

Distr.: General  
3 May 2013  
Arabic  
Original: English



## مجلس حقوق الإنسان

الدورة الثالثة والعشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقرر الخاص المعني بحقوق الإنسان للمهاجرين، فرانسوا كريبو

إضافة

البعثة إلى تونس \*\* \*

موجز

يبحث المقرر الخاص المعني بحقوق الإنسان للمهاجرين، في هذا التقرير، حقوق الإنسان للمهاجرين الذين يجدون أنفسهم على المعابر الحدودية في تونس. وعقد المقرر الخاص، أثناء بعثته، مشاورات مع مسؤولين في الحكومة التونسية ومع المهاجرين أنفسهم، بمن فيهم البعض ممن حاولوا العبور بجزراً إلى أوروبا بصفة غير شرعية.

ويسلم المقرر الخاص بأن تونس تمر بمرحلة انتقالية، وقد شهدت مؤخراً تدفقات هجرة غير معتادة إلى البلد ومنه في سياق الربيع العربي. بيد أنه يلاحظ وجود ثغرة كبيرة على مستوى القوانين والسياسات المتعلقة بالهجرة، ويأسف لبعض الجوانب التي تميز ضد المهاجرين في القوانين، بما في ذلك تجريم عبور الحدود بصفة غير شرعية، علاوة على الممارسات غير الواضحة المتصلة باحتجاز المهاجرين.

\* يُعَمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير ذاته، الذي يرد في مرفق الموجز، فيُعَمَّم باللغة التي قُدِّمَ بها وبالفرنسية فقط.

\*\* تأخر تقديم التقرير.

أما بخصوص العلاقة مع الاتحاد الأوروبي، فهو يأمل أن يتيح التفاوض على شراكة جديدة في مجال الهجرة والتنقل فرصة للاتحاد الأوروبي ولتونس كي يتناولوا مسألة إدارة الحدود في سياق الهجرة تناوياً يركز على احترام حقوق الإنسان للمهاجرين وحمايتهم وتعزيزها.

## Annex

[English and French only]

### Report by the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Tunisia (3 to 8 June 2012)

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	4
II. General background on migration in Tunisia.....	6–18	4
A. Historical overview of migration and Tunisia .....	6–11	4
B. Migration and the Arab Spring.....	12–18	5
III. Normative and institutional framework on migration.....	19–45	7
A. International legal framework .....	19–24	7
B. National legal framework .....	25–37	8
C. Institutional and policy framework.....	38–45	10
IV. Border management .....	46–50	11
A. Rescue at sea .....	46–48	11
B. Border controls at ports .....	49–50	12
V. Engagement with the European Union in the sphere of migration .....	51–59	12
A. European Union – Tunisian relations .....	51–57	12
B. Bilateral agreements with European Union member States.....	58–59	14
VI. Detention of migrants.....	60–74	15
A. Reception and orientation centres.....	60–65	15
B. Detention in prisons.....	66–71	16
C. Detention of Tunisians for migration-related offences.....	72–74	17
VII. Asylum .....	75–79	18
VIII. Conclusions and recommendations.....	80–91	19
A. Conclusions .....	80–85	19
B. Recommendations to the Government of Tunisia .....	86–90	20
C. Recommendations to the European Union .....	91	21

## **I. Introduction**

1. The Special Rapporteur on the human rights of migrants, François Crépeau, conducted an official visit to Tunisia from 3 to 8 June 2012 at the invitation of the Government. The mission was carried out in the context of the Special Rapporteur's year-long study on the general management of the external borders of the European Union and the impact on the human rights of migrants, which is the main focus of the Special Rapporteur's main report (A/HRC/23/46). The present report deals more specifically with the human rights situation of migrants in Tunisia.
2. During his six-day visit, the Special Rapporteur visited Tunis, the Port of La Goulette, the Port of Zarzis, the border point with Libya at Ras Jedir, places of migrant detention, including prisons and reception centres, and the Choucha refugee camp.
3. He met with a wide range of Government representatives, from, inter alia, the Ministry of the Interior; the Ministry of Foreign Affairs, including the Secretary of State for European Affairs; the Ministry of Social Affairs, Solidarity and Tunisians Abroad, including the Secretary of State for Migration and Tunisians Abroad; the Ministry of Defence; and the Ministry of Human Rights and Transitional Justice; as well as representatives of the police and the Coast Guard (Garde Nationale Maritime). He also met with intergovernmental organizations, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross and the International Organization for Migration (IOM), and the representative of the European Union and other members of the diplomatic corps.
4. The Special Rapporteur also met with the office in Tunis of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and representatives of the United Nations Country Team, and held meetings with civil society organizations and migrants themselves. The Special Rapporteur would like to thank everyone who took the time to meet with him for sharing information about their perspectives and experiences.
5. The Special Rapporteur expresses his appreciation for the support and cooperation the Government provided in planning and coordinating the visit. He would also like to sincerely thank the United Nations Resident Coordinator, and the OHCHR office in Tunis, for their indispensable support and assistance in carrying out this mission.

