs de violence envers les femmes ;**
- (b) **Veiller, à ce que les cas de violence envers les femmes fassent l'objet de poursuites diligentes et impartiales, que les auteurs soient poursuivis et punis conformément à la gravité de leurs actes, et que les victimes obtiennent réparation ;**
- (c) **Sensibiliser et former le corps judiciaire et les membres des forces de l'ordre au sujet de toutes les violences à l'égard des femmes et renforcer les campagnes de sensibilisation de l'opinion publique.**

### **Examens médicaux pour prouver des actes sexuels**

41. Le Comité relève avec préoccupation que les relations consenties entre personnes du même sexe sont pénalisées dans l'Etat partie, et les personnes soupçonnées d'être homosexuelles sont contraintes de subir un examen anal, ordonné par un juge et réalisé par un médecin légiste, destiné à prouver leur homosexualité. Malgré le droit de refuser cet examen, le Comité est préoccupé par des informations affirmant que plusieurs personnes acceptent cet examen sous la menace de la police arguant, entre autres, que le refus de donner leur consentement serait interprété comme une incrimination. Le Comité relève aussi avec préoccupation des informations dénonçant des examens vaginaux, parfois non consentis, pour prouver des actes sexuels, comme les rapports en dehors du mariage et des actes de prostitution (art. 2 et 16).

42. **L'Etat partie devrait abroger l'article 230 du code pénal, qui pénalise les relations consenties entre adultes du même sexe. Il devrait aussi interdire les examens médicaux intrusifs qui n'ont aucune justifications médicale et ne peuvent être consentis de manière libre et éclairée par les personnes qui les subissent et qui seront, de ce fait, poursuivis en justice.**

### **III. Special Procedures**

#### **Report of the Special Rapporteur on the human rights of migrants**

Mission to Tunisia (3 May 2013) [A/HRC/23/46/Add.1](#)

#### **General background on migration in Tunisia**

#### **Migration and the Arab Spring**

14. An important issue is that hundreds of young Tunisian men seem to have disappeared attempting to cross the Mediterranean during the height of the Arab Spring. The whereabouts of many persons who allegedly attempted to flee Tunisia still remain unknown. Numerous protests criticizing both the Italian and Tunisian authorities' reluctance in dealing with the cases of the missing migrants have taken place in Tunisia. On 11 January 2013, for instance, families of missing migrants observed a sit-in in front of the Italian Embassy in Tunis, defending their right to know the fate of their sons, missing since 6 September 2012.

[...]

16. Moreover, perhaps the more significant impact of the Arab Spring in Tunisia was the upsurge in immigration to Tunisia itself. Following the Libyan crisis in early 2011, between 350,000 and 1 million persons fled Libya via the Tunisian border in the course of a few months, including an estimated 97,000 Tunisian returnees. While many of these were Libyans themselves, a large percentage of third-country nationals who were residing in Libya also fled. At that time, Tunisia implemented an open border policy with Libya, and the majority of the Libyan nationals fleeing were hosted by Tunisians in their homes. Despite the lack of precise data, as at 31 January 2012, the vast majority of those third-country nationals had either returned to their country of origin or been resettled in third countries as refugees. The Special Rapporteur acknowledges the important role IOM has played in the management of those extraordinary inflows of migrants at the borders, carrying out a number of activities in strict coordination with the Tunisian authorities, UNHCR and other United Nations agencies.

## **Normative and institutional framework on migration**

### **Laws governing migration**

36. It is also worth noting that presently, Tunisia does not have a comprehensive asylum law. However a draft law on asylum is currently being prepared by the Ministry of Justice with the support of UNHCR.

