

ACCESS

The Role of Courts in Shaping Access to Asylum

TUNISIA

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INTRODUCTION: OBJECTIVES OF ACCESS

The research project "Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum" ACCESS investigates the role of courts in shaping access to asylum. It seeks to understand how courts globally interpret State-developed barriers in light of the Refugee Convention (RC) and other international norms, what socio-legal factors influence asylum access adjudication, and how the emerging jurisprudence shapes international refugee law (IRL) and migration governance.

ACCESS adopts a comparative approach as it relies on data collected from 19 countries, theoretically selected to cover all geographical regions, various legal systems and adjudication models, and different forms of participation in the international refugee law regime.[1]

Given the comparative and socio-legal approach of the project, our goal is to collect data through multiple methods that guarantee comparability, comprehensiveness, and reliability of the data.

The data collection template, along with the explanatory guidance used for the preparation of this National Report, can be found at: Lacchei, Alice; Lambertini, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara (2026) National Report ACCESS Project Template. DOI: 10.6092/unibo/amsacta/8984

In addition, the summaries of the judicial decisions analysed in Part II of this National Report and cited throughout this document can be found at: Lacchei, Alice; Lambertini Martinez, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara; Jesudoss, Lorett Mary (2026) ACCESS Mid-Term Dataset: The Role of Courts in Shaping Access to Asylum. University of Bologna. DOI 10.6092/unibo/amsacta/8962. [Dataset]

DEFINING TERMS

'**Asylum**' denotes the protection a state grants on its territory to non-citizens who seek it. It includes a legal status that protects against refoulement and provides a right to stay. In several jurisdictions, e.g. those that do not have domestic asylum legislation, this status might not be labelled 'asylum'. The research nevertheless includes such equivalent protection under the term 'asylum'. Similarly, if a national system that includes an asylum status provides additional protection statuses that include a set of rights closely similar to those the 1951 Convention provides for refugees lawfully staying, the research includes those statuses under 'asylum'.

'**Accessing asylum**' describes using legal and practical avenues to move towards the territory of potential host states, or to enter procedures and other arrangements for obtaining such status (labelled as asylum or not) implemented by a state or on its behalf. Territorial asylum processing (sometimes referred to as refugee status determination or RSD) itself or equivalent practices, however, are not studied here.

'**Barriers to accessing asylum**' refers to measures, arrangements, approaches, implementation practices, or structures that impede access to asylum. They can be implemented by state actors and others (if tolerated by the state); be of a practical or legal character; incorporate socioeconomic and cultural elements; and pertain to administrative or judicial spheres. Barriers implemented after the formal start of territorial asylum processing can be considered, if the processing is conducted as a sham or pretence rather than allowing effective access to asylum.

'**Pushbacks**' denote the removal or non-admittance of individuals trying to access asylum, without a substantive assessment of risks or potential rights violations. They can occur both on land and sea, including on international waters.

[1] Australia; Kenya, South Africa, Tunisia (Africa); Austria, Greece, Italy, Poland, Spain (Europe); India, Malaysia, Pakistan, Türkiye (Asia); Argentina, Brazil, Chile, Ecuador, Mexico (Latin America), USA.

'**Pullbacks**' are the dragging back of individuals approaching a destination state to the territory of a state from which they had departed without a substantive assessment of risks or potential rights violations. Such practices are often implemented in cooperation between two or more countries. While typically practiced at sea, such as in the territorial waters of the state of departure, pullbacks can also occur on land.

'**Walls and fences**' include physical barriers that prevent access to territory at or near borders, irrespective of the specificities of the construction or the materials used.

'**Detention**' is the imprisonment or other limitations of the right to liberty and security of person of individuals, territorially or extraterritorially, in connection with their asylum accessing.

'**Externalization of asylum processing**' denotes outsourcing procedures and transferring individuals to other jurisdictions to assess protection claims. Under such a practice, for example, potential destination states disallow asylum procedures on their territory, dismiss the corresponding applications, and deport individuals to cooperating countries. Externalized asylum processes can be based on formal and informal agreements between states.

'**Procedural barriers**' refers to any administrative practice or arrangement which, after individuals (attempt to) claim asylum, impedes the formalization of the application or the commencing of a procedure for obtaining asylum. This barrier can, for example, take the form of sham processes or (fast-track) processes based on the safe third country or safe country of origin concept, or a lack of mechanisms for ensuring appointments at registration offices.

'**Judicial or quasi-judicial body**' is the body that reviews/assesses the legality of the decisions, actions, or omissions of state authorities. This term encompasses the wide range of institutions adjudicating asylum barriers, including government/executive bodies, UNHCR, etc.

'**First instance judicial or quasi-judicial body**' is a court, tribunal, or other quasi-judicial body that hears appeals against administrative or executive decisions. 'Second instance judicial or quasi-judicial body' is a court or tribunal or other body that hears appeals against decisions made by a first instance judicial or quasi-judicial body. 'Third instance judicial or quasi-judicial body' is a court or tribunal (possibly a constitutional court) or another body that hears onward appeals, i.e., appeals against decisions already made by a judicial or quasi-judicial body of at least a second instance. In some jurisdictions there might be further levels of appeal.

'**Legal system**' refers to deeply rooted, historically conditioned attitudes about law's nature and role, the legal system's organization and functioning, and how the law is developed, applied, and interpreted (Merryman, 1985). The most common legal systems are the common law, civil law, Islamic, indigenous and socialist legal traditions (idem).

'**Asylum access adjudication**' refers to judicial examination and review by courts or quasi-judicial bodies of administrative decisions made by executive or immigration authorities regarding asylum.

'**Socio-legal factors**' refer to macro, meso, and micro factors influencing asylum access adjudication in the selected jurisdictions. They can originate at the macro level (state), at the meso level (judicial or quasi-judicial body), and at the micro level (individual). For example, adjudication may be influenced by the level of independence of the judiciary (macro factor) or the specialization of the asylum adjudication system (e.g., specialized courts); or availability of judicial or quasi-judicial bodies resources such as time, funds, human resources (meso factors); or individual characteristics of the actors involved, such as background or gender of adjudicators (micro factors).

'**Judicialization of politics**' refers to the increasing reliance on courts and judicial means for addressing core moral, political, and public policy questions (Hirschl 2013). For an overview of the meanings of judicialization, please refer to Hamlin and Sala (2018), who trace various forms in which judicialization of politics can occur (e.g., expanding the jurisdiction of courts, judicial activism, or due to the large number of cases decided by courts).

'**Forced migration**' refers to 'a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion' (IOM, 2019:77). Although it is not an international legal concept and the use of the term is debated because of the controversial dichotomy of voluntary/forced movements, in this report we refer to forced migration including the movement of refugees and asylum seekers, as well as other displaced persons (including those displaced by disasters or victims of human trafficking) who will not attempt to lodge an asylum application. When referring to 'other displaced persons', we mean those forced migrants who are not registered as asylum seekers or refugees, etc., despite being present in the country.

1. **Functioning:** What is the barrier's specific functioning? How does it prevent individuals from accessing asylum?

2. **Time:** What is the implementation period of the barrier? Is it still in use? Is there a time frame for its planned termination?

3. **Place:** Where is the barrier implemented?

4. **Actors:** Who are the key institutional and other actors implementing the barrier? Are there relevant actors from other jurisdictions or international actors?

5. **Interaction:** How does the barrier interact with other barriers and the country's asylum system?

6. **Development:** What has been the historical and political context for introducing the barrier, and how have its implementation and its character developed over time? (Please consider e.g. corruption, economic or human resources available to implement the barrier, resistance or support by local actors - officials or local community)

7. **Rationale:** What are the stated purposes (e.g., in legislative preambles, government/executive, or judicial statements) the barrier is designed to serve?

8. **Legal Status:** What legal status does the national legal framework provide to individuals prevented by this barrier from accessing asylum? For example, do they fall under a specific (protected or unprotected) category within national law, such as asylum seekers or refugees before formal recognition, or are they treated under the general framework for non-citizens?

9. **Specific Impact**: What is the impact of the barrier on specific groups, such as children, women, LGBTQ+ individuals, or people with disabilities? How does it differ from the barrier's general impact?

10. **Reach:** How many individuals have been affected by this barrier since 2010, both in absolute numbers and relative to the number of procedures for determining protection status in the same period? Has the barrier contributed to less movement of displaced persons towards the country? Please provide an informed estimate if reliable statistics or studies are unavailable.

11. **Source:** What is the legal basis or source of the barrier? Is it grounded in or approved by domestic, international, or supranational law (even if its legality might be contested)?

12. **Justification:** What justifications have the government/executive branch provided for the barrier? Are there official statements or documents that outline these justifications?

13. **Domestic and International Reactions:** What have been the reactions or interventions from domestic actors, international bodies, or other countries?

14. **Externalization:** How does the barrier outsource migration control functions to actors outside the jurisdiction?

15. **Technology:** How does the barrier draw on technological infrastructure or tools to fulfil its functioning?

16. **Other:** Any further information considered crucial for understanding this barrier to accessing asylum and its relevance.