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

### **A. Historical overview of migration and Tunisia**

6. Tunisia has long been a country of emigration. Following the country's independence in 1956, the principal destination for Tunisian migrants was north-western Europe. On the one hand, and, in particular, in relation to France, this can be attributed to the historical ties due to the country's former status as a French protectorate, and the continued importance of the French language in Tunisia. However, practical factors also played an important role. Rapid post-war economic growth in north-western Europe created increasing labour shortages in unskilled sectors, such as industry, mining, housing construction and agriculture. Thus from the 1950s there was an increasing emigration of "guest workers" from North Africa, including Tunisia, to Europe. In fact, at that time Tunisia signed formal agreements on guest-worker recruitment with France, Germany, Belgium and the Netherlands. The guest worker was viewed as participating in a temporary circular migration which would fill labour shortages and simultaneously build the skills of these workers, which could help them assist their home countries when they would return

home to their families. Historically, these Tunisian migrant guest workers tended to fit the profile of single young men searching for economic opportunities.

7. Yet the mid-1970s marked a turning point, as an economic recession in Europe led to the onset of increasingly restrictive immigration policies pursued by those same European States that had traditionally welcomed Tunisian migrants. As a result, temporary labour migration to those countries was no longer an option, and family reunification programmes became the only vehicle for Tunisians who wanted to migrate to the region. Subsequently, the more flexible circular temporary migratory movements were replaced by more permanent alternatives, such as family reunification, for those Tunisians for whom such an option was available.

8. Despite the end of the guest-worker programme in the northern European States, the push-and-pull factors leading Tunisians to seek work abroad led to the swift emergence of other, more flexible, migration pathways to Europe. In particular by the mid-1990s, the growth in specific sectors in southern European economies, mainly in the spheres of export-oriented agriculture, construction and tourism, coupled with large informal economies in those countries, fostered the demand for seasonal, flexible and low-skilled migrant labour. At that time, Tunisian migration increased dramatically to the region, in particular to Italy and Spain.

9. By the 1990s, as a result of the strengthening of European Union migration policy and the Schengen system, countries such as Italy and Spain were required to tighten their foreign-labour regimes, requiring visas for foreign workers, and effectively cutting off temporary seasonal work for Tunisians. This in turn led to a considerable increase in irregular migration of Tunisians across the sea to Italy; for many, this was the only way to enter Europe and look for work. It is notable that the outlying islands of Italy, such as Lampedusa, are only 113 km from the Tunisian coast.

10. The Special Rapporteur further observes that while Tunisia has historically been an important emigration country, shifting geopolitical factors have also led to it becoming an important country of both destination and transit. For example, increased investment in the education system has led to the Tunisian higher education system being one of the most highly regarded of the region, leading to an increase in students, in particular from other parts of Africa. Furthermore, the relocation of the African Development Bank to Tunis in 2003 has gradually led to a rise in highly skilled immigration from other African States.

11. However, another, perhaps even more important, change in migration patterns is the fact that Tunisia appears to be becoming an important transit country for migrants coming mainly from other Maghreb and sub-Saharan African countries, many of whom aim to reach Europe. Thus the Tunisian coastline has become an important locale for irregular migration to Europe. Although there was a sharp spike in irregular boat departures following the Arab Spring (see section II (B) below), the Special Rapporteur would like to point out that Tunisian ports do not appear to be the main departure points for those trying to reach Europe by sea. Despite the lack of accurate statistics, evidence from coastal authorities on both sides of the Mediterranean indicate that the number of irregular departures from Tunisia remain relatively low, particularly when compared with Libya, which appears to remain the key route through which migrants attempt the treacherous crossing of the Mediterranean.

