

## The Price of Complicity:

Tunisia-EU Partnership Agreement fuels egregious human rights abuses against refugees, asylum-seekers and migrants



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December 2024

## I. Introduction

In 2023 and 2024 the number of refugees, asylum-seekers and migrants crossing Tunisia's borders steadily increased, a phenomenon precipitated by the worsening humanitarian crises in Africa's Sahel region, including as a result of the intensifying armed conflict in Sudan.<sup>1</sup> In December 2023, the United Nations High Commissioner for Refugees (UNHCR), the UN Refugee Agency, reported a five-fold increase in the number of asylum applications in Tunisia compared to 2022<sup>2</sup> and, as of December 2024, out of 15,659 refugees and asylum-seekers registered with UNHCR in Tunisia, 47.8 per cent originated from Sudan.<sup>3</sup>

In the second half of 2022, Tunisia also emerged as a key north African transit country for Black Africans seeking to reach Europe.<sup>4</sup> From 2019 to 2021, Tunisians made up the largest group of arrivals in Italy,<sup>5</sup> however, from the second half of 2022 onwards, "sub-Saharan Africans surpassed Tunisians as the largest group migrating to Europe from Tunisia."<sup>6</sup>

The implementation of a 2017 agreement between Italy and Libya,<sup>7</sup> supported by the European Union (EU) despite very serious human rights concerns about it,<sup>8</sup> preceded Tunisia's emergence as a key transit country along the journey to Europe. According to UNHCR, between January 2023 and 9 July 2023, there were 37,720 sea arrivals in Italy from Tunisia compared to 28,558 from Libya.<sup>9</sup>

Overall, Tunisia has in fact experienced a decrease in net migration, due largely to its struggling economy, which has led large numbers of Tunisians to seek employment opportunities in Europe via "irregular" migration routes to Italy.<sup>10</sup>

Tunisian President Kais Saied's response to the country's economic challenges, and to the above-mentioned increase in arrivals, has been opportunistic and authoritarian. Looking to deflect Tunisians' attention from his ongoing, arbitrary arrogation of power,<sup>11</sup> which has resulted

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1. United Nations Refugee Agency (UNHCR), UNHCR urges global response to neglected humanitarian crisis in the Sahel, 7 June 2024, available at: <https://www.unhcr.org/news/briefing-notes/unhcr-urges-global-response-neglected-humanitarian-crisis-sahel>. See also: United Nations Refugee Agency, Thousands still fleeing Sudan daily, after one year of war, 9 April 2024, available at: <https://www.unhcr.org/news/briefing-notes/thousands-still-fleeing-sudan-daily-after-one-year-war>.
  2. UNHCR, UNHCR Tunisia Operational Update, October – December 2023, available at: <https://data.unhcr.org/en/documents/details/105545>.
  3. UNHCR, Refugees and asylum-seekers in Tunisia, 31 October 2024, available at: <https://data.unhcr.org/en/country/tun>. Figures are regularly updated and will have increased since time of writing.
  4. Hamza Meddeb and Fakhreddine Louati, Tunisia's Transformation Into a Transit Hub: Illegal Migration and Policy Dilemmas, Carnegie Endowment for International Peace, March 2024, available at <https://www.xcept-research.org/publication/tunisias-transformation-into-a-transit-hub-illegal-migration-and-policy-dilemmas/>.
  5. Lorena Stella Martini and Tarek Megerisi, Road to nowhere: Why Europe's border externalisation is a dead end, European Council on Foreign Relations, 14 December 2023, available at: <https://ecfr.eu/publication/road-to-nowhere-why-europes-border-externalisation-is-a-dead-end/>.
  6. Hamza Meddeb and Fakhreddine Louati, Tunisia's Transformation Into a Transit Hub: Illegal Migration and Policy Dilemmas, Carnegie Endowment for International Peace, March 2024, available at <https://www.xcept-research.org/publication/tunisias-transformation-into-a-transit-hub-illegal-migration-and-policy-dilemmas/>.
  7. Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2017, available at: <https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>.
  8. Under this agreement, funds were allocated to Libyan authorities, including the Libyan Coast Guard, which operates in collusion with militias, to establish detention centers. Refugees, asylum-seekers and migrants are systematically subjected to gross and widespread human rights violations in these centers, possibly amounting to crimes against humanity, perpetrated by State and non-State actors. See: The New Yorker, The Secretive Prisons that Keep Migrants out of Europe, 28 November 2021, available at: <https://www.newyorker.com/magazine/2021/12/06/the-secretive-libyan-prisons-that-keep-migrants-out-of-europe>. See also, UN General Assembly (UNGA), Technical assistance and capacity-building to improve human rights in Libya, UN Doc A/HRC/56/70, para.36, available at: <https://documents.un.org/doc/undoc/gen/g24/084/26/pdf/g2408426.pdf>, and UNGA, Report of the independent fact-finding mission on Libya, UN Doc A/HRC/52/83, p.2, available at: <https://documents.un.org/doc/undoc/gen/g23/043/04/pdf/g2304304.pdf>.
  9. See UNHCR factsheet, 3 July 2023, available at: <https://data.unhcr.org/en/documents/details/101824>.
  10. US CIA, Tunisia country profile, 8 August 2024, available at: <https://www.cia.gov/the-world-factbook/countries/tunisia/>.
  11. The International Commission of Jurists (ICJ), Tunisia: a rigged referendum delivers Constitution threatening

in the systematic erosion of the rule of law and judicial independence in the country,<sup>12</sup> Saied has fanned the flames of xenophobia. In February 2023, the President denounced the “hordes of irregular migrants from sub-Saharan Africa” and stated they had come to Tunisia as part of a criminal plan designed to “change the demographic make-up of Tunisia” and to turn the country into “just another African country that does not belong to Arab and Islamic nations.”<sup>13</sup> Following the speech, Tunisians’ attacks against Black Africans surged with impunity, while the Tunisian authorities carried out collective expulsions of Black Africans, including by abandoning them in desert border-regions without food or water.<sup>14</sup>

Despite these developments, on 23 July 2023, just five months after the President’s xenophobic speech, the EU and Tunisia agreed a “Memorandum of Understanding on a Strategic and Global Partnership” (the EU MoU), whose main stated objective is to stem the flow of “irregular” arrivals from Tunisia to Europe.<sup>15</sup> Besides some minimal reference to human rights and international law, the EU MoU failed to feature any substantive requirement for the Tunisian authorities to guarantee the human rights of asylum-seekers, refugees and migrants. Whether or not this is a coincidence, the 12 months following the EU MoU were marked by the Tunisian authorities’ further attacks against Black Africans, including reports of EU-funded security forces’ widespread perpetration of sexual violence against sub-Saharan women and girls,<sup>16</sup> and the arbitrary arrest and detention of staff at organizations working to support the human rights of migrants, asylum-seekers and refugees.<sup>17</sup>

In this briefing, the ICJ analyzes:

- (i) Tunisia’s limited domestic framework guaranteeing the human rights of refugees, asylum-seekers and migrants;
- (ii) the Tunisian authorities’ violations of the human rights of Black Africans through mass expulsions, inhuman treatment and arbitrary arrests and detentions, seemingly with the tacit acquiescence of the EU; and
- (iii) the impact of the President’s erosion of judicial independence on the right of victims’ to obtain effective remedies for these serious human rights violations.

The briefing concludes with a set of recommendations addressed to Tunisia and the EU with a view to their taking immediate steps to meet their legal obligations under international law with respect to the human rights of migrants, refugees and asylum-seekers, particularly Black Africans.

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democracy and human rights, 27 July 2022, available at: <https://www.icj.org/tunisia-a-rigged-referendum-delivers-constitution-threatening-democracy-and-human-rights/>.

12. ICJ, Tunisia: revoke Presidential Decree 11, 14 February 2022, available at: <https://www.icj.org/tunisia-revoke-presidential-decree-11/>.

13. Amnesty International, Tunisia: President’s racist speech incites a wave of violence against Black Africans, 10 March 2023, available at: <https://www.amnesty.org/en/latest/news/2023/03/tunisia-presidents-racist-speech-incites-a-wave-of-violence-against-black-africans/>.

14. ICJ, “Tunisia- the authorities must halt all forcible removals of foreign nationals in violation of international law and stop intimidating associations working on asylum and intimidation” 13 May 2024, available at: <https://www.icj.org/tunisia-the-authorities-must-halt-all-forcible-removals-of-foreign-nationals-in-violation-of-international-law-and-stop-intimidating-associations-working-on-asylum-and-migration/>.

15. European Commission, Mémorandum d’entente sur un partenariat stratégique et global entre l’Union européenne et la Tunisie, 23 July 2023, available in French at: [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_23\\_3887](https://ec.europa.eu/commission/presscorner/detail/es/ip_23_3887).

16. The Guardian, The brutal truth behind Italy’s migrant reduction: beatings and rapes by EU-funded forces in Tunisia, 19 September 2024, available at: <https://www.theguardian.com/global-development/2024/sep/19/italy-migrant-reduction-investigation-rape-killing-tunisia-eu-money-keir-starmer-security-forces-smugglers>.