### **Border management**

#### **Rescue at sea**

47. The Tunisian Coast Guard works in close collaboration with European Union countries, in particular Italy, in carrying out search and rescue operations at sea. Tunisia, like its European counterparts Italy and Malta, has ratified the International Convention on Maritime Search and Rescue, which provides for coordination and cooperation of such operations. However, one example highlights the complexity of search and rescue missions in the Mediterranean. During his visit the Special Rapporteur was informed of an operation carried out just days before, where the Coast Guard rescued a boat in distress in the Mediterranean that had over 60 persons on board, many of them Somalis, including women and children. In this case, the Special Rapporteur was informed that despite the fact that the boat in distress was much closer to European land territories, the Tunisian Coast Guard was requested by the Italian counterparts to rescue the sinking ship, and brought the rescued passengers safely to Tunisia, where they were received at the Choucha refugee camp. At the time of the Special Rapporteur's visit, they were awaiting processing. Many of these persons may in fact have valid refugee claims. However, due to the lack of a coherent asylum system in Tunisia, coupled with the fact that resettlement of Somali refugees remains a challenge for UNHCR in Tunisia, there is a likelihood that these persons may become stranded in Tunisia, thus increasing their vulnerability and the likelihood that they may attempt another dangerous sea journey. In this context it is, of course, important to observe that resettlement should not be considered the only available solution to refugees recognized in Tunisia. Local settlement, through regular residency status, should also be considered and the Tunisian authorities are encouraged to consider this option.

## **Engagement with the European Union in the sphere of migration**



## **European Union–Tunisian relations**

55. Within the context of the 2005–2010 Action Plan, the Special Rapporteur takes note of the presence of two key points related directly to migration, specifically section 2.4 on cooperation on justice and home affairs, in particular the subsection entitled “Migration (legal and illegal, re-admission, visas, asylum)”, and section 2.3.4 on movement of persons, particularly workers, and coordination of social security systems. The Special Rapporteur notes the important references in section 2.4 to facilitating legal migration (“Ensure and promote effective management of migration flows”) and combating irregular migration. He also observes the clear focus on border management, with, as a key goal, the development of an effective, comprehensive border management system. The Special Rapporteur thus hopes that the new 2012 action plan will insist on human rights in the context of migration management, with any mobility partnership guaranteeing the rights of all migrants, including those with irregular status, and establishing appropriate and effective means for migrants to defend their rights.

[...]

57. While the Special Rapporteur recognizes that those are indeed positive measures that will fundamentally affect European Union–Tunisian relations regarding migration, he observes the unequal relationship between the parties in this partnership. The result is a situation where Tunisia will accept its role in applying stronger border security measures in exchange for more lenient measures for its own citizens to enter Europe, for example through visa facilitation programmes. Left out of this equation, however, are the human rights of migrants, and in particular third-country nationals, whose human rights are often most at risk. The Special Rapporteur thus encourages the European authorities to ensure, in the context of the ongoing negotiations, a more nuanced policy of migration cooperation with Tunisia. Such policy should move beyond security issues to develop new initiatives in consultation and in real partnership with Tunisian authorities, which place at their core the respect, protection and promotion of the human rights of all migrants, including irregular migrants who are transiting through Tunisia. For example, the European Union should agree with Tunisian authorities on the following: the detention of migrants should always be justified, periodically reviewed by an independent tribunal, and limited to the minimum time necessary; children and families should not be detained; places of detention should be visited regularly by credible and appropriately funded civilian oversight mechanisms; migrants should not be criminalized for an irregular crossing or attempt. Furthermore, in collaboration with UNHCR, the European Union should continue to offer Tunisia additional places for the resettlement of refugees, and in collaboration with IOM, migrants should be offered voluntary return opportunities supported by appropriate funding for their reintegration back home. Once again, these solutions should not preclude local solutions through the granting by the Tunisian authorities of residency status, and the European Union should assist the Tunisian authorities with integration for those remaining in Tunisia.

### **Detention of migrants**

#### **Reception and orientation centres**

65. One issue that gravely concerned the Special Rapporteur was the fact that minors, including unaccompanied minors, are held at Ouardia Centre. Although minors appear to be kept separate from other detainees, this remains troubling. In one case, a minor had been in the centre for 21 days, charged with crossing the border into Tunisia illegally. He was

sentenced to nine days' prison, which he served in a juvenile facility, and was thereafter transferred to Ouardia, where he awaited deportation. In this time, he had not been in touch with his family, and he was not taken to meet with consular authorities until he self-harmed in order to get the attention of the staff. The Special Rapporteur observes that detention, as a measure of last resort, should never be applied in the case of minors, especially unaccompanied minors, who are particularly vulnerable and who should be housed in shelters appropriate to their age. Moreover, irregular crossing of a border should not be a criminal offence, and a minor should never be criminalized for having crossed a border irregularly.