## **B. Migration and the Arab Spring**

12. On 17 December 2010 the self-immolation of Mohamed Bouazizi, a 26-year-old vegetable seller from Sidi Bouzid, in protest against the Government's confiscation of his produce and denial of a livelihood, triggered a chain of protests around Tunisia, which

came to be known as the Jasmine Revolution. The revolution ultimately led to the fall of President Ben Ali on 14 January 2011. These events in turn reverberated not only in Tunisia but throughout the region, leading to the string of protests that has since been called the Arab Spring.<sup>1</sup>

13. During the crisis, tens of thousands of Tunisians embarked on journeys across the Mediterranean. In this context, 29,685 Tunisian migrants were recorded as entering Italy irregularly in 2011.<sup>2</sup> The Special Rapporteur notes that the majority of the irregular crossings appears to have taken place in the spring of 2011, when, at the peak of the revolution, Tunisian police forces were otherwise occupied and coastal control was relatively weak. He also notes that many non-Tunisians embarked on irregular journeys to Europe at that time, including an estimated more than 17,000 sub-Saharan Africans.

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

15. The Special Rapporteur observes, however, that despite European fears of mass influxes of migrants in the context of the Arab Spring, while there were some significant flows of Tunisian migrants across the Mediterranean to Italy, the total numbers were in fact rather low in comparison to the cross-border flows into Tunisia from Libya. Furthermore, the Special Rapporteur notes that according to statistical evidence, migration to Europe does not appear to have been accelerated by the Arab Spring, apart from the short-lived movement from Tunisia in 2011. Data have indicated that the changes in the region have not produced any significant inflow of new migrants to Europe: regular and irregular movements seem to have continued along a similar trajectory. Thus the Special Rapporteur observes that the flow experienced in 2011 appears to have been a *sui generis* response to the Arab Spring, and not an ongoing reality.

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

---

<sup>1</sup> See the report of the United Nations High Commissioner for Human Rights on the situation of migrants and asylum seekers fleeing recent events in North Africa (A/HRC/18/54).

<sup>2</sup> Philippe Fargues and Christine Fandrich, "Migration after the Arab Spring", Migration Policy Centre Research Report (2012), p. 4. Available from [www.migrationpolicycentre.eu/docs/MPC%202012%20EN%2009.pdf](http://www.migrationpolicycentre.eu/docs/MPC%202012%20EN%2009.pdf).

17. With regard to management of migration flows, the Special Rapporteur commends the approach of the Government of Tunisia in dealing with the turbulent events of its revolution and of the neighbouring crisis in Libya in 2011. In view of the fact that the majority of those who entered from Libya have not remained in Tunisia, Tunisia has demonstrated how flexible, humanitarian approaches to migration crises can not only benefit people in need, but in fact become a tool that actively promotes and protects human rights at such junctures.

18. However, one important effect of the increased migration flows of 2011 in the context of the Arab Spring is that both the Tunisian revolution and the crisis in Libya have had considerable impact on the discourse of migration and European borders, further cementing this on the agenda as one of the key political considerations between the European Union, its member States, and Tunisia (see section V below; see also A/HRC/23/46, para. 21). The Special Rapporteur takes note that the new interim Government also considers migration a national priority.

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

#### **A. International legal framework**

19. As at October 2012, Tunisia is party to the International Covenant on Civil and Political Rights (ratified 1969), including its first Optional Protocol (2011); the International Covenant on Economic, Social and Cultural Rights (1969); the International Convention on the Elimination of All Forms of Racial Discrimination (1967); the Convention on the Elimination of All Forms of Discrimination against Women (1985), including the Optional Protocol thereto (2008); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1988), including the Optional Protocol thereto (2011); the Convention on the Rights of the Child (1992), including its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (2003 and 2002, respectively); the Convention on the Rights of Persons with Disabilities (2008), including the Optional Protocol thereto (2008); and the International Convention for the Protection of All Persons from Enforced Disappearance (2011).

20. Tunisia has also acceded to the Convention relating to the Status of Refugees (1957) and its Protocol (1968), and ratified the United Nations Convention against Transnational Organized Crime and its two protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air (2003).