17. ICJ, “Tunisia- the authorities must halt all forcible removals of foreign nationals in violation of international law and stop intimidating associations working on asylum and intimidation” 13 May 2024, *supra* note 14.

## II. The Tunisian framework on asylum and migration

### Asylum-seekers and refugees

Tunisia acceded to the 1951 Convention relating to the Status of Refugees in 1957 and to its 1967 Protocol in 1968<sup>18</sup> (hereinafter jointly referred to as the UN Refugee Convention) and is thus bound to guarantee protection to refugees on its territory,<sup>19</sup> including in particular against *refoulement*,<sup>20</sup> and to ensure refugees' rights, consistent with international standards, including non-discrimination, freedom of religion, rights concerning their juridical status, to work, housing and education. Additionally, Tunisia ratified the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) in 1989 and is therefore bound by it. The OAU Refugee Convention provides refugees with broader protection against *refoulement* than the Refugee Convention and exhorts States parties to grant refugees asylum.<sup>21</sup> Moreover, as a party to the African Charter on Human and Peoples' Rights (ACHPR), Tunisia is bound by its Article 12(3), which guarantees people fleeing persecution the right not just to seek asylum but also to obtain it.

While article 32 of the 2022 Tunisian Constitution enshrines the right to "political asylum" in domestic law, including a prohibition against the "extradition" of persons who have been granted "political asylum", the later concept remains undefined.

In June 2016, draft legislation, which if adopted would have established a domestic asylum framework, reached the Prime Minister's office.<sup>22</sup> To date, however, Tunisia has failed to adopt a national framework on asylum. Consequently, UNHCR remains the sole entity responsible for conducting refugee status determination in Tunisia under the terms of a 2020 Memorandum of Understanding (UNHCR MoU) signed with the Tunisian Ministry of Social Affairs and the Tunisian Union for Social Solidarity.<sup>23</sup> Under the UNHCR MoU, Tunisia's obligations extend only to enabling access to social services for persons of concern to UNHCR. As a result, asylum-seekers and refugees in Tunisia are unable to enforce their rights under the UN Refugee and OAU Refugee Conventions before the Tunisian immigration authorities or appeal decisions in their asylum cases before Tunisian courts.

As of June 2024, UNHCR has suspended asylum application procedures at the request of the Tunisian authorities, leaving hundreds of refugees and asylum-seekers without access to international protection.<sup>24</sup>

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18. 1951 Convention relating to the Status of Refugees and its 1967 Protocol, available at: <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

19. Article 1(A)(2) of the Refugee Convention defines the term refugee for the purposes of the instrument as someone, who, among other things, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

20. "The core principle of the 1951 Convention is *non-refoulement*, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom", see The 1951 Refugee Convention.

21. OAU Refugee Convention, article 1(2), available at: <https://www.unhcr.org/media/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted-assembly-heads>. Article 1 of the OAU Refugee Convention provides a definition of the term refugee for the purposes of the instrument and Article 2 concerns the grant of asylum and protection against *refoulement*.

22. Reported obstacles to the adoption of the law include fears that it will draw in even higher numbers of asylum-seekers and refugees. See: Katharine Natter, "Ad-hocratic immigration governance: how states secure their power over immigration through intentional ambiguity, Territory, Politics, Governance" Taylor & Francis Group 15 February 2021, available at: <https://www.tandfonline.com/doi/full/10.1080/21622671.2021.1877189>.

23. UNCHR Factsheet, June 2021, available at: [https://reporting.unhcr.org/sites/default/files/UNHCR%20Tunisia\\_Factsheet\\_June%202021\\_ENG.pdf](https://reporting.unhcr.org/sites/default/files/UNHCR%20Tunisia_Factsheet_June%202021_ENG.pdf).

24. Infomigrants, Julia Dumont, Stuck in limbo: Tunisia's suspension of asylum procedures leaves migrants stranded, 31 October 2024, available at: <https://www.infomigrants.net/en/post/60899/stuck-in-limbo-tunisia-suspension-of-asylum-procedures-leaves-migrants-stranded>. See also: EEAS, Tunisia: Speech by High Representative/Vice-President Josep Borrell at the EP plenary on the situation in the country, 22 October 2024, available at: [https://www.eeas.europa.eu/eeas/tunisia-speech-high-representativevice-president-josep-borrell-ep-plenary-situation-country\\_en](https://www.eeas.europa.eu/eeas/tunisia-speech-high-representativevice-president-josep-borrell-ep-plenary-situation-country_en)

## The risk of criminalisation of refugees and asylum-seekers

Freedom from penalization or detention for “illegal entry” under domestic law is a well-established refugee right guaranteed, among others, under article 31 of the UN Refugee Convention. As such, it is a right that all refugees are entitled to exercise vis-à-vis a State party to the UN Refugee Convention from the moment they are on the territory of that State party.<sup>25</sup>

Despite this, Tunisia’s Organic Laws 1968-7, 1975-40 and 2004-6 make asylum-seekers and refugees liable to criminal prosecution for the “offence” of “irregular migration”, with article 23 of Organic Law 1968-7 on the Legal Status of Foreigners in Tunisia (Organic Law 1968) imposing up to one year’s imprisonment on any foreigner who enters or leaves Tunisia without a valid travel document and entry visa, with the term “foreigner” failing to differentiate, among others, between migrants, asylum-seekers and refugees.<sup>26</sup>

Given the financial limitations of UNHCR in Tunisia and the large volume of individuals seeking its support, many asylum-seekers have faced delays in their registration with UNHCR, and therefore delays in accessing documentation confirming their asylum-seeking status.<sup>27</sup> Since June 2024, the risk of asylum-seekers being left without documentation increased sharply as UNHCR suspended asylum application procedures at the request of the Tunisian authorities.<sup>28</sup> Under Organic Law 1968, while they are waiting for documentation confirming their registration with UNHCR, asylum-seekers (and refugees without identity documents as recognized refugees) are at heightened the risk of arrest, detention and prosecution as “irregular migrants”. Indeed, reports indicate that the Tunisian authorities have adopted a practice of arresting asylum-seekers before they have the chance to claim asylum at UNCHR, violating Tunisia’s international law obligations to guarantee protection to refugees on its territory, including the right to be free from penalization or detention for “illegal entry” under domestic law, pursuant to the Refugee Convention, and the right to seek and obtain asylum under the OAU Refugee Convention, and the 2022 Tunisian Constitution.<sup>29</sup>

## **Migrants**

Organic Law 1968-7 regulates the entry, stay and exit of foreign nationals, including the conditions for legal residency and work.<sup>30</sup> However, in practice, the procedures for migrants to regularize their status with the Tunisian authorities, and to obtain work permits and residence documentation, remain opaque and the Tunisian authorities are reported to apply them in a discriminatory manner, with migrants from the global North far more likely to be granted the right to remain and work in Tunisia than sub-Saharan nationals.<sup>31</sup> As a result, migrants from sub-Saharan Africa are more likely to be criminalized as undocumented “irregular” migrants.<sup>32</sup>

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25. See, for example, Guy S. Goodwill, Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection (October, 2001), available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/3bcfdf164.pdf>. In the Introductory Note of the Geneva Refugee Convention, UNHCR recognized that, “the seeking of asylum can require refugees to breach immigration laws,” with those fleeing persecution often unable to obtain travel documents prior to leaving their country of origin. Article 31 of the Convention provides that Contracting States should not subject refugees and asylum-seekers to penalties on account of their illegal entry.”

26. Organic Law No. 7 of March 8, 1968, on the Legal Status of Foreigners in Tunisia, available at: <https://legislation.securite.tn/latest-laws/loi-n-68-7-du-8-mars-1968-relative-a-la-condition-des-etrangers-en-tunisie/> in French and Arabic.

27. Alessandra Bajec, “In a Tunisian migration hub, asylum seekers find little support”, 6 November 2023, available at: <https://www.thenewhumanitarian.org/news-feature/2023/11/06/tunisia-migration-asylum-seekers-little-support>.

28. Infomigrants, Julia Dumont, Stuck in limbo: Tunisia’s suspension of asylum procedures leaves migrants stranded, 31 October 2024, *supra* note 24.

29. Vasja Badalič, “Tunisia’s Role in the EU External Migration Policy: Crimmigration Law, Illegal Practices, and Their Impact on Human Rights”, *Journal of International Migration and Integration*, 29 June 2018, page 91, available at: <https://link.springer.com/article/10.1007/s12134-018-0596-7>.

30. Organic Law No. 7 of March 8, 1968, on the Legal Status of Foreigners in Tunisia, *supra* note 25.

31. The Tahrir Institute for Middle East Policy (TIMEP), How Tunisia Produces “Irregular” Migrants, 13 July 2023, available at: <https://timep.org/2023/06/13/how-tunisia-produces-irregular-migrants/>.