PART 1: BARRIERS TO ACCESSING ASYLUM

I. IDENTIFYING BARRIERS

This section identifies the barriers to accessing asylum relevant to Tunisia between 2010 and 2024.

A. Barriers of general relevance

Pushbacks: ☒

Pullbacks: ☒

Detention: ☒

Procedural barriers: ☒

B. Barriers of specific relevance to this jurisdiction

Barrier 1: Voluntary return, Definition: Program that offers migrants the option to return to their countries of origin in an informed, safe, voluntary, and dignified manner. For those who decide that going home is their best path forward, IOM provides rights-based support to make that return possible.

IOM with the collaboration of the Tunisian authorities is implementing the voluntary return policy. According to IOM website: "As of 30 July 2025, IOM has supported the voluntary return of 5336 migrants to their countries of origin in 2025."[2]

According to many migrants, including asylum seekers and refugees, this policy is depriving them to access to the asylum procedure and for the most vulnerable it's depriving them from the resettlement procedure.

Barrier 2: **Criminalisation of NGOs**, Definition: The criminalization of NGOs can include legal restrictions, judicial harassment, criminal prosecutions, vilification and delegitimization on many levels. Tunisian government is targeting the NGOs by using legal means and instrumentalizing them to justify its policy in matter of combatting irregular migration and the cooperation with the EU. The criminalization started in May 2024. The government instrumentalized the justice in order to make the access of the migrants, refugees and asylum seekers to services and rights extremely difficult.

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pullbacks

Summary: Actually, the most relevant practice and barrier is pullback since the operation are becoming important, and the number of intercepted migrants is becoming huge (about 80 000 according to FTDES). Pullbacks are becoming highly observed in Tunisia especially since the conclusion of the MoU with the EU Commission (MoU on a strategic and global partnership, signed by the two parties on 16 July 2023 in Tunis) and the conclusion of the agreements with Italy (April 2024).

The number of arrivals to Europe has dropped considerably since the conclusion of the MoU[3], although cooperation in terms of integrated border management exists well before 2023, the political context in

[2] https://mena.iom.int/news/over-5000-migrants-were-assisted-through-iom-tunisias-assited-voluntary-return-and-reintegration-programme-during-first-part-

3 The bilateral agreements concluded between Tunisia and Italy, mentioned above, the agreement covering the prevention and repression of illegal immigration, readmission and return concluded between Italy and Tunisia in 1998, the 2003 Police Cooperation Agreement to train the Tunisian police forces in controlling its maritime border against illegal migration, the 2011 Italy-Tunisia MoU addressing the prevention of irregular departures, the deportation of Tunisians, and the issuance of temporary humanitarian stay permits to Tunisians in Italy and the agreements concluded in March 2024, are not published. The strategy in matter of migration cooperation is to maintain these agreements unpublished and not discussed in Parliament. The opacity and the lack of transparency is the most important characteristic in matter of migration management cooperation.

Tunisia has meant that the implementation of the MoU is stricter[4] and is accompanied by a large number of RAS operations. This is also explained by the determination of a SAR zone for the first time in the history of Tunisia. Italian authorities mentioned that the number of irregular migrants arriving from Tunisia recorded a significant drop: the authorities recorded 1,996 arrivals in 2025, compared to 10,247 in the first half of 2024[5].

The cooperation in matter of migration management, between Tunisia and the EU and EU member states, is focusing on border managements which aims essentially to intercept migrants and to intercept boats with Tunisians and third country nationals departing from their shores and return them. The European funding of the border management increased the number of the migrants intercepted.

1. Functioning: The criminalisation of the crossing of borders in Tunisian law was introducing under the pressure of the EU in 2004[6]. In early 2000, the interception was practiced mainly in the internal maritime water and sometimes in the international waters (C*anal de Sicile*). After 2011 and with the migration crisis resulting from the fall of the regime of Ben Ali and Moamar Gaddafi, cooperation in integrated border management intensified and projects financed by the EU multiplied to reduce the number of migrants arriving on European coasts[7]. During the democratic transition and before the political change that occurred on July 25, 2025, civil society opposed Tunisia playing the role of gate keeper of the European borders. Subsequently and with the rise of hate speech against migrants, Tunisia intensified the interception of migrants at sea after having determined a SAR zone for the first time in April 2024. This had the consequence of intensifying interception operations at sea especially with the conclusion of the MoU with EU in July 2023[8] and the agreements with Italy in April 2024.

2. *Time*: From 2004 to 2025. This practice began in 2004 with the adoption of the law criminalizing irregular border crossing. It has gained much more scope since the migration partnership from 2014 but it has been considerably strengthened since the conclusion of the MoU since subsequently the SAR zone was determined and enlarged, which means that the scope of intervention has become very wide.

3. *Place*: The Tunisian coast and the Tunisian SAR zone[9].

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[4] European and Tunisian Migration Policies: A Recipe for Failure and Suffering, 14/01/2024, https://www.iai.it/en/pubblicazioni/c05/european-and-tunisian-migration-policies-recipe-failure-and-suffering

[5] https://www.infomigrants.net/fr/post/65576/italie--comment-expliquer-la-forte-chute-des-arrivees-de-migrants-depuis-la-tunisie

[6] Law No. 2004-6 of February 3, 2004, amending Law No. 75-40 of May 14, 1975, relating to passports and travel documents: "*Art. 40 – Any person who knowingly transports one or more individuals for the purpose of bringing them into Tunisian territory or taking them out clandestinely, by any means whatsoever, shall be punished by five years' imprisonment and a fine of twelve thousand dinars.*" https://legislation-securite.tn/latest-laws/loi-n-2004-6-du-3-fevrier-2004-modifiant-la-loi-n75-40-du-14-mai-1975-relative-aux-passeports-et-aux-documents-de-voyage/

[7] About the Integrated Border Management (IBM) Project See, Country report, Tunisia, Asile project, Fatma Raach, Hiba Sha'ath, Thomas Spijkerboer, https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Tunisia-Country-Report-Final.pdf

[8] *A damaging deal: abuses, departures from Tunisia continue following EU agreement*, 5 September 2023 | By Sarah Doyel & Roberto Forin & Bram Frouws: "The MoU between the European Commission and Tunisia commits 105 million euros of European funds to reduce irregular migration both into and out of Tunisia and is indicative of the EU's broader aims to restrain Mediterranean migration. Speaking in Rome shortly after the signature of the agreement, European Commission President Ursula von der Leyen called the partnership a "blueprint for the future", signalling the EU's intention to advance similar accords elsewhere in the region. Cooperation discussions continue amid significant ongoing movements across the Mediterranean to Italy". https://mixedmigration.org/eu-tunisia-damaging-deal/

See also, Tineke Strik, Ruben Robbesom , Compliance or Complicity? An Analysis of the EU-Tunisia Deal in the Context of the Externalisation of Migration Control, Netherlands International Law Review (2024) 71:199–225 https://doi.org/10.1007/s40802-024-00251-x

[9] Sauvetage de migrants en mer : une nouvelle SAR zone tunisienne créée en mer Méditerranée, https://www.infomigrants.net/en/post/57513/sauvetage-de-migrants-en-mer--une-nouvelle-sar-zone-tunisienne-creee-en-mer-mediterranee

4. *Actors*: The interception is carried out by the Tunisian Coast Guard (Garde Maritime Nationale), but the capacity-building in matter of combating illegal migration and security cooperation is funded by EU[10] and EU member states (BMP Maghreb project and the Integrated Border Management (IBM) Tunisia project[11]) and under the bilateral projects add to these EU funded projects. Many EU countries contributed to equip the Coast Guards: Germany has provided equipment including speedboats, lifeboats, and vehicles (European Commission Services, 2021, p. 9). According to the European Commission Services (2021, p. 10), Italy has run a program worth 138 million EUR since 2011to supply and equip border, policy, and security forces in Tunisia[12]. The cooperation in matter of border control was intensified since the conclusion of the agreement with Italy in April 2024.The equipment and training of the Coast Guards have led to an increase in the Coast Guard's capacity to conduct interceptions/SAR operations/pullbacks.

Under the MoU, the same trends is observed since the main part of the budget is allowed to the border management. In his answer to a parliamentary question, the European Commission mentioned that: "As of the beginning of 2024, EUR 53 million from 2023 budget has been contracted, as detailed below, with other projects under preparation:
— Contract signed with the United Nations High Commissioner for Refugees to strengthen protection and access to basic services for refugees and asylum seekers in Tunisia — EUR 8 million (including EUR 3 million from a decision adopted in 2022[2]);
— Contract signed with the International Organisation for Migration to support voluntary returns from Tunisia to countries of origin and reintegration of Tunisian returnees — EUR 13 million;
— Contract signed with the technical cooperation operator for the French Ministry of the Interior and the Gesellschaft für Internationale Zusammenarbeit on support to search and rescue — EUR 17 million;
— Contract signed with the United Nations Office for Project Services to support the Garde Nationale Maritime — EUR 18 million.[13]"
The main budget is allocated for the SAR operations and the guard costs training: "Ongoing programmes of a total of €35mn (adopted in 2021, contracted in 2022) and 17 million (2023) to support Search and Rescue operations include support to setting up a Maritime Rescue Coordination Centre and the training academy of the Garde National Maritime of Tunisia, support for search and rescue operations at sea in Tunisia (EUR 16.5 million 2021 budget, EUR 17 million 2023 budget), and strengthening the Tunisian Coast Guard Training Pillar[14]".