21. The Special Rapporteur notes, however, that Tunisia is not yet party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Moreover, Tunisia has not yet signed and ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

22. The Special Rapporteur is pleased to note that Tunisia ratified the Optional Protocol to the Convention against Torture in 2011. In particular he notes the importance of establishing, in accordance with the Optional Protocol, a national preventive mechanism. The Special Rapporteur believes this will enhance the independent monitoring of human rights of migrants deprived of their liberty. The mechanism should be fully independent,

and mandated to conduct unannounced visits to all places where migrants may be deprived of their liberty, including all centres of detention.

23. Under the now repealed Constitution of 1959, the international obligations of Tunisia took precedence over national law (art. 32). However, the Special Rapporteur notes with concern that the current draft text of the new constitution appears to be unclear on the primacy of the State's international human rights obligations. Draft article 38 of the section on legislative power provides that "treaties ratified by the President and approved by the People's Assembly shall have higher authority than laws". However, draft article 1.17 stipulates that compliance with international treaties is compulsory provided that the treaties do not conflict with provisions of the Constitution. The Special Rapporteur is concerned by the latter provision, which not only appears to contradict the former, but also threatens the application of the international human right treaties to which Tunisia is a party and could affect the realization of the rights enshrined therein.

24. Tunisia is a member of the African Union, the Arab Maghreb Union, the League of Arab States and the Community of Sahel-Saharan States (CEN-SAD).

## **B. National legal framework**

25. Following the outburst of protests and the fall of President Ben Ali in 2011, Tunisia found itself in a period of instability, with two interim governments that quickly succeeded each other. On 7 March 2011, a third interim government was formed that pledged to organize the transparent election of a 217-seat National Constituent Assembly (NCA) mandated to draft a new constitution and name a new interim government. Elections were held on 23 October 2011 in which the Islamist party Ennahda received the greatest number of votes and formed a ruling coalition known as the Troika with two other parties.

26. Tunisia is currently undergoing a transition period. In this context, the national normative framework regarding human rights more generally, and migrants rights specifically, remains in flux. A number of new laws are being contemplated to respond to the key demand for increased respect for the exercise of basic human rights.

### **1. Draft constitution**

27. On 23 October 2011, the NCA was elected and charged with drafting and adopting a new constitution for Tunisia. Assembly members have established six permanent committees, each responsible for drafting articles under specific chapters. In August 2012, the NCA released a compilation of the work by the committees. The compilation is being reviewed by the Coordination Committee of the Assembly, which is tasked with providing recommendations to each committee but is not authorized to change the content of the text. The process of revising the existing articles into one cohesive constitution is expected to be finalized in February 2013 and the NCA will likely consider the complete draft of the constitution in March 2013. The consolidated draft must then be discussed by the full Assembly, and subsequently approved, article by article, by an absolute majority of the Assembly – 109 out of 217 members. The Assembly must then approve the entire draft in a separate vote by a two-thirds majority. If the text is not approved, the NCA will consider a revised text. If a final draft is not adopted during that session, a referendum will be scheduled, with a simple majority required for adoption.

28. The Special Rapporteur welcomes the fact that a considerable number of the draft articles are aimed at guaranteeing basic human rights for all persons, making no distinction between citizens and other persons found within the Tunisian territory. Significantly, these include the rights of all persons to life (art. 2.1), physical and moral integrity (art. 1.5), dignity of the person, including a prohibition against torture (art. 2.2), freedom of opinion,



expression and information (arts. 1.8 and 2.26), privacy (art. 2.4) and freedom of conscience and religion (art. 2.3). The Special Rapporteur further observes that the draft constitution explicitly notes the right of freedom of movement within the country and the right to leave and return to the country (art. 2.4).

29. Importantly, the draft further provides that a person can be detained only in accordance with the law: all detainees are to be informed of their rights and the charge against them, they should be given the possibility to be assisted by a lawyer, and the length of detention must be defined by law (art. 2.9). Any deprivation of liberty cannot result in degrading treatment or the denial of human rights (art. 2.10). The draft further guarantees the right to appeal before a fair, independent and neutral judge without distinction as to the nationality of the complainant (art. 2.6).

30. While the Special Rapporteur welcomes these provisions, he further notes that a number of draft articles potentially undermine the global enjoyment of some fundamental human rights for migrants, by specifying their applicability only to citizens. These include: that only citizens have equal rights and duties before the law, and are equal before the law (art. 1.6) and that the State will guarantee the individual and public rights of citizens, and their decent conditions of life (art. 1.7). Moreover, the right to equitable and decent work conditions (art. 2.14) and cultural rights (art. 2.32) are restricted to citizens.

