



Sub-Saharan Migration in Tunisia: The Urgency of a Reform / Overhaul

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Introduction:

The question of the sub-Saharan presence in the Maghreb countries is not new. Since the advent of "Fortress Europe", the imposition of individual visas on the countries of the South and the implementation of intra-African restrictions, sub-Saharan migration to the countries of the north of the continent is a growing phenomenon.

In Tunisia, this form of migration accelerated after 2011, mainly since the Libyan migration route was considered too dangerous. Along with a shift in the number of immigrants entering the country, the very nature of this migration has changed, increasingly becoming a settlement migration, not transit.

Today, Tunisia finds itself as a subcontractor of European migration policy. At the same time, a strict legal framework and security policies have been put in place to restrict access to the labor market to non-Tunisians, mostly sub-Saharan migrants, but also nationals. Migrants thus find themselves in an impasse, being unable to leave and unable to, with dignity, stay.

KEY TAKEAWAYS

- The United Nations High Commissioner for Refugees (UNHCR) registered around 1,000 asylum requests in 2015 , in contrast to 5,678 refugees and asylum seekers until the end of October 2020 , 2,669 which are of Sub-Saharan origin .
- The first legislation providing for sanctions against irregular migrants was the Law n ° 1968-0007 of 8 March 1968 relating to the condition of foreigners¹ and its implementing decree, at a time when the phenomenon of irregular migration was significantly less important
- There is a growing tendency to replace the unrealized prospects of regular migration vis-à-vis emigration countries with financial incentives.

Sub-Saharan Presence in Tunisia: The Magnitude of the Phenomenon

The figures collected by local and international organizations reveal the importance of the presence, as well as the precariousness of this category of migrants, particularly post-2011.

According to a quantitative study carried out in 2019 by sociologist Faten Msakni for the Tunisian Forum for Economic and Social Rights (FTDES), the number of sub-Saharan migrants in the country increased between 2004 and 2018. 79% of those questioned declared themselves to be arrivals in the country after the Revolution, more precisely between 2014 and 2018.¹ 78% of irregular migrants registered in 2018 are of sub-Saharan origin². The last population census in 2014 carried out by the National Institute of Statistics (INS) has reported 53,490 foreign residents in the country, of which 7,524 are from sub-Saharan Africa³, compared to around 3,000 in 2004⁴. There is no doubt that immigration from sub-Saharan Africa has increased considerably in a decade in Tunisia.

Among sub-Saharan migrants living in Tunisia, people in need of protection represents a significant proportion. The United Nations High Commissioner for Refugees (UNHCR) registered around 1,000 asylum requests in 2015⁵, in contrast to 5,678 refugees and asylum seekers until the end of October 2020⁶, 2,669 which are of Sub-Saharan origin⁷.

The Legalized Criminalization of Migration in Tunisia

The criminalization of migration took place gradually from the 1960s.

The first legislation providing for sanctions against irregular migrants was the Law n ° 1968-0007 of 8 March 1968 relating to the condition of foreigners⁸ and its implementing decree, at a time when the phenomenon of irregular migration was significantly less important. The penalties provided for people who crossed borders irregularly⁹ varied between fifteen days and one year in prison, in addition to a fine. These penalties are more severe in the event of possession of false travel documents, up to three years' imprisonment.

From 1998, the date of signature of the first readmission agreement with Italy¹⁰, Tunisia became one of Europe's "buffer zones", a secure space between the West and the rest of Africa. The end of the 1990s thus marks the beginning of Tunisia's integration into the process of externalizing European borders, a way for Western countries to subcontract border control to neighboring countries of the European Union (EU).

The most severe development concerned the sanctioning to assistance efforts for irregular entry and exit from the territory. The 1968 legislation already provided for sanctions for people facilitating, directly or indirectly, illegal entry, exit, movement or residence in Tunisia. As from the entry into force of the maritime disciplinary and penal code in 1977¹¹, assistance to irregular migrants became an official

¹ Faten Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations" (Tunisian Forum for Economic and Social Rights, 2019), <http://ftdes.net/rapports/subsahrianstates.en.pdf>, p.2.

² Terre d'Asile-Tunisie, "Permanence Sociale et Juridique, Rapport d'activités Du Premier Semestre 2018" (Maison du Droit et des Migrations, 2018), https://maison-migrations.tn/images/RA_annuel_Permanence_sociale_premier_s_emestre_2018_final_.pdf, p.8.