32. See above for more on the criminalization of irregular migration under Tunisian domestic law.

## Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia

For a long time, Tunisia, the EU and its Member States have affirmed their intention to cooperate on the issue of “irregular migration”, through formal agreements, such as the EU-Tunisia Association Agreement<sup>33</sup> and the EU-Tunisia Mobility Partnership.<sup>34</sup> Additionally, a number of EU/Tunisia cooperation projects have funded the search and rescue capabilities of the Tunisian Coast Guard and provided Tunisia with technical support, equipment and training for border surveillance, with the EU-Tunisia Association Agreement citing the reduction of “irregular departures” as a shared objective.<sup>35</sup>

At the end of 2022, Tunisia emerged as one of the main countries of departure for migrants hoping to reach Europe,<sup>36</sup> prompting the EU to prioritize strengthening and consolidating its existing “migration cooperation” with Tunisia.<sup>37</sup>

On 27 April 2023, two months after the Tunisian President’s xenophobic speech and the subsequent attacks on Black Africans,<sup>38</sup> the EU and Tunisia expressed their “willingness to establish a stronger partnership on migration, anti-smuggling and the promotion of legal migration.”<sup>39</sup>

On 11 June 2023, a Tunisian and EU Joint Declaration announced that the EU and Tunisia would work together on a “comprehensive partnership package” featuring “migration” as a key area for coordination.<sup>40</sup>

On 16 July 2023, less than two weeks after the Tunisian authorities had rounded-up and forcibly expelled hundreds of Black Africans, leaving them stranded in Tunisia’s desert border-regions with Algeria and Libya,<sup>41</sup> Olivér Várhelyi, the then EU Commissioner for Neighbourhood and Enlargement, and Mounir Ben Rjiba, Secretary of State to the Minister of Foreign Affairs, Migration and Tunisians Abroad, signed the Tunisia-EU MoU.

The Tunisia-EU MoU covers five areas of cooperation; under the MoU, the EU supports Tunisia in macroeconomic stability, economy and trade, renewable energies and people-to-people

33. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, OJ L 97, 30.3.1998, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21998A0330%2801%29>.

34. European Commission press release, EU and Tunisia establish their Mobility Partnership, 3 March 2014, available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_208](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_208).

35. Council of the European Union, Operationalization of the Pact – Action plans for strengthening comprehensive migration partnerships with priority countries of origin and transit Draft Action Plan: Tunisia, 3 February 2022, 11392/2/21 Rev 2, available at: <https://www.statewatch.org/media/3241/eu-council-pact-tunisia-action-plan-11392-21-rev2.pdf>.

36. Frontex, Central Mediterranean accounts for half of irregular border crossings in 2023, 14 September 2023, <https://www.frontex.europa.eu/media-centre/news/news-release/central-mediterranean-accounts-for-half-of-irregular-border-crossings-in-2023-G6q5pF> - :~:text=The Central Mediterranean remains the,for this period since 2016

37. Paula García Andrade and Eleonara Frasca, The Memorandum of Understanding between the EU and Tunisia: Issues of procedure and substance on the informalisation of migration cooperation, EU Immigration Blog, 26 January 2024, available at: <https://eumigrationlawblog.eu/the-memorandum-of-understanding-between-the-eu-and-tunisia-issues-of-procedure-and-substance-on-the-informalisation-of-migration-cooperation/>.

38. Amnesty International, Tunisia: President’s racist speech incites a wave of violence against Black Africans, 10 March 2023, available at: <https://www.amnesty.org/en/latest/news/2023/03/tunisia-presidents-racist-speech-incites-a-wave-of-violence-against-black-africans/>.

39. European Commission news release, “The European Commission and Tunisia have expressed the willingness to establish a stronger partnership on migration, anti-smuggling and the promotion of legal migration” 27 April 2023, available at: [https://neighbourhood-enlargement.ec.europa.eu/news/european-commission-and-tunisia-have-expressed-willingness-establish-stronger-partnership-migration-2023-04-27\\_en](https://neighbourhood-enlargement.ec.europa.eu/news/european-commission-and-tunisia-have-expressed-willingness-establish-stronger-partnership-migration-2023-04-27_en) - :~:text=The two sides have agreed,human rights and human dignity.https://neighbourhood-enlargement.ec.europa.eu/news/european-commission-and-tunisia-have-expressed-willingness-establish-stronger-partnership-migration-2023-04-27\_en.

40. European Commission news article, The European Union and Tunisia agreed to work together on a comprehensive partnership package, 11 June 2023, available at: [https://neighbourhood-enlargement.ec.europa.eu/news/european-union-and-tunisia-agreed-work-together-comprehensive-partnership-package-2023-06-11\\_en](https://neighbourhood-enlargement.ec.europa.eu/news/european-union-and-tunisia-agreed-work-together-comprehensive-partnership-package-2023-06-11_en).

41. Human Rights Watch, No Safe Haven for Black African Migrants, Refugees, 19 July 2023, available at: <https://www.hrw.org/news/2023/07/19/tunisia-no-safe-haven-black-african-migrants-refugees>.



contacts, and in exchange, Tunisia “cooperates on migration control”. The MoU underscores the willingness of both parties to develop a “holistic approach to migration”. In particular, Tunisia’s commitments under the MoU include “the prevention of migrant departures from Tunisia by sea”, “an obligation to combat migrant trafficking and smuggling”, and “the return of foreigners from Tunisia to their countries of origin”, all with a view to “decreasing the numbers of migrants departing Tunisia for Europe”.<sup>42</sup> As part of the EU MoU, the EU pledged 105 million Euros “to support the Tunisian coastguard and border management”, 900 million Euros in macroeconomic support and 150 million Euros in direct budgetary support.

On 22 September 2023, the European Commission announced that it would deliver 67 million Euros to Tunisia “due to the increased number of migrants arriving on Lampedusa, Italy, as an operational assistance package on migration”.<sup>43</sup>

As mentioned above, the EU negotiated and signed its MoU with Tunisia precisely at a time when the Tunisian authorities were perpetrating egregious human rights violations against migrants, refugees and asylum-seekers, including by collectively expelling over a hundred Black Africans to the Tunisian-Algerian border.<sup>44</sup> Moreover, the EU MoU omits all and any mention of concrete substantive human rights safeguards or monitoring requirements for the protection of human rights in the course of its execution. Indeed, the European Commission asserted there was no need to conduct a human rights impact assessment before signing the MoU,<sup>45</sup> leading the then Council of Europe Commissioner for Human Rights, Dunja Mijatović, to express concern that the European Union’s “failure to establish clear and concrete safeguards in migration co-operation activities will only add to the worrying trend of human rights being sacrificed to European states’ attempts to externalise their responsibilities” towards asylum-seekers, refugees and migrants.<sup>46</sup> In October 2024, an EU Ombudsman investigation found that the European Commission had in fact carried out a “risk management exercise” for Tunisia before the MoU was signed, including “the state of human rights, democracy, the rule of law, security and conflict” in the country and criticized the Commission for its failure to make the findings of the risk management exercise public.<sup>47</sup>

The MoU was further criticized for putting the EU’s compliance with fundamental rights at risk, as it prevents migrants, asylum-seekers and refugees from fleeing serious human rights violations being perpetrated by Tunisian authorities.<sup>48</sup>

In their attempts to intercept and prevent the arrivals on European shores of refugees, asylum-seekers and migrants – whether undertaken unilaterally or through measures collectively agreed with third countries, such as Tunisia – the EU and its member States cannot circumvent and externalize their international human rights and refugee law obligations to respect, protect and fulfil the human rights of asylum-seekers, refugees and migrants.<sup>49</sup> Consequently, by agreeing the MOU with Tunisia, the EU and its member States have violated

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42. Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia, 16 July 2023, available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_3887](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3887).

43. European Commission daily news, Commission announces almost €127 million in support of the implementation of the Memorandum of Understanding with Tunisia and in line with the 10-point plan for Lampedusa, 22 September 2024, available at: [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_23\\_4585](https://ec.europa.eu/commission/presscorner/detail/en/mex_23_4585).

44. For more on this, please see section III below.

45. European Commission, Reply of the European Commission to the questions from the European Ombudsman - Strategic initiative SI/5/2023/MHZ on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding, Case SI/5/2023/MHZ, 16 February 2024, available at: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/183009>.

46. Council of Europe, Commissioner for Human Rights statement, European states’ migration co-operation with Tunisia should be subject to clear human rights safeguards, 17 July 2023, available at: <https://www.coe.int/en/web/commissioner/-/european-states-migration-co-operation-with-tunisia-should-be-subject-to-clear-human-rights-safeguards>.

47. European Commission, Decision on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding, Case OI/2/2024/MHZ, 21 October 2024, available at: <https://www.ombudsman.europa.eu/en/decision/en/193851>.

48. Tineke Strik and 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*, 18 March 2024, available at: <https://link.springer.com/article/10.1007/s40802-024-00251-x>.