5. *Interaction*: This barrier interacts with another barrier which is detention. Since the migrants intercepted will be detained since the crossing the borders illegally is considered as a crim in Tunisian legislation. Since the number of pullbacks operations has increased, the migrants were conducted by the authorities to open air area far from the capital (El Amra, Jebeniana, Sfax). This situation created tensions between migrants

[10] Under the MoU (2023), Tunisia received "refitting of search and rescue vessels, vehicles and other equipment for the Tunisian coast guard and navy", the "operational assistance package on migration worth around €67 million euros", European Commission, Daily News 22 / 09 / 2023, https://ec.europa.eu/commission/presscorner/detail/en/mex_23_4585
See also: Action Document for EU Support to Border Management Institutions in Libya and Tunisia, https://enlargement.ec.europa.eu/system/files/2021-12/C_2021_9615_F1_ANNEX_EN_V3_P1_1639231%20Annex%20II%20BM%20LY%20TU.PDF

[11] https://www.icmpd.org/our-work/projects/support-programme-for-the-tunisian-government-in-the-field-of-integrated-border-management-ibm-tunisia-phase-iii

[12] See Country report, Tunisia, Asile project and also Anna Stahl, Jana Treffler, *Germany's Security Assistance to Tunisia: A Boost to Tunisia's Long-Term Stability and Democracy?* : "the German approach is aimed at assisting the Tunisian government to bolster the capacity of its security sector to secure Tunisia's borders. Germany pursues a similar strategy in other countries of the Maghreb and the Sahel region, where it implements projects to support border control through GIZ (Andres, 2017; Naceur, 2018)", https://www.euromesco.net/wp-content/uploads/2019/12/EuroMeSCo44_Germany-Security-Assistance-to-Tunisia.pdf

[13] https://www.europarl.europa.eu/doceo/document/E-9-2023-003692-ASW_EN.html

[14] See, DCAF report, Bridging the Gap between Irregular Migration and SSG/R Opportunities for a Coherent Approach by the International Community With examples from North Africa, unpublished (confidential report).

and local population and led to violence between them. The main consequence is the violation of the migrants right and the increasing vulnerability of the migrants[15].

6. *Development*: The evolution of the practice confirms that it has become a widespread practice and that it constitutes the essential part of cooperation in terms of integrated border management through SAR operations. The budget allocated to SAR operations and border management continues to increase and occupies the large part of the budget reserved for cooperation in migration matters[16].

7. *Rationale*: The sated purposes justify this measure by the combatting of irregular migration and the fight against human trafficking. The MoU with the EU[17] and the different agreements with EU member states mention that the cooperation in matter of border managements[18]. The authorities decaled that this cooperation aims to protect Tunisia from being a country of destination and settlement.

8. Legal Status: The legal basis invoked by European countries, to make Tunisia ensure the pullbacks, is the duty to rescue people at sea. The person intercepted are protected by the law of the sea (United Nations Convention on the law of the sea, Tunisia ratified this convention). They are also protected by the dispositions of the Geneva convention on refugees' status. When the intercepted persons are in a situation of distress, these cases involve positive obligations of states to protect the right to life, which are operationalized in international maritime law in the obligation of search and rescue (SAR)[19]. But Tunisia has no as nearly all national legal framework for protection and asylum in Tunisia. Despite of this breach to the migrant's rights, EU considered Tunisia as a safe place of disembarkation for the return of third country nationals who may want to invoke international refugee law[20]. This legal vacuum means that detention is easily practiced without legal basis.

9. *Specific Impact*: The vulnerable groups are becoming more sensitive and vulnerable since the intensification of the pullbacks from April 2024. The solidarity with migrants is becoming criminalized and the NGO's used to help them are under pressure (many activists are arrested and are still in jail). Many pregnant women[21], children [22], victims of human trafficking refuse to approach the authorities because they are afraid of being arrested. Even pregnant women refuse to go to the hospitals. The main impact is to dismantle the right to asylum by depriving the intercepted migrants from any access to any services and push them to ask the voluntary return[23].

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[15] FTDES, Communiqué *Un an après le début de la crise : les violations des droits des migrant.e.s en Tunisie se poursuivent*, 05/04/2024, https://ftdes.net/un-an-apres-le-debut-de-la-crise-les-violations-des-droits-des-migrant-e-s-en-tunisie-se-poursuivent/

[16] See, DCAF report, Bridging the Gap between Irregular Migration and SSG/R Opportunities for a Coherent Approach by the International Community With examples from North Africa, unpublished (confidential report).

[17] See the provisions of the Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia, published on 16th of July 2023, available on https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887

[18] European Commission, press release, The European Union continues to implement the Memorandum of Understanding with Tunisia with the disbursement of EUR 150 million in financial support, 04 March 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1301

[19] Article 98(1) of UNCLOS, which deals with the duty to render assistance, provides: "1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: a) to render assistance to any person found at sea in danger of being lost; b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him; c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call".

[20] Désignation de la Tunisie comme pays tiers d'origine sûr : la Commission européenne récompense les autorités tunisiennes pour leur coopération migratoire et blanchit leurs abus, 30 avril 2025, https://migreurop.org/article3409.html

[21] Marta Luceño Moreno, Violences qui migrent avec les femmes Etude qualitative exploratoire sur les violences faites aux femmes et aux filles migrantes en Tunisie, UNFPA, 2022, https://tunisia.unfpa.org/sites/default/files/pub-pdf/les_violences_qui_migrent_avec_les_femmes.pdf

[22] Enfants et jeunes migrants et déplacés en Tunisie : Profils, itinéraires, protection et besoins, Rapport de recherche MMC, Mai 2021 https://mixedmigration.org/wp-content/uploads/2021/07/MMC_Save-the-Children_Tunisia_FR.pdf

[23] L'asile, un droit démantelé par la politique de contention de l'UE et l'opportunisme des pays tiers : le cas de la Tunisie, FTDES, juillet 2024 - Sami Adouani, https://migreurop.org/article3318.html

10. *Reach*: The number of migrants intercepted has increased remarkably. The authorities do not give a figure but the associations, notably the FTDES, give very close estimates of reality based on the figures put forward by the Italian authorities. Recently the FTDES announced that the Italian authorities have started to be cautious in the dissemination of figures because these elements are used by associations to criticize cooperation in terms of integrated border management. The number of intercepted migrants in 2024 according to FTDES reached 80 000[24]. According to FTDES, which compiles statistics on the number of migrants intercepted by the Tunisian Coast Guard, in the first nine months of 2021, the Coast Guard returned 19,500 individuals back to Tunisian shores. In contrast to this, in the nine years prior (between 2011 and 2020), the same Coast Guard had returned 42,000 individuals in total (Le Figaro & AFP, 2021). In the same report, FTDES noted that the number of interceptions conducted by the Tunisian Coast Guard increased considerably following a visit by the Italian Minister of Interior and the EU Commissioner for Home Affairs to Tunisia in May 2021, where they secured an agreement from the Tunisian government to establish a hotline between Italy and Tunisian authorities dedicated to the exchange of information about irregular departures of boats from Tunisia (The Arab Weekly, 2021). In 2024, the Tunisian authorities don't publish any data, but according to FTDES sources the number of migrants intercepted is 80 000.

11. *Source*: The domestic law related to the travel documents and access to the territory prohibit the entrance or the living of Tunisia through "illegal" way. It's known under the appellation of "crossing border secretly". This provision was introduced under the Italian pressure (Law adopted in 2004[25]). The cooperation agreements with EU and EU countries are based on this statement. The MoU signed between Tunisia and EU mentions that "The two Parties also share the priorities of combating irregular migration in order to avoid loss of human lives and developing legal pathways for migration. Tunisia reiterates its position that it is not a country of settlement for irregular migrants. It also reiterates its position to control its own borders only"[26].

12. *Justification*: The executive branch explains this barrier by the necessity to protect the safety of the country and to combat irregular migration. The executive's public speech in March 2023 constituted a new turn towards a racist speech since the executive, using far-right references, says that it is preserving the country from an attempted invasion and the great replacement[27].