31. In this context, the Special Rapporteur reminds the Government of Tunisia that non-citizens, including migrants and migrants in an irregular situation, are equally the beneficiaries of human rights, and that, apart from the right to vote and be elected and the right to enter and stay on the territory, rights should not be restricted to citizens. He thus hopes that this is properly reflected in the draft text in order for the new constitution to meet the minimum international human rights standards.

## **2. Laws governing migration**

32. Despite the fact that the 1959 Constitution provided for the right to leave the country (art. 10), a number of other laws which remain in force constrain this right, setting up a criminal framework for irregular border crossings.

33. Law No. 1975-40 of 14 May 1975, regarding passports and travel documents, provides that irregular leaving of the national territory is a crime punishable by a jail sentence of between 15 days and six months and a fine (art. 35).

34. Decree No 1968-7 of 8 March 1968 regulates the entry and stay of foreigners in Tunisia and provides for a penalty of 1 month to one year in prison and a fine for migrants who enter or cross the border illegally (*franchissement illégal de la frontière*) or for those who stay in the country illegally. The law stipulates that they can be sent back and forbidden from re-entering the territory.

35. A more recent law, No. 2004-6 of 3 February 2004, modified and completed the law of 1975. While leaving the penalties regarding irregular migration as established by the laws of 1968 and 1975 unchanged, the 2004 law was intended to implement the Smuggling of Migrants Protocol. However, in practice, the law provides for a sentence of between 3 and 20 years in prison and a fine of between 8,000 to 100,000 Tunisian dinars (D) for helping people, even on a voluntary basis, to migrate irregularly. Another penalty of up to four years in prison is established for hosting an irregular migrant. The failure to report knowledge of an irregular migrant is also punishable. In the view of the Special Rapporteur, such provisions go far beyond the intention of the Smuggling of Migrants Protocol.

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

37. The Special Rapporteur observes that the absence of a specific legal framework for the protection of migrants contributes to their situation of vulnerability. The adoption of an updated national law that focuses on protection and promotion of their rights in accordance with international standards would be an important step to remedy this situation.

### **C. Institutional and policy framework**

38. Since the election in late October 2011 and the subsequent appointment of the new interim Government, the Special Rapporteur was assured by various representatives of Government that migration is considered an important issue and remains a national priority. The Special Rapporteur is also aware that the interim Government is currently in the process of reconstituting many of its ministries, including their approach and policy regarding migration. Yet currently, there is no one institute or ministry that has sole competence in migration matters, resulting in a somewhat patchy institutional migration framework.

39. A new migration department has been created in the Ministry of Social Affairs through the creation of a Secretary of State position in charge of immigration and Tunisians abroad. This new department aims at gradually bringing under its supervision all units of other ministries working on migration. The Special Rapporteur observes that given the complex and multifaceted nature of migration policy, it will be important for the department to liaise with all other key actors within Government about the rights of non-citizens, particularly during this critical transitional period.

40. In the interim period prior to the full operationalization of the new Secretary of State, the Ministry of the Interior continues to play a key role in migration, and in particular with regard to border management. Important competencies of the Ministry include its oversight of the reception and orientation centres, and prisons. It is also responsible for law enforcement, including the police and the National Guard. The National Guard, an armed civilian force, is in charge, *inter alia*, of the protection of land and maritime borders.

41. The Special Rapporteur notes that with the support of OHCHR and IOM, there is an endeavour to establish an anti-trafficking unit within the new migration department. A draft law has been prepared by the Centre for Legal and Judicial Studies of the Ministry of Justice, with the support of an interministerial committee (2010-2011); this law is currently being discussed and revised by an inter-institutional steering committee. The Special Rapporteur hopes that this will be swiftly implemented.

42. The Tunisian Armed Forces, consisting of a land army, navy and air force, also play a key role in the protection and monitoring of the borders of Tunisia, on land and at sea. In particular, the Navy works in close collaboration with the Coast Guard to carry out search and rescue operations at sea, and also works in close collaboration with the National Guard and the Ministry of the Interior in the management of borders. These agencies also work in close collaboration with European Union countries, in particular Italy, on search and rescue at sea.