49. UNHCR, UNHCR Note on the “Externalization” of International Protection, 28 May 2021, available at: <https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534>.

their international law obligations under the Refugee Convention, as well as under international human rights law, including under the European Convention on Human Rights and the Charter of Fundamental rights of the European Union, to guarantee the human rights of refugees, asylum-seekers and migrants, in particular their right to protection against *refoulement*.<sup>50</sup> Moreover, by continuing to implement the MoU with Tunisia, the EU and its member States may at best be deemed to condone Tunisia's egregious violations of the human rights of refugees, asylum-seekers and migrants, and at worst must be deemed complicit in these violations.

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50. For more on these obligations see pages 2-3 and 7 of this briefing. Under international human rights law, the *non-refoulement* principle enjoins States from removing an individual from their jurisdiction where there is a real risk that the person concerned would face serious human rights violations in the receiving country. The *non-refoulement* principle is absolute, permitting no derogation either in law or in practice, irrespective of the conduct of the person concerned. See, *Saadi v Italy*, judgment, European Court of Human Rights, no. 37201/06, 28 February 2008, para. 127; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984; *Adel Trebourski v. France*, UNCAT, CAT/C/38/D/300/2006, 11 May 2007, paras 8.2 – 8.3; UN Human Rights Committee, General comment no. 31 [80]; The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 12. The removing State is under a duty of enquiry to verify, before removal, that the person concerned will not face a real risk of prohibited treatment in the country of destination and/or in any third country through which they may transit. See, *Mamatkulov and Askarov v. Turkey* [GC], judgment, Grand Chamber, European Court of Human Rights, no. 46827/99 and 46951/99, 04 February 2005, para. 69.

### III. Egregious violations of the rights of refugees, asylum-seekers and migrants

#### Violations of the prohibition on collective expulsions and of the *non-refoulement* principle

Between July 2023 and May 2024, the Tunisian authorities collectively and forcibly expelled hundreds of Black migrants, refugees and asylum-seekers on three separate occasions:

- i. Between 2 and 5 July 2023, the Tunisian authorities collectively and forcibly expelled up to 1,200 people to the Libyan and Algerian borders.<sup>51</sup> At least two of the men expelled to the Libyan border were Cameroonian asylum-seekers registered with UNHCR.<sup>52</sup>
- ii. Between 18 to 20 September 2023, the Tunisian National Guard collectively and forcibly expelled over 100 migrants, including children, and possibly also asylum-seekers and refugees, to the border with Algeria. The Black Africans expelled, who originated from Cameroon, Guinea, Senegal and other sub-Saharan countries, were intercepted at sea by the Tunisian Coast Guard and returned to Tunisia before they were expelled. This incident was the first collective expulsion carried out after the signing of the EU MoU and represented a shift in policy as people intercepted at sea before the EU MoU had been returned to Tunisia and not removed onward.<sup>53</sup>
- iii. On 3 May 2024, the Tunisian authorities arrested approximately 400 Black Africans, including asylum-seekers and refugees from Sudan, from makeshift settlements near the headquarters of the International Organization for Migration and the UNHCR office in Tunis, before collectively and forcibly expelling them to the Algerian border<sup>54</sup> and to Libya.<sup>55</sup> On 6 May, in a televised speech during a National Security Council meeting, President Saïed confirmed that 400 foreign nationals had been expelled to the “eastern border” in “continuous coordination” with neighboring countries.<sup>56</sup>

In its case-law, the European Court of Human Rights has defined collective expulsions as “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.”<sup>57</sup>

Collective expulsion of non-nationals is prohibited under international law. This prohibition is present in all major human rights treaties<sup>58</sup> and is a rule of customary international law making it binding on all States.<sup>59</sup> Moreover, the Human Rights Committee has clarified that, where non-derogable rights and absolute prohibitions are concerned, any procedural safeguards that

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51. Human Rights Watch, No Safe Haven for Black African Migrants, Refugees, 19 July 2023, *supra* note 41.

52. Tunisian Forum for Social and Economic Rights, Tunisia: Anatomy of a Forced Deportation to Libya, 5 July 2023, available at: <https://ftdes.net/en/tunisie-anatomie-dun-refoulement-force-vers-la-libye/>.

53. Human Rights Watch, Tunisia: African Migrants Intercepted at Sea, Expelled, 10 October 2023, available at: <https://www.hrw.org/news/2023/10/10/tunisia-african-migrants-intercepted-sea-expelled>.

54. Le Monde Afrique, En Tunisie la répression s’accroît sur les migrants subsahariens et les associations qui les soutiennent, 8 May 2024, available at: [https://www.lemonde.fr/afrique/article/2024/05/08/en-tunisie-la-repression-s-accroît-sur-les-migrants-subsahariens-et-les-associations-qui-les-soutiennent\\_6232218\\_3212.html](https://www.lemonde.fr/afrique/article/2024/05/08/en-tunisie-la-repression-s-accroît-sur-les-migrants-subsahariens-et-les-associations-qui-les-soutiennent_6232218_3212.html).

55. Al Jazeera, Tunisia: The migration trap, 10 May 2024, available at: <https://www.aljazeera.com/news/2024/5/10/tunisia-the-migration-trap>.

56. ICJ, Tunisia: the authorities must halt all forcible removals of foreign nationals in violation of international law and stop intimidating associations working on asylum and intimidation, 13 May 2024, *supra* note 14.

57. *Khlaifia and Others v. Italy* [GC], 2016, para. 237, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-170054%22%5D%7D>.

58. Treaty prohibitions on collective expulsions are contained in Article 4 of Protocol 4 to the European Convention on Human Rights, Article 12.5 of the ACHPR, Article 22.9 American Convention on Human Rights, and Article 22.1 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Although no express ICCPR provision prohibits collective expulsions, the Human Rights Committee has been clear that “laws or decisions providing for collective or mass expulsions” would entail a violation of Article 13 ICCPR: UN Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, available at: <https://www.refworld.org/legal/general/hrc/1986/en/38724>.

59. The ILC Special Rapporteur on the expulsion of aliens held that the prohibition of collective expulsion assumed the status of a general principle of international law “recognised by civilised nations”, UN GA, *Third report on the expulsion of aliens / by Maurice Kamto, Special Rapporteur*, 19 April 2007, A/CN.4/581, para. 115.

aim to guarantee such rights and obligations must be observed on equally absolute terms.<sup>60</sup> Therefore, insofar as a measure of collective expulsion is linked to the non-derogable prohibition of *refoulement*, States are not able to derogate from the obligation to ensure procedures that allow individuals to submit reasons against their removal. The Tunisian authorities are also legally bound to respect the prohibition on collective expulsion as Tunisia is a State Party to the 1966 International Covenant on Civil and Political Rights (ICCPR), article 13 of which requires that any alien lawfully in the territory of a State Party may be expelled only further to a decision reached in accordance with the law, and that any person liable to expulsion shall be allowed to submit reasons as to why they should not be expelled, and to have their case reviewed by a competent authority.<sup>61</sup> The Human Rights Committee has confirmed that where procedural safeguards exist to uphold an absolute prohibition, such as the absolute prohibition on *refoulement*, the right to submit reasons against a potential collective expulsion in violation of the non-derogable principle of non-refoulement, the right to these procedural safeguards is to be guaranteed on equally absolute terms.<sup>62</sup> Consequently, Tunisia can in no circumstances deny individuals the right to submit reasons against their removal. Additionally, the Human Rights Committee has confirmed that “laws or decisions providing for collective, or mass expulsions would entail a violation” of article 13<sup>63</sup> and also of article 6(1), the right to life, where the expulsions put the lives of the concerned individuals at risk.<sup>64</sup>

Furthermore, with specific regard to asylum-seekers and refugees, under both the UN and OAU Refugee Conventions, Tunisia is legally obliged to uphold the principle of *non-refoulement* under international refugee law, namely the prohibition on removing refugees to any place where they would be at risk of persecution on account of their race, religion, nationality, membership of a particular social group or political opinion.<sup>65</sup> Tunisia is also bound by the 1984 Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT),<sup>66</sup> which it ratified in 1988. The UN Committee against Torture has confirmed that the mass expulsion of refugees and asylum-seekers without conducting an individualized and objective assessment of their personal risk upon removal amounts to a violation of the principle of *non-refoulement*.<sup>67</sup> Tunisia is similarly bound under customary international law to respect the prohibition of *refoulement*.<sup>68</sup>

The ICJ is deeply concerned at Tunisia’s collective and forcible expulsion of foreign nationals, including refugees and asylum-seekers, without conducting individualized assessments of the risks posed to them on expulsion under either Organic Law 1968 or the UN Refugee and OAU Refugee Conventions. In so doing, Tunisia has failed to meet its international law obligations to uphold the prohibition on collective expulsions and the principle of *non-refoulement* under international refugee and human rights law.

The ICJ is also concerned that such collective expulsions are ostensibly targeting individuals based on their skin colour, purportedly on the basis of their real or perceived origins, in violation

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60. UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 15, available at: <https://www.refworld.org/legal/general/hrc/2001/en/30676>.