13. *Domestic and International Reactions*: Internal reactions are contradictory, populist and hateful speech has created a division among public opinion. Some people believed in the populist discourse which claims that sub-Saharan migrants want to settle permanently in Tunisia and change the demographic composition of the country and therefore they must be prevented in every possible way[28]. This made the government's actions tolerable. Another part of public opinion denounces this speech, the violations of human rights and cooperation in matters of border management. The authorities did not communicate regarding the operations at sea until activists presented the evidence. From then on public opinion became overwhelmingly opposed to the pullback. European partners welcomed these operations and their results which had the consequences of reducing the number of migrants arriving on Italian coasts. Some

[24] https://ftdes.net/la-migration-non-reglementaire-sur-les-cotes-tunisiennes/

[25] Law No. 2004-6 of February 3, 2004, amending Law No. 75-40 of May 14, 1975, relating to passports and travel documents: "Art. 40 – Any person who knowingly transports one or more individuals for the purpose of bringing them into Tunisian territory or taking them out clandestinely, by any means whatsoever, shall be punished by five years' imprisonment and a fine of twelve thousand dinars.". https://legislation-securite.tn/latest-laws/loi-n-2004-6-du-3-fevrier-2004-modifiant-la-loi-n75-40-du-14-mai-1975-relative-aux-passeports-et-aux-documents-de-voyage/

[26] https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887

[27] See: https://www.iom.int/fr/news/declaration-de-loim-sur-la-situation-des-migrants-en-tunisie and Camille Cassarini, Vincent Geisser. Une politisation en devenir ? L'immigration subsaharienne dans les tourments d'une xénophobie stratégique. Afrique(s) en Mouvement, 2023, Confluences tunisiennes Émigration(s) et immigration(s) dans la Tunisie de l'après-2011, N° 6 (2), pp.72-81.ff10.3917/aem.006.0072ff. ffhal-04369025f

[28] Garavoglia (Matteo), le rôle des financements européens sur la migration dans les pratiques violentes des autorités sécuritaires tunisiennes, FTDES, 2024, p. 14. https://ftdes.net/le-role-des-financements-europeens-sur-la-migration-dans-les-pratiques-violentes-des-autorites-securitaires-tunisiennes/

organizations have nevertheless raised the violations of the human rights of migrants: OMCT[29], FTDES[30], Mixed Migration Centre[31]. Unfortunately, the migrants became more vulnerable and without any protection since the asylum application procedure has been suspended and the UNHCR is becoming unable to respond to any application even if it's registered[32].

14. *Externalization*: The externalization of the EU migration policy and management deeply impacted Tunisia and the migrants right. EU support the interceptions by the Tunisian Coast Guard and consider that people rescued at sea are brought to a place of safety, as well as the norms to which this notion of safety refer (nonrefoulement and the right to liberty). The lack of legal and judicial guarantees for migrants makes their situation fragile and accentuate their vulnerability[33].

15. *Technology*: The border management and pullbacks operations are made possible with the technical support of many EU projects in the framework of which equipment is delivered to Tunisia to ensure the interception operations. the equipment consists of ships, telecommunications control system etc.

Detention

Summary: Immigration detention occurs in Tunisia; on the basis of the information we have, the conclusion must be that it does. It should be noted that the immigrant detention centres under the Ministry of Interior's authority are to be distinguished from the reception centres run by the Tunisian Red Crescent, IOM, and UNHCR in Zarzis and Medenine, where migrants returned from sea are accommodated on a temporary and short-term basis. As we understand, the factual situation in these centres does not amount to detention. However, respondents and documentary sources indicate that immigration detention is practiced in several "retention" centres across the country, most notably *Ouardia* and *Ben Guuerdane* centres. These centres do not have a clear legal status in Tunisia. The centres are under the authority of the National Guard, which falls under the Ministry of Interior[34].

1. *Functioning*: Before the conclusion of the MoU with EU on July 2023, the detention was not practiced massively and the authorities used to cooperate with international agencies and UNHCR. They used to inform them when they arrest migrants. After 2024 (agreements with Italy the detention was replaced by another practice which is containment through the creation of rudimentary camps in the open air[35]. There is no funding for those open air "camps" since it's not a real one, migrants are living in olive fields without any facilities, they built rudimentary shelters, but which were destroyed by the authorities.

2. *Time*: 2011 to 2025

3. *Place*: Tunisia

4. *Actors*: Coast guard and ministry of interior.

5. *Interaction*: This barrier interacts with the procedure gap and the difficulties to access to the status determination procedure.

[29] Torture roads the shrinking of civic space and its impact on people on the move in Tunisia, Volume 3, May-October 2024, https://omct-tunisie.org/wp-content/uploads/2025/01/Torture-Roads-Volume-3-EN-PAGES.pdf
[30] Etude: Crispation anti-migrants Subsahariens en Tunisie : Discours et violences, May 2023, https://ftdes.net/etude-crispation-anti-migrants-subsahariens-en-tunisie-discours-et-violences/
[31] Mixed Migration Review 2023, https://mixedmigration.org/resource/mixed-migration-review-2023/
[32] https://www.infomigrants.net/en/post/60899/stuck-in-limbo-tunisias-suspension-of-asylum-procedures-leaves-migrants-stranded
[33] *The Price of Complicity: Tunisia-EU Partnership Agreement fuels egregious human rights abuses against refugees, asylum-seekers and migrants*, ICJ, December 2024, https://www.icj.org/wp-content/uploads/2024/12/TUN-The-Price-of-Complicity-FINAL_compressed-1.pdf
[34] See Country report Tunisia, *op.cit.*
[35] https://www.jeuneafrique.com/1579763/politique/en-devenant-zone-sar-la-tunisie-fait-un-pas-de-plus-dans-le-controle-des-flux-migratoires/

6. *Development*: After the creation of the SAR zone, the detention was replaced by the containment in open air camps[36]. This area is not a detention centre but a kind of unformal camp in the farms of Sfax. Migrants managed some rudimentary shelters for them.

7. *Rationale*: The detention wasn't used as way to avoid or make difficult the access to the asylum procedure before 2024, after the creation of the SAR zone it is becoming systematically used with these aims. Before the crackdown of civil society, the two detention centres (*El ouardia* and *Ben guerdene*) were managed with cooperation with UNHCR and the Red crescent in order to facilitate the access the asylum status determination procedure. The authorities were cooperative. The authorities separated the detention for common crime and the detention for crossing the borders irregularly. Actually, all the irregular migrants are excluded from the public space and deported in open air rudimentary camps. Since the UNHCR is not playing its role this new kind of detention is used to make the access to any kind of procedure impossible.

8. *Legal Status*: There is no mention of administrative detention of immigrants in Tunisian legislation; hence no legal basis for it exists in Tunisian law. The Tunis Administrative Tribunal ordered the suspension of a deportation decision and a decision to keep the migrants in a detention centre. The court applied article 29 of the 2014 constitution which prohibits arrest or detention without a judicial order. Article 6 ACHPR provides that everyone has the right to liberty. No one may be deprived of this right except for reasons and conditions previously laid down by law. This means that detention of individuals is possibly only if there is an explicit basis for this in domestic law. The absence of a legal basis also means that no legal remedy is available against migrant

9. *Specific Impact*: Detention has an important impact on access to asylum procedure. Actually detention, which take new form (open air camp) is used to keep away migrants. There is no access to any judicial services, so even the judges can't take any decision about this illegal situation. Since the UNHCR don't receive any refugee status determination, migrants can't access to asylum.

10. *Reach*: No data available.

11. *Source*: None

12. *Justification*: None

13. *Domestic and International Reactions*: Local NGOs used to be active and ask the liberation of arrested migrants. Actually, political pressure diminished the role of the civil society[37]. The major civil societies organisations who used to deliver services to migrants: legal aid, assistance, etc. are actually non active, their responsible are in jail, they were arrested because if their support to migrants. Before the MoU, they use to support the migrants by providing lawyers and helping them to reach UNHCR and other organisations. Actually even the UNHCR is becoming out of services.

14. *Externalization*: The externalization of the EU migration policy creates a shift. The containment replaced the detention with more complicated impact on the right to asylum.

Procedural barriers

Summary: The only organ in charge with the refugee status determination is UNHCR. The access to the asylum is depending on UNHCR procedure. Before the crackdown of civil societies, CTR (Le conseil Tunisien pour les réfugiés) was the main institution which coordinate with UNHCR and gives information and assistance to migrants and asylum seekers in order to facilitate the access. Since 2024, the CTR is non-functional and his director and main responsible are in detention. Even UNHCR is unfunctional since 2024. The political pressure led to the end of this role played by the UNHCR.

[36] L'asile, un droit démantelé par la politique de contention de l'UE et l'opportunisme des pays tiers : le cas de la Tunisie, FTDES, juillet 2024 - Sami Adouani, https://migreurop.org/article3318.html
[37] Torture roads the shrinking of civic space and its impact on people on the move in Tunisia, https://omct-tunisie.org/wp-content/uploads/2025/01/Torture-Roads-Volume-3-EN-PAGES.pdf

1. *Functioning:* The refugee status determination is implemented in Tunisia by UNHCR[38]. The procedure is private and there is no access to the statistics or elements related to the practice in this matter which considered as confidential. UNHCR uses to publish data about the number of registered applicants, number of refugees etc. But don't communicate about the procedure. Since 2023, the authorities asked UNHCR to suspend registration of the new arrival asylum seekers and to not do any RSD procedure anymore. The role of UNHCR is actually reduces to the renewal of the asylum seekers cards and the refugees' cards. But, due to the context and the difficulties related to the access to the UNHCR office (since the refugee's and asylum seekers freedom of movement is very limited), make the renewal of the cards and access to services and protection very hard.