### **Detention in prisons**

68. The Special Rapporteur certainly recognizes the right of Tunisia to imprison any individual who commits a crime on its territory, and who is properly convicted by a court of law in accordance with all the rights connected with the right to a fair trial (International Covenant on Civil and Political Rights, art. 14). However, he remains concerned that certain categories of migrants appear to be detained on a regular basis in violation of these principles. In particular, the Special Rapporteur noted with concern the fact that many migrants are imprisoned in pretrial detention for extensive periods, often up to a year, without even knowing the charges against them. During this period, migrant detainees are often not given access to a lawyer, are unable to make phone calls to family members and are not put in contact with their consular authorities. The Special Rapporteur then learned that often migrants are eventually released without charges, asked to pay a D1,000 fine, and then deported.

69. Furthermore, the Special Rapporteur notes that where migrants are charged with a crime, many appear to be charged with the crime of illegal border crossing. Of particular concern is the fact that irregular border crossing remains a criminal offence in Tunisia (*franchissement illégal de la frontière*). This contravenes fundamental principles of human rights, including the right to leave one's country (International Covenant on Civil and Political Rights, art. 12). While the Tunisian authorities insist that this is not regularly applied, the Special Rapporteur learned of cases where it was in fact used, including against both Tunisians and foreigners entering Tunisia irregularly, and who were subsequently imprisoned for the alleged offence. In fact, this offence seems to be applied indiscriminately, regardless of other protection concerns, including in the problematic case of the unaccompanied minor who was charged with this offence.

71. With regard to the Harboub Prison, the prison conditions faced by migrants were substandard, with overcrowded cells and limited other facilities. The Special Rapporteur of course notes that these conditions have an impact on all detainees, migrants and citizens alike, and welcomes the new Government's willingness to increase openness and transparency regarding prison conditions, evidenced by its recent ratification of relevant international human rights treaties. However, he notes a number of concerns particular to migrant detainees. Migrants detained in prisons do not appear to be visited regularly by non-governmental or international organizations specialized in migrant rights, which is troubling, given their specific situation and potential protection concerns, including possible asylum or other humanitarian claims. In fact, the Special Rapporteur met with a number of detained migrants who appeared to have potential refugee claims. He thus notes the importance of improving prison management and providing training on the rights of migrants, as well as the need to facilitate regular access by independent monitors to prisons where migrants are detained. He also notes the necessity of training prison operators and guards on the basic

principles of human rights law, including specific modules on the rights of migrants, and categories of vulnerability, including refugee protection.

## **Asylum**

75. Although Tunisia has also acceded to the Convention relating to the Status of Refugees and its Protocol, the Special Rapporteur remains concerned about the fact that there is no adequate refugee status determination procedure in Tunisia. He is aware that substantial progress has been made in this regard. A draft law on asylum is currently being developed, in coordination with UNHCR. The Special Rapporteur would encourage the continuing of the transparent consultative process in the drafting of this law, in order to produce a final text that meets international standards on refugee and asylum-seeker protection. He further hopes that such a text will be swiftly passed into law to ensure a comprehensive legal framework that would protect all refugees and asylum seekers in Tunisia.

76. In this context, the Special Rapporteur learned that, currently, third-country nationals continue to attempt to cross from Libya to Tunisia irregularly by land. Many such persons have alleged protection claims. However, it was reported to the Special Rapporteur that asylum claims are not accepted at the border, and thus many of these persons attempt to reach the Choucha refugee camp where they can make an asylum claim, given the presence of UNHCR in the camp. However, the Special Rapporteur learned that if these persons are caught by Tunisian authorities before reaching the camp, they are pushed back by Tunisian authorities to Libya.