61. ICCPR, article 13, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

62. UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 15, *supra* note 60.

63. UN Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, para 10, *supra* note 58.

64. UN Human Rights Committee, General Comment 36: Article 6, the right to life, 3 September 2019, para. 31, available at: <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

65. 1951 Convention relating to the Status of Refugees in 1957, article 33(1), *supra* note 18.

66. CAT, article 3, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

67. Committee Against Torture, General Comment No. 4, para. 13, available at: <https://www.refworld.org/legal/general/cat/2018/en/120416>.

68. UNHCR, The Principle of *Non-Refoulement* as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994; UNHCR, Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, para. 15, available at: <https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625>.

of Tunisia's obligations under international law to prohibit and punish racial discrimination, as detailed below.

### **Violations of right the right to life, and of the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment**

During the mass expulsions of July 2023, the Tunisian authorities' committed acts of violence against migrants, refugees and asylum-seekers, including beatings, sexual assaults, the deliberate deprivation of food and water following abandonment in Tunisia's desert-regions, as well as property damage.<sup>69</sup> Following the July expulsions, at least 25 people were found to have died at the Tunisia-Libya border,<sup>70</sup> with others who had been forcibly transferred to Libya where they subsequently faced a real risk of forced labour, extortion and killing.<sup>71</sup>

A Guardian Newspaper report also confirmed that, in February 2024, the Tunisian authorities intercepted 150 people heading from Tunisia to Italy by boat and transferred them to a National Guard base on the Tunisia-Algeria border, where Tunisian National Guard officers, who receive EU funding under the EU MoU, are alleged to have systematically raped the women in the group.<sup>72</sup>

Furthermore, during the mass expulsions of September 2023<sup>73</sup> and May 2024,<sup>74</sup> it was documented that the Tunisian authorities physically attacked individuals and took them to the Algerian border, before they abandoned them there without food or water, having previously confiscated their phones, thereby depriving them of a vital means to obtain assistance.

A Guardian Newspaper report also stated that the Tunisian security forces had raped hundreds of sub-Saharan migrant, refugee and asylum-seeking women residing in the vicinity of Sfax.<sup>75</sup> Additionally, migrants, refugees and asylum-seekers living in informal settlements in Sfax have been the victims of frequent police raids in which police officers fire tear gas and burn tents.<sup>76</sup> Indeed, far from guaranteeing access to social services, as required under the UNHCR MoU,<sup>77</sup> the Tunisian authorities fail to guarantee refugees and asylum-seekers access to adequate medical treatment, and to protect from violence at the hands of Tunisian citizens, including from kidnapping and extortion.<sup>78</sup>

Under articles 6(1) ICCPR, Tunisia is bound to respect the right to life of all persons within its jurisdiction, including non-nationals, and must not carry out collective expulsions, in particular, when there is a real risk to the lives of migrants, refugees and asylum-seekers.<sup>79</sup> Additionally, under article 7 ICCPR and article 3(1) CAT, the Tunisian authorities must guarantee the right of all foreign-nationals to be free from torture or other cruel, inhuman or degrading treatment or punishment, including by not exposing them to a real risk of such treatment upon expulsion.<sup>80</sup> The Trial Chamber of The International Criminal Tribunal for the former Yugoslavia found that

69. Human Rights Watch, No Safe Haven for Black African Migrants, Refugees, 19 July 2023, *supra* note 41.

70. Libya Update, Migrant Crisis at Tunisia-Libya Border Worsens as Death Toll Rises, 27 July 2023, available at: <https://libyaupdate.com/migrant-crisis-at-tunisia-libya-border-worsens-as-death-toll-rises/>.

71. David Lewis, "Exclusive: Migrant expulsions from Tunisia to Libya fuel extortion, abuse, UN says " Reuters, 11 June 2024, available at: <https://www.reuters.com/world/africa/migrant-expulsions-tunisia-libya-fuel-extortion-abuse-un-briefing-2024-06-11/>.

72. The Guardian, The brutal truth behind Italy's migrant reduction: beatings and rapes by EU-funded forces in Tunisia, 19 September 2024, *supra* note 16.

73. Human Rights Watch, Tunisia: African Migrants Intercepted at Sea, Expelled, 10 October 2023, *supra* note 50.

74. The New Humanitarian, Tunisia accused of 'mass desert dumping' of migrants, 7 May 2024, available at: <https://www.thenewhumanitarian.org/news/2024/05/07/tunisia-accused-mass-desert-dumping-migrants>.

75. The Guardian, The brutal truth behind Italy's migrant reduction: beatings and rapes by EU-funded forces in Tunisia, 19 September 2024, *supra* note 16.

76. Aljazeera, Tunis police raid sees refugees abandoned near the border with Algeria, 6 May 2024, <https://www.aljazeera.com/news/2024/5/6/tunis-police-raid-sees-refugees-abandoned-near-the-border-with-algeria>.

77. UNCHR Factsheet, June 2021, *supra* note 23.

78. Aljazeera, Tunis police raid sees refugees abandoned near the border with Algeria, 6 May 2024, *supra* note 69.

79. UN Human Rights Committee, General Comment No.36: Article 6, the right to life, 3 September 2019, para. 31, *supra* note 64.

80. UN Human Rights Committee, General Comment No.20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), para. 9, 10 March 1992, available at: <https://www.refworld.org/legal/general/hrc/1992/en/11086>.

rape necessarily causes severe pain and suffering, and so may constitute torture if the other constituent elements of the definition of torture in article 1 of CAT are established, namely that rape was carried out by a public official for the purpose of, inter alia, intimidation, punishment, coercion or discrimination.<sup>81</sup> This is a position that has also been recognized by the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.<sup>82</sup> Furthermore, under both article 7 and article 9(1) of the ICCPR, Tunisia must guarantee respect for the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of persons to everyone under its jurisdiction. Both rights entail a prohibition on State officials' infliction of unjustifiable bodily injury on all persons, whether detained or at liberty.<sup>83</sup>

The ICJ is profoundly concerned at the Tunisian authorities' perpetration of egregious human rights violations against migrants, asylum-seekers and refugees, both through their direct infliction of severe pain and suffering, and unjustifiable bodily injury, on said individuals in the territory of Tunisia and as a result of exposing them to a real risk of such treatment in third countries. In so doing, Tunisia has repeatedly violated its international human rights law obligations to protect, respect and fulfill migrants', asylum-seekers' and refugees' rights to life, to liberty and security of person, and to freedom from torture or other cruel, inhuman and degrading treatment or punishment.<sup>84</sup>

## Violations of the right to liberty and security of persons

### Arbitrary arrest and detention of migrants, refugees and asylum-seekers

Following the President's xenophobic speech in February 2023, the Tunisian authorities conducted numerous arrests of Black Africans.<sup>85</sup> While the authorities carried out many of these arrests on purported suspicion of "illegal entry offences" under Organic Law 1968, credible reports indicate that arresting officers often made no effort to ascertain the immigration status of those they were arresting, including by requesting identity documents, etc. Consequently, even documented asylum-seekers and refugees were at risk of arrest. Moreover, according to credible reports, law enforcement officials subjected arrested individuals to racist verbal abuse and physical abuse.<sup>86</sup>

The United Nations Working Group on Arbitrary Detention has held that "criminalising illegal entry into a country exceeds the legitimate interest of States to control and regulate irregular migration and leads to unnecessary detention",<sup>87</sup> and the Special Rapporteur on the rights of migrants has emphasized that irregular entry or stay "should never be considered criminal offences: they are not per se crimes against person, property or national security."<sup>88</sup> The ICJ

81. ICTY, *Prosecutor v. Zejnil Delali Zdravko Muci*, IT-96-21-T, Judgement, para. 496, 16 November 1998, available at: <https://www.refworld.org/jurisprudence/caselaw/icty/1998/en/91857>.

82. Special Rapporteur on Torture, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Commission on Human Rights, U.N. Doc. E/CN.4/1986/15, para. 119, available at: [https://ap.ohchr.org/documents/E/CHR/report/E-CN\\_4-1986-15.pdf](https://ap.ohchr.org/documents/E/CHR/report/E-CN_4-1986-15.pdf). The Committee Against Torture also discusses rape and other sexual violence in the context of CAT. The Committee Against Torture, General Comment No.2 Implementation of article 2 by States parties, 24 January 2008, paras. 18 and 22, available at: <https://digitallibrary.un.org/record/612634?ln=en>. See also: Summary Record of the 21st meeting, UN.ESCOR, Commission on Human Rights, 48th Session, para. 35, available at: <https://digitallibrary.un.org/record/138396?ln=en>.

83. UN Human Rights Committee, General Comment 35 on Article 9, Liberty and security of person, para. 9, available at: <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person>.