³ National Institute of Statistics, "Recensement Général de la Population et de l'Habitat 2014 Principaux indicateurs" (INS, 2015), http://www.ins.tn/sites/default/files/publication/pdf/rgph-chiffres-web_0.pdf, p.34.

⁴ Mustapha Nasraoui, "Les travailleurs migrants subsahariens en Tunisie face aux restrictions législatives sur l'emploi des étrangers," *Revue européenne des migrations internationales* 33, no. vol. 33-n°4 (December 1, 2017): 159–78, <https://doi.org/10.4000/remi.9244>.

⁵ WMC and TAP, "La Tunisie compte plus de 2700 réfugiés et demandeurs d'asile venus d'Afrique subsaharienne et de Syrie,"

Web Manager Center, November 27, 2019, sec. Afrique, <https://www.webmanagercenter.com/2019/11/27/441796/la-tunisie-compte-plus-de-2700-refugies-et-demandeurs-dasile-venus-dafrique-subsaharienne-et-de-syrie/>

⁶ <https://data2.unhcr.org/en/country/tun>

⁷ <https://data2.unhcr.org/en/documents/details/82883>

⁸ Parliament of the Republic of Tunisia, "Law N ° 1968-0007 Of March 8, 1968 Relating To The Condition Of Foreigners In Tunisia." (Official Journal of the Republic of Tunisia, 1968), <https://www.refworld.org/pdfid/54c25b2b4.pdf>

⁹ Without valid travel documents, through unofficial checkpoints, or without visa when required.

¹⁰ Both for Tunisians and for third country nationals who have passed through the country.

¹¹ Parliament of the Republic of Tunisia, "Maritime Disciplinary and Penal Code" (Official Journal of the Republic of Tunisia, 1977), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88040/1005/58/F1260683681/TUN-88040.pdf>.

offense, its sanction being assessed separately from the initial one, namely attempted irregular migration.

It is in the logic of sanctioning the complicity of irregular entry or exit of the territory as an independent offense that the infamous law of 2004¹², amending and supplementing the law of 1975 on passports and travel documents¹³, was conceived. Initially devised to fight smugglers, this law has often been used to sanction migrants themselves, as well as those supporting them on their journey¹⁴.

The Tunisian state has thus adopted the same repressive measures against illegal migration as those planned for offenses against public order, terrorism and transnational organized crime. Thus, the link between the three was firmly established in 2004, authorizing and justifying all subsequent violations of general principles of criminal law aimed at preventing arbitrariness and guaranteeing fundamental human rights¹⁵.

Additionally, a migrant in an irregular situation in Tunisia had no possibility of regularizing their situation nor obtaining a residence permit. They were automatically exposed to an expulsion procedure, with the theoretical exception of refugees under the aegis of the 1951 Geneva Convention. The expulsion procedure could also be initiated if a regular migrant was considered to be a threat to the country's public order, a vague legal term that has historically been used for repressive purposes¹⁶. Although an appeal is possible, migrants who are the subject of an expulsion decision did not have sufficient time to initiate a legal procedure, the expulsion being either instantaneously carried out, or within eight days in the event of confiscation of the residence permit.

Apart from physically preventing migrants from seeking asylum, Article 25 of the 1968 law as well as the 2004 law make no distinction between smugglers and volunteers providing humanitarian assistance to migrants, including medical care. This includes professionals¹⁷ who are required to inform the

authorities of the location of the migrants. The 2004 law also criminalizes the failure to report irregular migrants.

Until today, this double criminalization seriously hampers the work of volunteers and civil society organizations. Above all, it decreases the chances of migrants receiving assistance of any kind, in addition to pushing them to an increased marginality and extreme caution in seeking assistance which is already scarce. Ultimately, it is an asylum seeker's chances of obtaining refugee status that are undermined by these policies.

The Outsourcing of European Borders in Tunisia

The promotion of regular migration routes is not the prerogatives of the EU but those of its Member States. We observe a growing tendency to replace the unrealized prospects of regular migration *vis-à-vis* emigration countries with financial incentives, in particular by the promotion of an investment fund of 44 billion euros established in 2020 called the External Investment Plan (PIE)¹⁸.

In the framework of regional dialogues, the focus is clearly on the African continent as a main target of EU migration policy. Thus, within the framework of the Global Approach on Migration and Mobility (AMM)¹⁹, the priority is given to the Africa-EU partnership on migration and employment, and to the Rabat process since 2005.