77. Thus, the establishment of a clear asylum determination procedure is urgent in order to fully protect the rights of such vulnerable individuals, and may better facilitate the early recognition of certain categories of migrants crossing the border into Tunisia who may be deserving of refugee protection. In the context of the pending closure of the Choucha camp and in the interim period before this law is fully implemented, it is urgent that border guards, police and all other authorities with the power to detain migrants at border points or within Tunisia are trained on the principle of non-refoulement and the right of persons to seek asylum.

78. Similarly, the Special Rapporteur notes with concern the fact that migrants in detention centres, including prisons, appear to not have any systematic opportunity to learn of the possibility of making an application for asylum. Despite the lack of a national framework law on refugee status, the Special Rapporteur notes the importance of the proper training of all persons who come into contact with migrants, including all persons operating at centres where migrants are held, border guards, and relevant personnel rescuing migrants at sea.

79. Importantly, as Choucha was established as a transit camp exceptionally due to the 2011 war in Libya, the camp will likely be closed in 2013. This poses a particular problem for certain categories of persons currently residing in the camp: firstly, migrants with approved refugee claims who remain living in the camp as they have not been able to be resettled; and secondly, migrants with failed refugee claims. For the former category, the Special Rapporteur urges the Government of Tunisia to allow this relatively small number of persons who have not been resettled to remain in Tunisia and become self-reliant outside the transit camp. For the latter, while IOM is assisting with voluntary returns for those persons who wish to return to their countries, there remain a considerable number of persons who do not wish to return home and who could be considered stranded migrants. The Special Rapporteur urges

the Government of Tunisia to work with all involved organizations to find an appropriate and durable solution for these persons, including by considering local settlement in Tunisia through the issuance of residency status.

**Conclusions and recommendations :**

**86. Regarding the normative and institutional framework for the protection of the human rights of migrants, the Government should:**

- (a) Ensure the protection of all human rights for everyone, including migrants, regardless of their status, in the new constitution;**
- (b) Develop an updated legal framework for the protection of migrants in line with international human rights law. Such a law should abolish any criminal penalty for irregular migration;**
- (c) Ensure that domestic implementation of international obligations, such as those under the Smuggling of Migrants Protocol and the Trafficking in Persons Protocol, supplementing the United Nations Convention against Transnational Organized Crime, does not infringe on fundamental principles of human rights law; [...]**

**87. Regarding border management, the Government should:**

[...]

- (d) Strengthen the mechanisms to detect, identify and assist vulnerable migrants at the border, including minors, potential asylum seekers and victims of trafficking.**

**88. Regarding detention of migrants, the Government should:**

- (a) Ensure that detention of migrants is justified according to international law and is limited to the minimum time necessary, and that any migrant for whom detention is no longer strictly necessary is immediately released;**
- (b) Develop alternatives to detention and ensure that detention is considered only as a measure of last resort;**
- (c) Ensure that all places where migrants are held are fully disclosed, and ensure adequate access to such places for independent monitors, including NGOs, UNHCR, and other international organizations;**
- (d) Ensure that unaccompanied minors and families with children are not detained, and develop mechanisms and shelters to detect and protect unaccompanied migrants; [...]**

**89. Regarding asylum seekers and refugees, the Government should:**

- (a) Engage in a full transparent consultative process in the drafting of the new law on asylum, in order to develop a final text that meets international standards on refugee and asylum-seeker protection, and ensure its swift passage into law;**
- (b) Conduct trainings for all Government officials who may come into contact with migrants, including law-enforcement officials, on the principle of non-refoulement and the right of persons to seek asylum;**
- (c) Ensure that all migrants who claim protection concerns are adequately informed of their right under international law to seek asylum;**
- (d) In the context of the pending closure of the Choucha camp, ensure that those persons with approved refugee claims who are unable to be resettled in third**

**countries are settled in Tunisia. For those migrants in Choucha with failed refugee claims, work together with international organizations to find appropriate and durable solutions.**