84. With respect to this, a submission to the International Criminal Court on 23 September 2024 accuses the Tunisian authorities of widespread use of torture, including rape, against sub-Saharan migrants, refugees and asylum-seekers, amounting to a crime against humanity. See, Justiceinfo.net, Amin Taieb, Crimes against migrants: Tunisia is radicalising, will the ICC act?, 4 November 2024, available at: <https://www.justiceinfo.net/en/136710-crimes-against-migrants-tunisia-radicalising-icc-act.html>.

85. OHCHR, "Tunisia must immediately stop hate speech and violence against migrants from south of Sahara, UN Committee issues early warning", 4 April 2023, available at: <https://www.ohchr.org/en/press-releases/2023/04/tunisia-must-immediately-stop-hate-speech-and-violence-against-migrants>.

86. Human Rights Watch, No Safe Haven for Black African Migrants, Refugees, 19 July 2023, *supra* note 41.

87. UN Doc A/HRC/13/30, para. 58, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F13%2F30&Language=F&DeviceType=Desktop&LangRequested=False>.

88. UN Doc A/HRC/20/24, para 13, available at: <https://undocs.org/Home/>

is concerned at Tunisia's failure to meet its international law obligations not only by arbitrarily criminalizing irregular migration, but also by carrying out arrests against refugees, asylum-seekers and migrants, purportedly for the "offence of illegal entry", without taking steps to ascertain their immigration status in Tunisia and instead, effecting arrests solely on the basis of arrestees' racial profiles.

Furthermore, in cases in which individuals were either not subject to criminal prosecution for "illegal entry" further to arrest,<sup>89</sup> or had completed their sentences further to conviction for "illegal entry",<sup>90</sup> the Tunisian authorities have reportedly continued to arbitrarily detain migrants at El Ouardia migrant centre. The centre, albeit intended for use only as a "reception centre" for new arrivals in Tunisia, is in fact used as an administrative detention centre for foreign nationals before expulsions are carried out,<sup>91</sup> despite the absence of a law to regulate the circumstances in which the authorities can detain non-nationals at the facility, or to regulate the duration of, and appeals against, detention.<sup>92</sup> The Tunisian authorities have reportedly detained some foreign nationals at El Ouardia for up to 18 months, including children.<sup>93</sup>

Under article 6 ACHPR and article 9(1) ICCPR, the Tunisian authorities may only detain persons on "such grounds and in accordance with such procedure as are established by law". The UN Working Group on Arbitrary Detention has stated that the detention of migrants must only be used as a last resort, with the grounds clearly defined and the legality of detention regularly reviewed.<sup>94</sup> Additionally, the UN Human Rights Committee confirmed that the detention of asylum-seekers must be deemed arbitrary unless it is executed for only a short period to document their entry, record their claims and determine their identity.<sup>95</sup> Any additional order for detention must be made further to an individualized assessment of each asylum-seeker's risk to others and of their risk of absconding, inter alia.<sup>96</sup> Finally, the detention of refugee, asylum-seeking or migrant children solely for the purposes of immigration control is always arbitrary.<sup>97</sup>

The ICJ is deeply concerned at the Tunisian authorities' use of El Ouardia detention centre to detain migrants, refugees and asylum-seekers without any legal grounds and in violation of Tunisia's international human rights law obligations to guarantee the right to liberty and security of person, including freedom from arbitrary arrest and detention of all persons within its jurisdiction. This arbitrariness is compounded by the prolonged nature of the periods of detention to which detainees are subjected without access to the courts to have the lawfulness of their detention reviewed, and the authorities' detention of migrant, refugee and asylum-seeking children solely for immigration control purposes.

#### Arbitrary arrest and detention for the legitimate exercise of the rights to freedom of association and expression

On 6 May 2024, in a speech denigrating associations working to uphold the human rights of migrants and refugees, President Saïed branded staff at migrant rights non-governmental organizations as "traitors" and "mercenaries" and accused them of receiving "huge sums of money from abroad" in order to "settle these Africans in Tunisia." The President also criticized

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89. OHCHR, Tunisia must immediately stop hate speech and violence against migrants from south of Sahara, UN Committee issues early warning, 4 April 2023, available at: <https://www.ohchr.org/en/press-releases/2023/04/tunisia-must-immediately-stop-hate-speech-and-violence-against-migrants>.

90. World Action Against Torture, Note sur la détention arbitraire au centre de détention de migrants d'El-Ouardia, 21 March 2023, available at: <https://omct-tunisie.org/2023/03/21/note-sur-la-detention-arbitraire-au-centre-de-detention-de-migrants-del-ouardia/>. The report itself can be accessed here.

91. Ibid.

92. Ibid.

93. OHCHR, Tunisia must immediately stop hate speech and violence against migrants from south of Sahara, UN Committee issues early warning, 4 April 2023, *supra* note 89.

94. UN Doc. A/HRC/10/21, 16 February 2009, paras. 67 and 82, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F10%2F21&Language=E&DeviceType=Desktop&LangRequested=False>.

95. UN Human Rights Committee, General Comment 35 on Article 9, Liberty and security of person, para. 18, *supra* note 83.

96. Ibid.

97. UN Doc A/HRC/39/45, para. 11, available at: <https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/deliberations>.

these organizations' efforts to temporarily house migrants and refugees in hotels.<sup>98</sup> Concurrently, the Tunisian authorities opened investigations against staff working at least four Tunisian associations supporting migrants and refugees:

- i. On 6 May 2024, the day of President Saïed's speech, the Tunisian authorities arrested and detained Saadia Mosbah, the President of Mnemty, a Tunisian anti-discrimination association, and searched her home and Mnemty's premises, ostensibly in relation to allegations of "money laundering" under Law 2015-26.<sup>99</sup> Further to interrogation, the Public Prosecutor at the Tunis Court of First Instance extended Mosbah's period of police custody for ten days. The General Coordinator of Mnemty, Zied Rouine, was also questioned but was subsequently released. On 16 May, an investigating judge at the Tunis Court of First Instance charged Mosbah with money laundering and ordered her to be placed in pretrial detention, where she remained at the time of writing;<sup>100</sup>
- ii. On 7 May, the Public Prosecutor at the Tunis Court of First Instance opened investigations into Sherifa Riahi, the former director of Terre d'asile Tunisie, a non-governmental organization providing legal and social support to asylum-seekers and refugees, purportedly on suspicion of money laundering and financial corruption under Law 2015-26.<sup>101</sup> Further to arrest, the Tunisian authorities held Riahi in police custody for five days. On 16 May, Riahi and one other person connected to Terre d'asile Tunisie appeared before an Investigating Judge at the Tunis Court of First Instance, who ordered them both to be placed in pretrial detention where they remained at the time of writing;<sup>102</sup>
- iii. On 13 May 2024, Tunisian security forces arrested Abderrazek Krimi, the President of the Tunisian Refugee Council (TRC),<sup>103</sup> a non-government organization and implementing partner of the UNHCR in Tunisia in support of its mandate for the protection of refugees under the terms of the UNHCR MoU.<sup>104</sup> An Investigating Judge at the Tunis Court of First Instance subsequently ordered Krimi's pre-trial detention, along with the TRC's Vice-President, based on charges of "conspiracy to help people entering the Tunisian territory", ostensibly as a result of TRC's work in obtaining accommodation in Tunisia for foreign nationals;<sup>105</sup> and
- iv. On 12 November 2024, Tunisian authorities detained Abdullah Said, a prominent advocate for migrant rights and President of Enfants de la Lune, an association that cares for children suffering from incurable genetic diseases and provides humanitarian support to child migrants and refugees. The authorities also questioned the secretary general and treasurer of Enfants de la Lune, who were both subsequently detained.<sup>106</sup> While the specific charges against all three detainees are still unknown, anti-terrorism investigators accuse Enfants de la Lune of receiving foreign funds "to assist sub-Saharan migrants to enter illegally in to Tunisian soil", purportedly as a result of their activities providing care to child migrants and refugees.<sup>107</sup>

Furthermore, on 11 May 2024, the Tunisian authorities raided the premises of the Tunisian Bar Association in Tunis and arrested and detained Sonia Dahmani, a lawyer and columnist, on "fake news charges" for statements she made in response to the Tunisian authorities' crackdown on Black Africans on television channel Carthage Plus.<sup>108</sup> In July 2024, the Tunis Court of First

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98. Mosaïque FM, Saïed: Associations of traitors and agents receive huge sums of money from abroad, 6 May 2024, available in Arabic here.

99. Business news, Arrestation de Saadia Mosbah et fouille de son domicile, 7 May 2024, available at: <https://www.businessnews.com.tn/arrestation-de-saadia-mosbah-et-fouille-de-son-domicile,520,137642,3>.

100. Human Rights Watch, Tunisia: Deepening Civil Society Crackdown, 17 May 2024, available at: <https://www.hrw.org/news/2024/05/17/tunisia-deepening-civil-society-crackdown>.

101. Mosaïque FM, Detention of an official in an association concerned with 'refugee affairs and fighting racism', 7 May 2024, available in Arabic here.