2. *Time:* Especially since 2011, the number of asylum seekers increased. The UNHCR is the only habilitated authority to ensure the procedure.

3. *Place:* Tunisia.

4. *Actors*: UNHCR / Red crescent / CTR.

5. *Interaction:* This barrier is very important because it impact the access to the international protection. Many migrants who may access to the refugee status has no idea about the procedure and sometimes don't consider that reaching the UNHCR is very important for them.

6. *Development:* After the conclusion of the MoU and the agreement with Italy, the role of the UNHCR is becoming strictly limited. The Tunisian authorities asked the UNHCR to not register migrants in order to facilitate their 'voluntary return'. The UNHCR is becoming under political pressure. UNHCR don't receive any refugee status determination application. His role is actually limited to the services available for already registered refugees.

7. *Rationale:* The authorities consider that they are not concerned by this obligation and that this is the role of UNHCR. Since 2024, this role is being very limited by the authorities.

8. *Legal Status:* There is no legal provision in national legislation.

9. *Specific Impact:* Reduction of the number of asylum seeker registration and reduced the protection of the more vulnerable categories. Dismantling the right to asylum.

10. *Reach:* There is few data about this issue, but the FTDES presented an estimation according to its own investigation. According the FTDES, there is no more registration and even many of the registered refugees and asylum seekers leaved Tunisia. According to FTDES data, the number of refugees and asylum seekers registered with the UNHCR in Tunisia fell from 18,362 in June 2024 to 10,683 in May 2025, due to precarious living conditions leading to many departures.

11. *Source:* Lack of domestic law and procedure for asylum seekers.

12. *Justification:* The migration and refugee issue were not very present before 2011, after the fall of Kadafi regime UNHCR played a big role and the authorities considered that it's the agency role and not theirs. Before the shift in the Tunisia position regarding externalization, the authorities refused to adopt a national law in order to resist to the EU pressure. They considered that having a national law will make the EU consider Tunisia as a third safe country.

13. *Domestic and International Reactions:* After the refugee crisis EU considered that it's important that Tunisia adopt its own legislation and procedure to facilitate the access to the refugee status. The EU pressure on Tunisia to adopt its national law, since the law project was prepared with EU finding under the neighbourhood policy budget, was becoming very huge. The democratic environment in this period led the authorities to refuse the adoption of the project since the civil society organizations considered this

[38] https://www.infomigrants.net/fr/post/60868/en-tunisie-les-procedures-de-demande-dasile-suspendues-jusqua-nouvel-ordre

pressure as a way to export the EU problems and issues to Tunisia and to externalize the asylum procedure[39]. It was considered as a mean of resistance to EU externalization policy.

14. *Externalization*: The externalization of the EU migration policy deeply impacted the access to the procedure of refugee status determination.

B. Barriers of specific relevance to jurisdiction

Actually, in Tunisia, the deportation is becoming the big threat to all categories of migrants. Many refugees and asylum seekers were deported either to frontiers with Algeria or the frontiers with Libya. Many of them were dispossessed and the authorities (police, law enforcement, border guards) took their refugee and/or asylum seeker cards and destroyed them. The status of refugees and asylum seekers is no longer a protective status. For other asylum candidates, they are also deprived of access to the procedure due to their deportation. Although a significant number of deported migrants attempt to return to Tunisia, and some succeed in doing so, the context and in particular the ban imposed by the authorities on UNHCR from no longer carrying out registration and case management means that access to the asylum procedure becomes impossible.

III. SELECTING BARRIERS

Since the case law are very rare in Tunisia, the only cases available are related to detention. I suggest focussing on detention for further research. Pullback is very relevant at this moment since it's the main practice resulting from the application of the MoU and agreements with Italy but there are no cases available about this practice. The authorities prohibit the access to the places when the migrants are staying, and it makes very hard for researchers and even NGOs to obtain relevant data about what's happening there. Only a few members of the parliament visited the camp in order to use the migrant's situation to make the public opinion hostile to them. I consider more relevant to focus on detention for practical and legal reasons. Furthermore, the detention actually is becoming different, since the camps of migrants may be considered as new way of containment of migrants which is a kind of detention which aim to deprive the migrants from accessing to asylum especially with the focus on voluntary return and no on asylum procedure.

[39] See, Cooperation within Reason: Tunisia's Approach to Asylum and Readmission, In: European Journal of Migration and Law, Authors: Hiba Sha'ath and Fatma Raach, https://brill.com/view/journals/emil/26/2/article-p179_3.xml?srsltid=AfmBOooKOGWJjhP3QxyPJ2PXIEHEoSSZMefFneWqNzmxc0mdueYq_nLC

PART 2: CASE LAW ANALYSIS

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Description of the barriers in the case law

Detention: Detention is the act where a police officer or law enforcement official deprives a person of their liberty for a temporary period following a legal process.

No cases related to one or more selected barriers

There are no cases to many selected barriers because of the multiple obstacles in accessing judicial or quasi-judicial bodies. The lack of a national legislation on asylum makes the UNHCR the only responsible about the procedure and deprive the ordinary judge from this competence. Since the national legislation is very limited in matter of protecting migrants' rights, migrant is always afraid about being arrested, for this reason they are avoiding the judicial body. The Tunisian law recognizes the right for non-nationals to obtain legal aid, only in case of mutual legal assistance bilateral agreement with the country of origin. Many associations provide legal assistance for migrants, but since the crackdown of civil society, this assistance is becoming very rare. The main obstacle to access to justice is the detention and despite that the number of cases is very limited since these court decisions were rendered due to the active role of the civil society. In 2020, during the Covid-19 pandemic, a consortium of associations filed two series of actions in court to request, first, the suspension of a series of administrative decisions adopted by the Minister of the Interior to place 22 migrants in administrative detention and to request the annulment of these decisions. The administrative court adopted bold decisions to order the suspension of the decision in 2020 and ruled on the annulment in 2022. The decisions have not been published. Only 9 decisions are available through personal connections.

B. Institutional settings

In Tunisia, no legal text determines the competent court in case of illegal detention of a migrant. But, given that administrative detention is carried out on the basis of an administrative decision, it is possible to challenge the decision before the administrative court. This is what made it possible for the administrative court to make decisions on the matter. There is no specific jurisdiction for other barriers. This depends on the legal basis for the detention. If the basis is an administrative decision, the competent court is the administrative court which is a court specialized in administrative litigation. It has jurisdiction in first instance, appeal and cassation. If the arrest of the migrant is due for criminal reasons or for access to the territory in a manner contrary to the law relating to access to the territory, it is the judicial judge who has jurisdiction.

Executive bodies involved in asylum access adjudication

No, the executive bodies are not involved.

International or regional organizations involved in asylum access adjudication

UNHCR is the only organization involved in asylum access adjudication. Tunisia acceded to the 1951 Geneva Convention relating to the Status of Refugees on October 24, 1957 and to the 1967 protocol under Law No. 68-26 of 07/27/1968: Tunisia's accession to the protocol relating to the status of refugees[40]. The official cooperation between Tunisia and the UNHCR started in 2011 with the adoption of the Decree-Law No. 2011-92 of 2011, authorizing the ratification of a cooperation agreement between the Government of the Republic of Tunisia and the United Nations High Commissioner for Refugees relating to the establishment of the UNHCR office in Tunisia[41]. Since Tunisia has not established a national procedure to handle refugee status determination, the UNHCR office is handling the process. The

[40] https://www.refworld.org/legal/legislation/natlegbod/1968/fr/103560
[41] https://www.refworld.org/legal/decreees/natlegbod/2011/fr/103563

UNHCR reportedly collaborates with the Tunisian Red Crescent[42] and then with the Tunisian Council for Refugees (CTR) to receive applications and organize initial interviews. The CTR had replaced the Red Crescent following a corruption case, related to internal use of funds and non-respect to their engagements, within the Red Crescent, which was a highly respected institution, but after the death of its president, a scandal took place, which led to the UNHCR collaborating with the CTR, a national NGO founded by a former senior Tunisian UNHCR official. Following the crackdown on civil society, the CTR is no longer functional and will no longer play the collaborative role it previously played until 2024. Currently, the UNHCR is no longer receiving applications for refugee status determination. Since the local NGO's are no longer active on the ground the UNHCR is doing direct implementation, and it deprives it of being operational. Many services (like distributing the financial aid to asylum seekers) are being very difficult to implement especially with the current context of criminalization of NGO's work related to migration.

In the case of detention-related cases, which are the only existing cases related to migrants in Tunisia, regarding access to justice and respect for their rights, the organizations that were involved since they challenged the detention decision are: the World Organization Against Torture (OMCT), the Tunisian Forum for Economic and Social Rights (FTDES), Terre d'Asile Tunisie and Lawyers Without Borders (ASF). These organizations constituted a coalition in order to offer to the migrant's the ability to being represented by a lawyer and to access to justice in order to obtain the liberation of the detainees' migrants.