Since 2016, the EU has invested € 58 million in the country through three migration-related funds: the Emergency Trust Fund for Africa (EUTF for Africa), established in 2015 to promote stability and address root causes of irregular migration and the phenomenon of displacement in the continent; the Asylum, Migration and Integration Fund (FAMI) and the European Neighborhood Policy (ENP)²⁰. These

¹² Parliament of the Republic of Tunisia, "Organic Law N° 2004-6 of February 3, 2004 Relating to Passports and Travel Documents" (Official Journal of the Republic of Tunisia, 2004), <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2004/2004F/011/TF200461.pdf>.

¹³ Parliament of the Republic of Tunisia, "Law No. 1975-40 Of 1975, Relative To Passports and Travel Documents" (Official Journal of the Republic of Tunisia, 1975), <https://www.refworld.org/docid/3ae6b54e8.html>.

¹⁴ Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique."

¹⁵ Benjemia and Ben Achour, "Plaidoyer pour une réforme des lois relatives aux migrants, aux étrangers et à la nationalité en Tunisie."

¹⁶ Hamza Meddeb, "Courir Ou Mourir : Course à El Khobza et Domination Au Quotidien Dans La Tunisie de Ben Ali" (thesis, Paris, Institut d'études politiques, 2012), <http://www.theses.fr/2012IEPP0030>, p. 389.

¹⁷ Including doctors and lawyers.

¹⁸ European Commission, "Fact sheet - What Is the EU External Investment Plan" (European Commission, 2017), https://ec.europa.eu/commission/sites/beta-political/files/update4_jan20_factsheet_eip_en_0.pdf.

¹⁹ General framework of the Union's foreign policy on asylum and migration.

²⁰ Haifa Mzalouat, "Comment l'Europe contrôle ses frontières en Tunisie ?," *Inkyfada*, Mach 2020, <https://inkyfada.com/fr/2020/03/20/financements-ue-tunisie-migration/>.

frameworks do not take into account bilateral agreements between Member States and Tunisia, nor other aid investments development, or anti-terrorism programs with a migration approach. The mobilization and allocation of funds, programs, and donors are difficult to track²¹. However, since 2011 the EU has invested a total of 2.5 billion euros in Tunisia²².

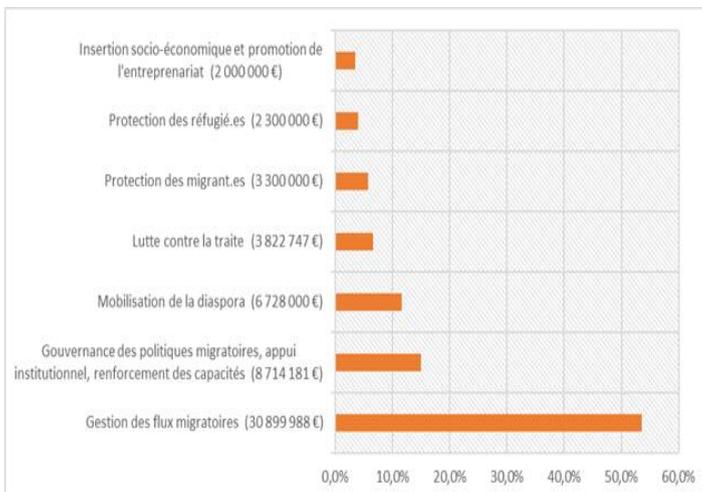
Most of these funds come from the EUTF, denounced by organizations such as OXFAM as being too focused on security, since a very substantial financial support is directed towards security and border control²³. In the same vein, a report²⁴ from the Directorate-General for External Policies of the European Parliament dating from 2016 denounces cooperation in the field of migration that is focused on the fight against terrorism and the management of migratory flows on the European side. This in turn contradicts the rhetoric focused on consolidating the rule of law and supporting the democratic transition in Tunisia. Although the country has been cooperative on the externalization of borders, the state has always refused to be part of the regional disembarkation platform of the European Council. Simply put, the project consists of relocating to the southern shore of the Mediterranean the screening process between eligible asylum seekers and economic migrants.

Suggested alternatives

There is therefore an urgent need to initiate immediate reforms. First of all, the legal framework governing migrants' access to the labor market and residency, economic migrants and refugees, must be re-imagined in order to eliminate the criminalizing logic, inconsistent with a state in democratic transition.