102. Témoignage du médecin des enfants de Sherifa Riahi, 1 Juin 2024, available at: <https://kapitalis.com/tunisie/2024/06/01/temoignage-du-medecin-des-enfants-de-sherifa-riahi/>.

103. Le Monde Afrique, En Tunisie la répression s'accroît sur les migrants subsahariens et les associations qui les soutiennent, 8 May 2024, *supra* note 54.

104. UNCHR Factsheet, June 2021, *supra* note 23.

105. Le Monde Afrique, En Tunisie la répression s'accroît sur les migrants subsahariens et les associations qui les soutiennent, 8 May 2024, *supra* note 54.

106. See statement of Romdhane Ben Amor, spokesperson for the Tunisian Forum for Social and Economic Rights, 14 November 2024 ; See also The Guardian, Migrant rights advocate held in Tunisia under anti-terrorist investigation, Lorenzo Tondo, 18 November 2024, available at: <https://www.theguardian.com/world/2024/nov/18/migrant-rights-advocate-held-tunisia-anti-terrorist-investigation-abdallah-said>.

107. *Ibid.*

108. The National, Tunisian police raids lawyers' bar offices and arrest commentator Sonia Dahmani, 11 May



Instance convicted Dahmani of the charges and sentenced her to one-year's imprisonment, which was later reduced to eight months.<sup>109</sup> On 24 October 2024, Dahmani was sentenced to two years on "fake news charges", this time over comments she made on IFM radio station about "sub-Saharan Africans" in Tunisia facing racism.<sup>110</sup>

Under article 9(1) ICCPR, the Tunisian authorities' arrest and detention of employees of the abovementioned NGOs as punishment, ostensibly for the legitimate exercise of their right to freedom of association and for the execution of their profession obligations to assist Black African migrants and refugees, is arbitrary.<sup>111</sup> Additionally, Tunisia has also violated its international obligations to guarantee Sonia Dahmani's freedom from arbitrary detention by arresting, detaining and convicting her for the mere, legitimate exercise of her right to freedom of expression, in clear violation of article 9(1) and article 19 of ICCPR.<sup>112</sup>

The ICJ is extremely concerned that such arbitrary proceedings are in violation of the country's obligations under international human rights law to guarantee the rights to freedom of association and expression. The ICJ is further concerned that a judiciary whose independence has been fundamentally undermined by President Saied, is enabling the weaponization of criminal prosecutions against human rights defenders working to uphold the human rights of migrants, asylum-seekers and refugees is enabled.<sup>113</sup>

## Violation of the right to freedom from discrimination

### Discrimination against black African refugees, asylum-seekers and migrants

President Kais Saied's speech of 21 February 2023, in which he accused "sub-Saharan migrants" of conspiring to alter the demographic make-up of Tunisia,<sup>114</sup> had far-ranging consequences for Black African migrants, refugees and asylum-seekers in Tunisia.

As outlined above, between 2023 and 2024 these repercussions included:

- i. At least three incidents of mass and forcible expulsions of primarily Black African refugees, migrants and asylum-seekers in a manner amounting to a violation of the prohibition on torture or other ill-treatment;
- ii. A surge in the Tunisian authorities' arbitrary arrest and detention of migrants, refugees and asylum-seekers from sub-Saharan Africa; and
- iii. An increase in Tunisian citizens' attacks against Black Africans, with little to no police protection.

On 4 April 2023, the UN Committee on the Elimination of Racial Discrimination (ComERD) expressed its concern regarding reports of an increase in xenophobic or racist hate by Tunisian citizens aimed at Black Africans and reports of the Tunisian authorities arbitrarily arresting Black Africans, including women and children, as part of a concerted campaign.<sup>115</sup> Additionally, on 18 July 2023, UN Experts<sup>116</sup> urged the Tunisian authorities to take measures to stop the collective

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2024, available at: <https://www.thenationalnews.com/news/2024/05/11/tunisian-police-raids-lawyers-bar-offices-and-arrest-prominent-lawyer-sonia-dahmani/>; Committee to Protect Journalists, Jailed Tunisian commentator Sonia Dahmani given further 2-year sentence, 25 October 2024, available at: <https://cpj.org/2024/10/jailed-tunisian-commentator-sonia-dahmani-given-further-2-year-sentence/>

109. Ibid.

110. Ibid.

111. UN Human Rights Committee, General Comment 35 on Article 9, Liberty and security of person, para. 17, *supra* note 83.

112. Ibid.

113. ICJ, Tunisia: revoke Presidential Decree 11, 14 February 2022, *supra* note 13. See also: page 16 onwards of this briefing regarding the impact of the executive's undermining of judicial independence on the rights of victims to an effective remedy and to access to justice.

114. See ICJ, "Tunisia- the authorities must halt all forcible removals of foreign nationals in violation of international law and stop intimidating associations working on asylum and intimidation" 13 May 2024, available at: <https://www.icj.org/tunisia-the-authorities-must-halt-all-forcible-removals-of-foreign-nationals-in-violation-of-international-law-and-stop-intimidating-associations-working-on-asylum-and-migration/#:~:text=The%20International%20Commission%20of%20Jurists,on%20collective%20expulsions%20last%20week.>

115. OHCHR, Tunisia must immediately stop hate speech and violence against migrants from south of Sahara, UN Committee issues early warning, 4 April 2023, *supra* note 89.

116. The Special Rapporteur on contemporary forms of racism, the UN Working Group of Experts on People

expulsion of “sub-Saharan migrants” and to halt the targeting of “sub-Saharan migrants” on the basis of their real or perceived race or ethnicity.<sup>117</sup>

The human rights violations of Black Africans in Tunisia are compounded by Tunisia’s discriminatory implementation of Organic Law 1968, which often prevents Black African migrants from obtaining official residency documentation, and Tunisia’s criminalization of “irregular migration”,<sup>118</sup> which causes many Black African “undocumented” refugees, asylum-seekers and migrants to be subjected to arbitrary arrest, detention and expulsion.

The ICJ is deeply concerned at Tunisia’s failure to abide by its international law obligations to guarantee migrants, refugees and asylum-seekers within its jurisdiction the right to freedom from racial discrimination. Under articles 2(1) and 5(b) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which Tunisia ratified in 1985, Tunisia must guarantee to all, regardless of race, “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” Additionally, under articles 5(2) and 5(d)(i) CERD, Tunisia must guarantee the right to freedom of movement and residence within its borders to everyone, regardless of the race or ethnicity of the rights-holder.

#### Discrimination against women and girls

During the 12 months after the signing of the MoU, credible reports emerged of EU-funded Tunisian security forces’ widespread perpetration of rape and other forms of sexual assault against female refugees, asylum-seekers and migrants, including the rape of girls as young as ten.<sup>119</sup> While articles 227 to 229 of the Tunisian Penal Code prohibit both rape and sexual assault,<sup>120</sup> the Tunisian authorities have failed to instigate investigations into these credible allegations with a view to holding to account any members of the national security forces found to be responsible.

Under article 1 of the Convention of the Elimination of all forms of Discrimination against Women, which Tunisia ratified in 1985, discrimination is defined as any act carried out “on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... of [their] human rights”.<sup>121</sup> The UN Committee for the Elimination of Discrimination Against Women has held that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” with all acts of sexual harm<sup>122</sup> and rape being a manifestation of gender-based violence, and thus being inherently discriminatory.<sup>123</sup> In particular, rape has been found to discriminate against women in their enjoyment of the rights to, inter alia, freedom from torture or other cruel, inhuman or degrading treatment or punishment, the right to security of person and the right to privacy.<sup>124</sup>

The ICJ is deeply concerned at the reports regarding the Tunisian authorities’ systematic

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of African Descent, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on freedom of opinion and expression, and the Committee on the Elimination of Racial Discrimination.

117. OHCHR, UN experts urge Tunisia to act swiftly to uphold migrants’ rights, 18 July 2023, available at: <https://www.ohchr.org/en/press-releases/2023/07/un-experts-urge-tunisia-act-swiftly-uphold-migrants-rights>.

118. See pages 3 and 4 of this briefing.

119. OHCHR, Tunisia: UN experts concerned over safety of migrants, refugees and victims of trafficking, 14 October 2024, available at: <https://www.ohchr.org/en/press-releases/2024/10/tunisia-un-experts-concerned-over-safety-migrants-refugees-and-victims>. See also: The Guardian, The brutal truth behind Italy’s migrant reduction: beatings and rapes by EU-funded forces in Tunisia, 19 September 2024, *supra* note 16.

120. 1913 Tunisian Penal Code, available in French at: <https://www.refworld.org/legal/legislation/natlegbod/1913/fr/91579>.

121. 1979 Convention on the Elimination of all forms of Discrimination Against Women, available at: <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>.

122. UN Committee on the Elimination of Discrimination Against Women, General Comment No. 19: Violence against women, para.1, available at: <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>.

123. UN Special Rapporteur on Violence Against Women, Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, 19 April 2021, para.9, available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4726-rape-grave-systematic-and-widespread-human-rights-violation>.