C. Legal context and legal system

The administrative court referred to Organic Law No. 50 of the year 2018 adopted on October 23, 2018 relating to the fight against all forms of racial discrimination, Law No. 7 of the year 1968 adopted on March 8, 1968 relating to the situation of foreigners in Tunisia, the Tunisian Constitution of 2014, the United Nations Convention against Torture and all inhumane and cruel treatment and degrading, the United Nations Covenant on Civil and Political Rights, United Nations Covenant on economic, social and cultural rights, Geneva conventions adopted in 1949 and their 1977 Protocols, the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights.

Reference to decisions from international or supranational tribunals

In two cases: *Case No. 167354*, 14th July 2022, *Omar Kolibali VS Minister of internal affairs* and *Case No. 167356*, 14th July 2022, *Jean Joseph Kamdam Tayo VS Minister of internal affairs*; the Administrative Tribunal of Tunis referred to the Article 6 of the African Charter on Human and Peoples rights which provides that: "*Every individual shall have the right to the liberty and security of his person. No one may be deprived of his freedom of movement except on such grounds and in accordance with such procedure as are established by law. He may not be arrested or detained arbitrarily*". The court referred to the provision related to the freedom of movement and the interdiction of arbitrary detention since for these cases the migrants were detained arbitrarily without any legal basis.

Judicial or quasi-judicial bodies doesn't invoke foreign cases or legislation in the cases related to the detention of migrants.

The Administrative tribunal, in the *Case No. 167356* (14th of July 2022), referred to the ICJ Judgement of 30th of November 2010, in the Case concerning Ahmadou Sadio Diallo (Republic of Guinea V. Democratic Republic of the Congo)[43], the ICJ considered that: "The provisions of Article 9, paragraphs 1 and 2, of the Covenant, and those of Article 6 of the African Charter, apply in principle to any form of arrest or detention decided upon and carried out by a public authority, whatever its legal basis and the objective being pursued (see in this respect, with regard to the Covenant, the Human Rights Committee's General Comment No. 8 of 30 June 1982 concerning the right to liberty and security of person (Human

[42] https://www.panapress.com/Le-HCR-met-fin-a-sa-collaboratio-a_630595388-lang1.html

[43] Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010, p. 639, https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-00-EN.pdf

Rights Committee, CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Person)). The scope of these provisions is not, therefore, confined to criminal proceedings; they also apply, in principle, to measures which deprive individuals of their liberty that are taken in the context of an administrative procedure, such as those which may be necessary in order to affect the forcible removal of an alien from the national territory. In this latter case, it is of little importance whether the measure in question is characterized by domestic law as an "expulsion" or a "refoulement"". The Court didn't elaborate on the connection made by the ICJ between freedom from detention, removal, expulsion or refoulement.

The Administrative Tribunal adopted the same logic and considered that the Article 9 of the of the Covenant is applicable in this case related to detention in order to remove the alien from the national territory. But without mentioning any special interpretation or analysis on detention and removal under article 9.

Human Rights Standards

The Administrative tribunal, in the *Case No. 167356* (14th of July 2022), accepted the arguments of the defendants based on international institutions and mechanisms, above mentioned, and considered that all of these legal bases and concluded that the administrative decision was violating all the legal requirements:

- General comment No. 35, Article 9 of the Universal Declaration on Human Rights (Liberty and security of person): "Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security"[44].
- Fact Sheet No. 26, The Working Group on Arbitrary Detention, "No one shall be subjected to arbitrary arrest, detention or exile" (Universal Declaration of Human Rights, article 9), The defendant mentioned the different cases in which the detention is considered as arbitrary according to the Working Group on Arbitrary Detention : "To enable it to carry out its tasks using sufficiently precise criteria, the Working Group adopted criteria applicable in the consideration of cases submitted to it, drawing on the above-mentioned provisions of the Declaration and the Covenant as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Consequently, according to the Group, deprivation of liberty is arbitrary if a case falls into one of the following three categories: A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him)(Category I); B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II); C) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III)[45]".

In this case asylum seekers' rights are weighed against national interests according to the Ministry of interior, and the court considered that even in this case, the authorities, here the Minister of interior, had

[44] https://docs.un.org/en/CCPR/C/GC/35
[45] https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet26en.pdf

to respect the national legislations which mentions that even in case of national interests threat the procedure which prevails is to adopt a legal decision: the article n° 18 of the Law No. 7 adopted in 8 March 1968 related to the status of the foreigners in Tunisia, mentions that the administration is obliged to explain the reasons of its decision and the administration is required to justify its decision according to which it considers that the foreigner constitutes a threat to public order and to prove its reasons which will lead to the decision to repatriate[46] and that the judge has the right to verify this reasons and their motivation. Article 19 of this law requires the adoption of an expulsion decision and the fixing of an address at which the foreigner must reside during the time of being expelled. In the absence of all these conditions, the court considered that the argument of breach of public order is not valid and considered that the defendant's arguments are valid.

D. Laws and norms at the domestic level

Tunisia is part to New York Protocol, since 27 July 1968 (https://www.refworld.org/legal/legislation/natlegbod/1968/fr/103560), but since Tunisia has not adopted a law relating to the status of refugees and has not installed a national mechanism to determine refugee status, the entire procedure is implemented by the UNHCR.

The principle of non-refoulement

The Tunisian Constitution of 1959 provides in its article 17 that it's forbidden to proceed to the extradition of political refugees. The Tunisian Constitution adopted in 2022, in its article 32 recognizes the non-refoulement for only persons who obtained the political asylum. The article 32 of the Constitution mentions that: "The right to political asylum is guaranteed under the conditions established by law, it is prohibited to extradite people who benefit from political asylum".

There is no domestic legislation that mentions the principle of non-refoulement in general terms—with the exception of this constitutional provision—even though Tunisia is a party to the New York Protocol.

The right to asylum

The different Tunisian constitutions recognize only political asylum. The 2014 Constitutions recognized the political asylum and the 2022 Constitution[47] in its article 32 recognized it also: "The right to political asylum is guaranteed under the conditions established by law, it is prohibited to extradite people who benefit from political asylum". The Tunisian constitutional tradition seems to adopt a very narrow definition of asylum. Before the adoption of a cooperation agreement between UNHCR and Tunisia, the political asylum was decided under political umbrella[48]. There is no national asylum law, which constitutes a significant gap regarding access to asylum.

Sources of international refugee law that are relevant to asylum access adjudication

The main source is New York Protocol since Tunisia is part of it, it's not incorporated in domestic legal order.

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[46] Here is mentioned the conditions of application of the art18 of the Law No. 7 adopted on 8 March 1968 regarding the detention of the foreigners in order to repatriate them when they are considered as a threat to public order. In this case, the migrant was detained without proofing that he is constituting a threat to the public order. The detention according to this law is a temporary measure when a decision of repatriation is adopted which is not the case in this affair.

[47] The *travaux préparatoires* of the 2014 constitution are not published, the rapporteur published his own *mémoires* and mentions some aspects but the debate was public and all the points about the right to asylum are known: the constitution recognized the right to political asylum, the right of non-refoulement was debated but the constitution recognized the prohibition of the extradition of political refugees. For the 2022 constitution, it was written by the president and there is no *travaux préparatoires*.

[48] Before 2011 the representation of UNHCR was very limited and it was a kind of special authorization to deal with the refugees. Political refugees are not under the competence of UNHCR since for the persons admitted as political refugee, they obtain a residence permit after the permission of the head of the executive. Before 2011, the number of the refugees in Tunisia was about 900!

Other human rights obligations

The International covenant on civil and political right, The International covenant on economic, social and cultural right, The Universal Declaration of Human Rights, The Convention against torture and other cruel, inhuman or degrading treatment or punishment, International Convention on the Elimination of All Forms of Racial Discrimination. The asylum access adjudication is not carried out by national court, so there is no data about their role in asylum access.

Other obligations (i.e. stemming from general public law, criminal law, humanitarian law, civil law, administrative law etc), in addition to the Refugee Convention, apply to asylum seekers

No, there is no domestic law applying. Domestic law related to the passports and legal documents allowing the persons to access to the national territory, the legislation related to foreigners mentioned further and the general regulation related to the administrative law related to the need to respect the legality of the decision and respect to the constitution. In fact, depending on the case, the domestic law can offer a wide range of legal texts.

Membership in a regional or other international organization

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. It's not relevant in the case of Tunisia since the asylum procedure is not carried out by national court or institution but by UNHCR. The consequence is that only the international law is applied and not regional one.

The role of soft law in asylum access adjudication

There is no data available since the procedure is confidential.

E. Legal standing

There are no specific legal procedures, it explains that the existent cases are about detention only. There is a procedure against illegal detention but not for the other barriers. It's not related to RSD since for RSD only UNHCR is competent.

F. The influence of international Courts

There is no influence. In the mentioned jurisprudence, it was mentioned by the defendants as an argument in favour of freedom of movement and combatting illegal detention. But the court based his position only on the national legislation, the constitution and the international obligations of Tunisia.