As a result, an asylum law must be passed as soon as possible to prevent practices such as *refoulement* at the borders and detention in undeclared centers²⁵. At the same time, the practice of fines for irregular presence should be suspended to reduce the risks of exploitation of migrants and give them the chance to continue their migratory journey or return to their countries of origin. This would allow the Tunisian legal arsenal to be harmonized with its international commitments, in particular regarding Convention 111 concerning discrimination in employment of the International Labor Organization²⁶ and the 1951 Convention relating to the status of refugees²⁷.

Along with legal reforms, a pragmatic approach should be considered, notably by allowing access to education and health care coverage, and by opening a way for the regularization of irregular migrants already exercising a professional activity in Tunisia.



Main areas of EU investment related to migration in Tunisia post-2015¹

²¹ Comme souligné par une enquête journalistique au Niger. Voir : Maite Vermeulen, Ajibola Amzat, and Giacomo Zandonini, "Europe Spends Billions Stopping Migration. Good Luck Figuring out Where the Money Actually Goes," *The Correspondent*, December 9, 2019, <https://thecorrespondent.com/154/europe-spends-billions-stopping-migration-good-luck-figuring-out-where-the-money-actually-goes/20366228498-b2c9baad>.

²² European Commission, "Tunisia - European Neighbourhood Policy And Enlargement Negotiations," Text, European Neighbourhood Policy And Enlargement Negotiations - European Commission, 2016, https://ec.europa.eu/neighbourhood-countries/tunisia_en.

²³ The 2017 OXFAM report highlights the contradiction between official EU rhetoric aimed at promoting channels of regular migration and mobility between European and African countries, and between African countries themselves, as well as facilitating secure migration and mobility, and the practice of EU donors being mainly oriented towards containment and control. See : Elise Kervyn and Raphael Shilhav, "Une urgence pour

qui ? Le fonds fiduciaire d'urgence de l'Union européenne pour l'Afrique : routes migratoires et aide au développement en Afrique" (OXFAM, 2017), <https://www-cdn.oxfam.org/s3fs-public/bp-emergency-for-whom-eutf-africa-migration-151117-summ-fr.pdf>.

²⁴ Directorate General for External Policies of the EU, "Les Politiques de l'Union Européenne En Tunisie, Avant et Après La Révolution" (European Parliament, 2016), https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578002/E_XPO_STU%282016%29578002_FR.pdf.

²⁵ United Nations Human Rights Council, "Compilation on Tunisia - Report of the Office of the United Nations High Commissioner for Human Rights" (UN Human Rights Council, 2017), <https://www.refworld.org/docid/590c7a0a4.html>. United Nations Human Rights Council, "Report of the Special Rapporteur on the Human Rights of Migrants. Addendum: Mission to Tunisia."

²⁶ Ratified by Tunisia in 1959.

²⁷ Ratified by Tunisia in 1957.

Key Insights and Conclusions:

Although the phenomenon of irregularity, and therefore precariousness, continues to grow among sub-Saharan migrants in Tunisia, the authorities do not seem prepared to consider either the scale of the problem, or the situation of said migrants. Rather than seeking to regularize the situation of the latter, the State turns a blind eye to their exploitation by the informal sector to continue to guarantee national companies an often

qualified, cheap, and non-demanding workforce. The main strategy of the state to discourage this type of migration thus seems to be to deprive migrants of their fundamental rights. However, far from dissuading them, the figures show that this strategy pushes them, in fact, to a prolonged underground.

There is therefore, , a historical observation to be made. We cannot prevent human beings from

moving. Then, given the widening North-South disparities and the constant sociopolitical instability in Africa, migratory flows from the poorest countries are unlikely to decrease. At the same time, the more the North toughens its migration policies, the more Africans will have no other choice but to stay within the continent.

RECOMMENDATIONS

- Tunisia should urgently vote for an asylum law guaranteeing an adequate legal framework for people in need of protection, in accordance with the inclusion of the right of asylum in the 2014 constitution. Civil society associations as well as the professionals concerned should at the very least be allowed to assist migrants in the asylum application process, without risk of criminalization.
- Pecuniary fines for irregular stay should be suspended for sub-Saharan migrants, as this exposes them to the most precarious irregular work contracts and prevents them from returning to their countries of origin.
- In the absence of being able to regularize the situation of sub-Saharan workers in Tunisia, the state should at least guarantee them social security allowing them access to health care. This can be done via, for example, a specific fund for people in an irregular situation.

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