124. *Ibid*, para. 20.

perpetration of rape and other forms of sexual violence against female refugees, asylum-seekers and migrants. The seriousness of the organization's concern in this respect is compounded by the failure of the Tunisian authorities to launch an impartial and independent investigation into these credible allegations, in line with Tunisia's international human rights law obligations.

### **The right to an effective remedy and access to justice**

In 2018, Tunisia promulgated Organic Law 2018-50 relating to the elimination of all forms of discrimination (Organic Law 2018), which criminalizes, among other acts, racial discrimination and incitement to racial hatred with offences attracting up to three years' imprisonment, and guarantees victims' access to compensation.<sup>125</sup> Since promulgation, reports suggest that some victims have been able to obtain effective remedies under the law.<sup>126</sup>

However, the law's limited range of justiciable offences, including its failure to adequately criminalize serious offences of a discriminatory nature, and President Saied's systematic erosion of the rule of law and judicial independence,<sup>127</sup> mean that there is little prospect of the law's effective implementation and of victims obtaining justice and effective remedies for the more recent serious violations detailed above.

Since President Saied's institutional power grab of 5 July 2021 and his adoption of a tailor-made Constitution in 2022,<sup>128</sup> the Tunisian judiciary has been subjected to attacks aimed at undermining its independence and its ability to ensure access to justice for all and to guarantee the right to a fair trial before an independent and impartial justice system. In particular, through Decree Law no. 2022-11 of 12 February 2022, the President dissolved the elected High Judicial Council (HJC), a body established by to guarantee the independence of the judiciary, and replaced it with a Temporary high Judicial Council, almost half of whose members are appointed directly by the President.<sup>129</sup> Then, on 1 June 2022, the President proceeded to dismiss 57 judges and prosecutors, after granting himself the authority to do so through Decree Law no. 2022-35.<sup>130</sup> Since then, the President has weaponized the judiciary to silence dissenting voices, including political opponents,<sup>131</sup> journalists<sup>132</sup> and lawyers.<sup>133</sup>

Under article 2(3) ICCPR and article 6 CERD, all persons are entitled to access to an effective remedy for violations of their human rights through a competent national tribunal, including for violations resulting from acts of racial discrimination. International standards establish that victims of gross human rights violations may seek redress for physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights stemming from the violations.<sup>134</sup>

125. Organic Law 2018-50, articles 8 and 9, available at: <https://legislation-securite.tn/latest-laws/loi-organique-n-2018-50-du-23-octobre-2018-relative-a-lelimination-de-toutes-les-formes-de-discrimination-raciale/>.

126. Arab Reform Initiative, Tunisia's Law against Racial Discrimination: The Mixed Results of a Pioneering Legislation, 11 February 2021, available at: <https://www.arab-reform.net/publication/tunisias-law-against-racial-discrimination-the-mixed-results-of-a-pioneering-legislation/>.

127. ICJ, Tunisia: Authorities must end Attacks on Judges and Prosecutors, 18 December 2023, <https://www.icj.org/tunisia-authorities-must-end-attacks-on-judges-and-prosecutors/#:~:text=Tunisia%3A%20Authorities%20must%20end%20Attacks%20on%20Judges%20and%20Prosecutors,-Dec%2018%2C%202023&text=In%20a%20briefing%20paper%20published,reinstate%20all%20those%20arbitrarily%20dismissed>. See also: ICJ, Tunisia: President's power grab is an assault on the rule of law, 26 July 2021, available at: <https://www.icj.org/tunisia-presidents-power-grab-is-an-assault-on-the-rule-of-law/>.

128. ICJ, Tunisia: Proposed constitution codifies authoritarianism, 2022, available at: <https://www.icj.org/resource/tunisia-proposed-constitution-codifies-authoritarianism/>.

129. ICJ, Tunisia: Q&A on the High Judicial Council and judicial independence in light of Decree 11, 2022, available at: <https://www.icj.org/resource/tunisia-qa-on-the-high-judicial-council-and-judicial-independence-in-light-of-decree-11/>.

130. ICJ, Tunisia: Arbitrary dismissals a blow to judicial independence, 10 June 2022, available at: <https://www.icj.org/tunisia-arbitrary-dismissals-a-blow-to-judicial-independence/>.

131. ICJ, Tunisia: end crackdown on political opponents and allow free and fair elections, 15 July 2024, available at: <https://www.icj.org/tunisia-end-crackdown-on-political-opponents-and-allow-free-and-fair-elections>.

132. ICJ, Tunisia: end crackdown on journalists, 9 April 2024, available at: <https://www.icj.org/tunisia-end-crackdown-on-journalists/>.

133. ICJ, Tunisia: stops judicial harassment of lawyers, 5 October 2023, available at: <https://www.icj.org/tunisia-end-judicial-harassment-of-lawyers/>.

134. UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 8, 15

The ICJ is deeply concerned that the direct and indirect victims of the above violations, including those whom the Tunisian authorities subjected to gross human rights violations, will be unable to seek effective remedies through the Tunisian courts, in violation of Tunisia's international human rights law obligations to guarantee access to an effective remedy. Given President Saied's attacks on the judicial system, including his arbitrary dismissal of judges, the chances that judges and prosecutors would be able and willing to investigate and prosecute violations of the human rights of refugees, asylum-seekers and migrants independently of executive influence and in accordance with international human rights standards are extremely limited.<sup>135</sup> Indeed, at the time of writing, the ICJ is unaware of any judicial investigation or prosecution arising from the human rights violations committed in the context of the mass expulsion of migrants, refugees and asylum-seekers.

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December 2005, available at: [https://legal.un.org/avl/ha/ga\\_60-147/ga\\_60-147.html#:~:text=The%20issue%20of%20basic%20principles,of%20Minorities%2C%20in%20the%20context](https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html#:~:text=The%20issue%20of%20basic%20principles,of%20Minorities%2C%20in%20the%20context).

135. Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, Basic Principles on the Independence of the Judiciary, 6 September 1985, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary#:~:text=The%20judiciary%20shall%20decide%20matters,quarter%20or%20for%20any%20reason>.

## IV. Recommendations

In light of the findings outlined above, the ICJ calls on Tunisia, the EU and its Member States to comply with their obligations under international human rights law.

### Recommendation to Tunisia:

- i. Immediately halt all mass expulsions of migrants, refugees and asylum-seekers, and fully comply with the principle of *non-refoulement*.
- ii. Immediately order an independent, impartial and thorough investigation into the credible accounts of the authorities' ill-treatment of migrants, asylum-seekers and refugees, including during the mass expulsions between July 2023 and May 2024, and ensure victims' access to justice and effective remedies, including reparation.
- iii. Immediately end the illegal administrative detention of migrants, refugees and asylum-seekers.
- iv. Immediately end the arbitrary and discriminatory arrest and detention of migrants, refugees and asylum-seekers.
- v. Repeal all legislation criminalizing "illegal migration".
- vi. Immediately release all employees of non-governmental organizations detained solely for the mere exercise of the right to freedom of association and for their legitimate work in defence of the human rights of migrants, asylum-seekers and refugees.
- vii. Swiftly promulgate a comprehensive national law on refugee protection in line with international standards, including provisions for the judicial review of decisions in asylum cases.
- viii. Ensure the swift investigation and prosecution of public officials who incite racial hatred, violence and discrimination against foreign nationals of Sub-Saharan African origin.
- ix. Ensure the swift investigation and prosecution of law enforcement officials allegedly responsible for the mass rape of sub-Saharan migrants, refugees and asylum-seekers.
- x. Ensure the effective implementation of Organic Law No. 2018-50 of 23 October 2018 on the elimination of all forms of racial discrimination.

### Recommendations to the EU and its Member States:

- i. Unconditionally uphold the right to seek and enjoy asylum from persecution in the EU regardless of the individual's country of origin or means of arrival.
- ii. Cease all attempts to externalize and circumvent international human rights and refugee law obligations to guarantee the human rights of refugees, asylum-seekers and migrants.
- iii. Place human rights at the centre of future MoUs with any third parties and provide for comprehensive human rights risk assessments on the impact that such MoUs have on the human rights of refugees, asylum-seekers and migrants.
- iv. Immediately suspend funding to Tunisian authorities implicated in serious human rights violations, and urge Tunisia to investigate, prosecute and punish those responsible for gross human rights violations in the context of implementing the MoU or other migration-related policies.
- v. Until the above recommendations are enforced, revise the MoU with Tunisia, including by providing a roadmap for reform with clear indicators for Tunisia to meet its human rights obligations and provide benchmarks for triggering the suspension of funding.
- vi. Ensure that any future cooperation with Tunisia on migration, including policies and funding, fully safeguard the human rights of refugees, asylum-seekers and migrants, and, in particular, the rights of those entitled to international protection, and ensure safe and legal routes for those trying to cross borders, rather than outsourcing border control.
- vii. Publish the findings of the EU Commission risk management exercise conducted for Tunisia before the signing of the MoU to allow full, public scrutiny of the agreement.

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