G. Comparative insights

Divergences among judicial bodies

There are no divergences since there is no cases and the procedure is carried out by UNHCR.

Divergences between national courts and supranational rulings

There are no examples. The court did not base its position on the ruling of the ICJ, other monitoring bodies, or soft law. The administrative court based its legal positions solely on national law, the constitution, and international agreements, notably the Convention against Torture and the International Covenant on Civil and Political Rights. For this reason, it cannot be considered whether there was any application or interpretation of the ruling of the ICJ or other monitoring bodies cited and mentioned by the defense counsel.

H. Role of expert testimony

There is no example.

I. Future Directions

Emerging trends or evolving issues in asylum law

There are two projects already presented to the Parliament[49] but not adopted yet. So, it is not possible to talk about an emerging trend. The trend now is criminalization of solidarity towards migrants and the voluntary return.

II. IDENTIFICATION OF LEADING DECISIONS

Detention:

1. The Administrative tribunal, in the decision *No. 167356* (14th of July 2022) and decision *No. 4105335* (10th July 2020).

A. Description of the barriers in the selected decisions

Detention: The barrier was formally established by the executive branch (Ministry of interior), since the Minister of interior adopted a decision in order to detain migrants.

Administrative obstacles faced by the applicant(s)

Detention: The applicants were not informed about the reason for their detention. The authorities didn't communicate to the detainees the reason for their detention, didn't explained them that they are detainees after the adoption of an administrative decision. They were in the detention centre without understanding the basis, the reasons and they haven't access to legal aid. The efforts of the NGO's was the way that made them access to justice.

Challenges related to their legal standing or capacity

Detention: the administration at the detention centre didn't inform them about their rights to obtain legal representation. The main obstacle was the lack of information about the reasons for their detention and the lack of legal aid

Hearing

Detention: The legal representant (the lawyer) was heard.

Legal aid

Detention: The administration didn't inform the applicants about their rights but thanks to the active role of associations, the applicants obtained legal assistance.

Applicant's vulnerability

Detention: Yes, but it didn't impact the adjudication process.

B. Impact of the judicial body's decision

Detention: The decisions had a positive impact and led to the liberation of the detained migrants. Unfortunately, the context prevented the adoption of other decisions reinforcing migrants' rights.

C. Consistency with previous jurisprudence

Detention: There are no previous decisions.

[49] The New Arab, *Tunisia parliament wants to legalise pro-Saied deportation of migrants law*, 27 January 2025, https://www.newarab.com/

Evolutive or restrictive approach

Detention: No, this decision was considered as a revolutionary one, actually since the crackdown of civil society no more associations can support the migrants in order to make them access to the court.

PART 3: SOCIO-LEGAL FACTORS

This third part of the Report is divided into four sections: I) Procedures in asylum access adjudication; II) Judicial or quasi-judicial bodies in asylum access adjudication; III) Other actors in asylum access adjudication; IV) Socio-political context.

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

Pushbacks: Pushbacks are practiced actually especially when the migrants are arrested, detained and deported to the Algerian or Libyan frontiers. Even asylum seekers and refugees have been deported without any respect to their statutes and the international protection they have. Since it's a political decision and all the authorities and powers are involved in applying this policy, the victims have no access to any jurisdiction. Even this practice is violating the international obligations of Tunisia, his legacy cannot be assessed by judicial body or quasi-judicial body.

Pullbacks: This barrier is particularly relevant actually in Tunisia. Due to the frequent use of this practice and the subsequent removal measures—mass expulsion at the border with Algeria or placement in accommodation centres in specific cases (women victims of violence, unaccompanied children)—migrants intercepted at sea are denied access to the asylum process. This is especially true given the increased use of interception at sea. Since June 2024, the authorities have requested that the UNHCR, the only organization capable of receiving asylum applications and conducting refugee status determination procedures, cease registering any asylum seekers. Because the sole competent organization is no longer able to act, this obstacle cannot be raised in court, given the current context and the absence of any legal procedure to challenge this barrier as an impediment to asylum.

Time as a challenge

Procedural barriers: Since the suspension of the UNHCR role in June 2024, the authority imposed to UNHCR to carry out the procedure for the asylum seekers registered until 2023. The access to the procedure is limited in the time and limited to people who are in line with the authorities' conditions.

Costs for legal representation

Detention: For migrants in detention, the legal system presents a barrier to accessing the asylum process, since filing an asylum application requires reaching the UNHCR. The only legal precedents concerning migrants in Tunisia relate to their arbitrary detention. These individuals lacked the resources to afford legal representation. It was thanks to the support of civil society that the migrants were released.

Spatial and geographical issues

Pullbacks: Intercepted persons are deported or they are left in the Sahara without support, excepted the women victims of violence and the children. So, absolutely, in Tunisia the geographical issue undermine access to asylum adjudication. In fact, to file an asylum application you must travel to the UNHCR office. Two centres are authorized to process applications: one in the south, near the Libyan border in Medenine, and the other in the capital, Tunis. Potential asylum seekers who are in places like Sfax, a migration hub, will not be able to travel, especially given the restrictions imposed on migrants. If they are stopped on their way to the UNHCR office, they could be arrested and deported.

Practices to overcome these challenges to accessing justice

Pullbacks: UNHCR set up a hotline[50] in order to allow deported migrants who are candidates to the asylum seekers procedures in order to facilitate reaching out UNHCR. Despite to the Tunisian context the hotline helped in saving many lives. But since the registration of asylum seekers stopped since June 2024,

[50] No public data available on that. Confidential.

the hotline doesn't work for making the procedure possible. The civil society used to be very active also but since the crackdown of the civil society since May 2024, the support is very limited: The last association still working in the ground to support migrants is Avocats sans Frontières ASF, they used to support migrants especially in reaching the justice in order to be represented by a lawyer and ask the application of the law. Actually, they are supporting migrants in some areas like the procedure related to obtaining the identity documents. The Arab Institute for Human Rights is also supporting the asylum seekers and the refugees by providing legal assistance. The role of the Arab institute is limited to the refugees and asylum seekers because of the circumstances, since irregular migration is being criminalised. Before the crackdown in 2024, the assistance provided by the NGO's was very large and reach all the categories of migrants.

Detention: A coalition of NGO's (OMCT, ASF, Terre d'asile Tunisie, FTDES), used to support migrants by providing access to justice in order to make the migrants contest the illegality of their detention to facilitate access to the asylum procedure. The few cases available in Tunisia are the result of this legal assistance provided by NGO's, otherwise the migrants remain without any legal support and can't reach UNHCR in order to register as asylum seekers.

Implications of difficulties accessing justice in asylum access adjudication

Access to justice is the major obstacle to accessing the asylum process in Tunisia. Asylum seekers who are unable to access UNHCR to file their applications are often those who are detained. Because they lack easy access to justice to challenge the illegality of their detention, they remain detained and risk deportation without being able to reach UNHCR, the body responsible for the asylum process. Moreover, the only existing legal precedents concern the illegal detention of migrants. Without the support of NGOs that enabled migrants to access justice by providing them with legal representation, they would not have been released.

B. Legal aid

There is no legal aid procedure within the refugee status determination process in Tunisia. Prior to its suspension in June 2024 at the request of the authorities, the procedure was handled exclusively and entirely by UNHCR; the processing of cases is confidential, and there is no need for legal aid since the procedure is entirely internal to the organization.

Free legal aid

Law No. 2002-52 of June 3, 2002, on legal aid, governs the granting of this assistance to individuals, whether plaintiffs or defendants, at various stages of the proceedings. In Tunisia, legal aid is available to foreigners; it is subject only to conditions of reciprocity and the existence of a legal aid agreement with the foreigner's country of origin. Law No. 2002-52 of June 3, 2002, concerning legal aid, stipulates:

"Art. 2 – The following may benefit from legal aid:

- Legal entities engaged in non-profit activities and having their principal place of business in Tunisia,

- Foreigners when Tunisian courts have jurisdiction over disputes in which they are involved, pursuant to a judicial cooperation agreement on legal aid concluded with the State of which they are a national, and subject to compliance with the principle of reciprocity."

But in practice, migrants rarely seek the legal aid available from the courts for fear of being arrested. They are often assisted by organizations that provide legal assistance. Some judges recognize migrants' right to seek legal aid[51], but others are not aware of this.

Detention: The only cases available are related to detention and the migrants gained access to justice thanks to legal aid provided by a group of NGOs.

[51] Not published information, confidential.

Challenges in obtaining legal representation in asylum access adjudication

There is no legal aid on asylum access adjudication in Tunisia.

C. Lodging the appeal

There is no legal provision in Tunisia regarding the registration/lodging of the appeal in asylum access adjudication.

D. Hearing

There is no legal provision and no practice related to this aspect.

E. Deliberation

There is no legal provision and no practice related to this aspect.

F. Review of decisions

There is no legal provision and no practice related to this aspect.

G. Procedures in decentralized states

Tunisia is a unitary state; this question does not apply.

H. Influence of procedures in practice and the role of courts

Do not apply, since there is no ordinary procedure, only UNHCR is competent and actually they are suspending the registration after authorities request and pressure on them.

II. JUDICIAL BODIES IN ACCESS TO ASYLUM

Note: In Tunisia, the judicial and quasi-judicial courts are not competent to receive asylum applications; this part does not apply to the Tunisian case.

A. Judicialization of politics

There is no conflict between the executive branch and the judiciary since the judiciary is not competent in matter of asylum procedure. But there are conflicts between the executive branch and the UNHCR which is the unique organization in charge with the procedure of refugee status determination.

Restriction or expansion of the jurisdiction or competence

The judicial is not competent and there is no legislation which restricted his competence. But in the Tunisia case, since June 2024 the competence of the UNHCR has been effectively rendered meaningless by the use of pressure and threats to suspend the agreement between UNHCR and the Tunisian government. Currently, UNHCR is no longer registering any asylum applications and is not processing any applications except those registered before 2023.

B. Other relevant aspects of judicial and quasi-judicial bodies

The lack of any role played by the judicial and the quasi-judicial make the access to asylum procedure very weak and dependant from the political context. The authoritarian shift in Tunisia made the refugees and asylum seekers statute very fragile and reinforced their vulnerability.

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

Don't apply in the Tunisia case.

B. International or regional organizations

UNHCR is the only institution involved and competent in matter of asylum. This UN agency, according to its mandate is receiving the asylum application and in determining the refugee status.

Involvement, efforts, and interests that international and regional organizations display

In Tunisia before the crackdown of the civil society, the criminalization of migration and the restriction on UNHCR mandate, UNHCR played a central role since it's the only institution in charge with that. Many other NGOs played an important role essentially regarding irregular detention since they are supporting the detainees' migrants in order to make them access to the asylum procedure and to protect their rights.

C. NGOs and bar associations

NGOs and bar associations involved in asylum access adjudication. Involvement, efforts, and interests.

In Tunisia, NGOs are not involved directly in the asylum adjudication. But they role is crucial since they used to help migrants to access to justice in case of detention or human rights violation in order to make them free and able to access to the asylum procedure.

NGOs were essentially very useful to migrants and asylum seekers in defending their rights and facilitating their access to asylum procedure. It's not still the case. After the crackdown of civil society. A few NGO's (like Arab institute for human rights and ASF) are still providing assistance to refugees and asylum seekers in matter of legal assistance. But this assistance is not related to access to asylum, it's linked to their day-to-day needs: ID's, certificate of birth, access to habitation, etc.

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

Main migration routes towards the country since 2010

The main migration routes towards the country are: The most important one, based on the migrant's number is the central migration route linking sub-Saharan Africa to Europe. Another migratory route has expanded due to the conflict in Sudan.

With the conflict in Sudan, another migration route has developed: the route linking Sudan to Tunisia via Libya.

A few numbers of migrants are from Eritrea and Ethiopia: The Horn of Africa/North Africa migration route remains minimal compared to the sub-Saharan African route.

Forced migration routes towards the country

The forced migration routes towards the country are linked to the conflicts zone: the instability and coup d'Etats in Western Africa made the western Africa route /Sub-Saharan route the most important one. The route Soudan/Libya /Tunisia is also important due to the conflict and massacred happening in Soudan.

Main entry points in the country since 2010

The main entry points since 2010 are: **Edhhiba-Wazen** and **Ras Jedir***:* in the eastern south, it's the regular entry point from Libya. In 2011, people fleeing the war that was beginning in Libya entered through regular border crossings controlled by Tunisian authorities: the **Ras Jdir** and **Dhiba Wazen** border posts. With the increase in the number of irregular migrants arriving in Tunisia, they began using uncontrolled entry points on the Algerian border, such as **Ain Draham**, **Jerissa**, and **Kasserine**. On the Libyan side of the border, entry points are the uncontrolled desert areas, the buffer zones between the two countries, often near the city of **Ben Guerdane**.

Implications that migratory routes towards the country have on how judicial institutions

Migration routes—particularly forced returns to Algeria and Libya—led to a concentration of migrants in the south, rendered them invisible, and made it impossible for them to access judicial or quasi-judicial institutions.

Implications of country entry points on what happens in judicial institutions

There is no real impact since Tunisia is not a federal State and especially that the context in Tunisia made the position of the authority regarding migrants and access to asylum uniform.

B. Composition and spatial distribution of forced migration population

https://www.unhcr.org/africa/media/tunisia-fact-sheet

https://webarchive.archive.unhcr.org/+/https://reporting.unhcr.org/sites/default/files/UNHCR%20Tunisia%20Factsheet%20-%20July%202017.pdf

https://reliefweb.int/report/tunisia/unhcr-tunisia-factsheet-march-2018

https://reliefweb.int/report/tunisia/unhcr-tunisia-factsheet-august-2019

https://reliefweb.int/report/tunisia/unhcr-tunisia-factsheet-may-2020-enar

https://reliefweb.int/report/tunisia/unhcr-tunisia-factsheet-september-2021-enar

https://reliefweb.int/report/tunisia/tunisia-unhcr-fact-sheet-february-2022

https://reliefweb.int/report/tunisia/unhcr-tunisia-registration-fact-sheet-18-december-2023

https://www.unhcr.org/sites/default/files/2024-03/UNHCR%20Tunisia-Factsheet-%20January%202024.pdf

https://www.donneesmondiales.com/afrique/tunisie/refugies.php

Implications on what occurs in judicial institutions

Not relevant for Tunisia case.

Displaced persons who are not asylum seekers or recognized refugees

They are not asylum seekers or recognized refugees; they were impacted by the detention since they were placed in detention center.

Distribution of asylum seekers and displaced persons within the territory

The main number of asylum seekers and non-registered displaced people is in Sfax, in El Amra open air camp. Since the authorities displaced them in this camp to make them invisible. The recognized refugees and some asylum seekers are in the UNHCR shelters in Medenine and Tunis. But due to budget cut, UNHCR will close two centers.

Implications of the spatial distribution of the forced migration population on asylum access adjudication

Of course, the current situation related to this geographical distribution impacted mainly access to protection since asylum seekers and recognized refugees cannot access to UNHCR office in Tunis to renew their cards without risking arrest or deportation. Since there is no representation of UNHCR in Sfax. There is only in Tunis and Medenine.

C. Political and public debate in the country

Relevance of the topic in political debate

Political discourse impacted the access to asylum[52] since the discriminatory and racist discourse made the public space dangerous for refugees, asylum seekers and migrants. So, they can't move freely and are obliged to be invisible and don't access to any protection. After the hate speech, the cities and public spaces became very dangerous for migrants. The public discourse propagated hate against migrants, asylum seekers and refugees. Many cases of violence were documented and the published reports, based on field work, confirms the relationship between the political discourse and the access to migrants' rights and asylum.

Relevance of the topic in public debate

This topic in not debated at all, but between 2023 and 2024, migrants and access to asylum was demonized and make people refuse to consider the refugees request as a human right[53]. Since the hate speech in March 2023, the topic of migrants and asylum are becoming a taboo and a dangerous topic. The political issue impacted also the public opinion to make it very sceptic about the asylum for nationalist reasons.

Relevance of the topic in public opinion

The militants and persons engaged in the protection of human rights are still trying to protest and to defend the right to help migrants, to express solidarity with them and the migrant's human rights. But due to the impact if the public opinion and the official discourse, many people are becoming hostile to the migrants and even to the refugees and asylum seekers. They are repeating the rhetoric of the public and official discourse which consider the refugees and asylum seekers as invaders. This public discourse emerged in the first time just before the conclusion of the MoU. It was a way to justify the externalisation policies.

Implications that political debate and public opinion have on what occurs in judicial bodies

The public discourse is very relevant and impacted the judge when they are judging migrants or asylum seekers and even refugees arrested by the police and persecuted for irregular residency or irregular access to the territory. The judges are under pressure, and they don't apply any legal guarantee. They order the detention of the migrants without considering their status, sometimes.

D. Corruption

Not relevant since corruption in Tunisia apply when migrants are trying to leave. So, they pay bribes to facilitate crossing borders.

E. Other socio-political factors

The shift of the political regime to an authoritarian one impacted deeply the perception of migrants and the right to asylum.

[52] La Tunisie doit mettre fin au « discours de haine » contre les Subsahariens, https://news.un.org/fr/story/2023/04/1133917 ,Crispation anti migrants subsahariens en Tunisie : Discours et violence https://ftdes.net/fr/etude-crispation-anti-migrants-subsahariens-en-tunisie-discours-et-violences/ , Torture Roads vol n°1: Mapping of violations suffered by people on the move in Tunisia https://www.omct.org/en/resources/reports/pr%C3%A9sentation-du-rapport-les-routes-de-la-torture-vol-n-1

[53] Torture Roads vol n°3: The shrinking of civic space and its impact on people on the move in Tunisia https://www.omct.org/en/resources/reports/les-routes-de-la-torture-vol-n-3-le-r%C3%A9tr%C3%A9cissement-de-lespace-civique-et-son-impact-sur-les-personnes-en-d%C3%A9placement-en-tunisie