43. At the bilateral and international levels, the Ministry of Foreign Affairs, in particular the Secretary of State for European Affairs, is responsible for negotiating bilateral agreements on migration.

#### **Newly created national human rights institutions and mechanisms**

44. The Minister for Human Rights and Transitional Justice is in charge of the newly created Ministry responsible for implementing the Government's human rights policy and coordination in this area across the Government. The Special Rapporteur welcomes the creation of a ministry dedicated to the promotion and protection of human rights. He

emphasizes that the Ministry must consider as a key priority the human rights of all persons on the State's territory, including non-citizens.

45. The interim Government has also expressed its intention to revise the statute of the national human rights institution, the High Committee for Human Rights and Fundamental Freedoms, in order to align its mandate with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and a draft law has been developed to this end. The Special Rapporteur welcomes the draft law and considers that it could provide the grounds for the establishment of a robust national human rights institution with sufficient independence from the State. In particular, however, the Special Rapporteur emphasizes that the Committee must be explicitly empowered to carry out independent investigations, and in particular be tasked with looking into the human rights dimension of migration as it affects Tunisian emigrants but also immigrants, both regular and irregular, within Tunisia. Furthermore, the institution should be able to receive direct complaints from non-citizens and have the authority to *proprio motu* carry out visits to places of detention where migrants are held. Finally, the Special Rapporteur stresses the importance of the national institution being provided adequate resources to fulfil its mandate in all regions of Tunisia. In order to fully cement the independence and mandate of the institution, the Special Rapporteur notes that its establishment in accordance with the Paris Principles could be embedded within the new constitution.

## **IV. Border management**

### **A. Rescue at sea**

46. The Special Rapporteur has learned that border management remains the key responsibility of the gendarmerie and the Coast Guard. At a meeting with representatives of the Coast Guard in both the Port of La Goulette and the Port of Zarzis, the Special Rapporteur was pleased to learn that their key priority remains the saving of lives. Search and rescue operations, which are led by the Coast Guard, result in the concrete outcome of saving lives and are commended by the Special Rapporteur. The Special Rapporteur encourages Tunisia to continue this practice of placing the value of the lives of persons stranded at sea at the forefront of all migration-related maritime operations.

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

recognized in Tunisia. Local settlement, through regular residency status, should also be considered and the Tunisian authorities are encouraged to consider this option.

48. Overall, the Special Rapporteur notes that there does not appear to be any formal agreement by which Tunisian authorities are obliged to carry out search and rescue operations beyond their own territorial waters in the northern Mediterranean. Yet, he noted that from the perspective of the Coast Guard, there appears to be implicit pressure from European member States on Tunisia to rescue and retrieve boats at risk with migrants in such cases. As one border guard noted about the migrants: “The Europeans will not accept them.” This status quo is troubling, and indicates the ongoing phenomenon of the externalization by Europe of its border control to its southern neighbours.

## **B. Border controls at ports**

49. The Ministry of Defence also works in close collaboration with the gendarmerie, and the Ministry of the Interior, in the management of the border at ports. In this context, the Special Rapporteur visited the Port of La Goulette, one of the main ports from which ferries cross the Mediterranean. Official statistics indicate that, annually, approximately 220 irregular migrants are detected at the port attempting to depart Tunisia for Europe. The port is closely monitored, with border police working closely with the port authorities and Customs officials.

50. The Special Rapporteur was informed that if someone is found to be attempting to depart Tunisia irregularly, he or she is charged with irregular border crossing and sent to a detention facility. He was told of a young Somali woman who was travelling with her baby the day before his visit to the port. She had hidden herself in the back of a truck, and her child was apparently hidden in a sack of grain, and the truck was about to board a ferry for Italy. Prior to its boarding, however, heat detection scanning technology led to their discovery. The woman was apparently then sent directly to a facility to be detained. The Special Rapporteur regrets that he was not able to meet with this woman, and was not provided any information on her whereabouts. Moreover, the procedure for sending this woman and infant child to detention remained unclear. Given the fact that she was travelling with an infant, and in the light of her country of origin, it appears that she may indeed have had protection concerns. In this context, the Special Rapporteur notes that it is essential that all persons working at border points, including port authorities, border police and Customs officials, be afforded comprehensive human rights training that highlights the human rights of migrants, relevant protection concerns and procedures that are required for the processing of such persons.

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

### **A. European Union–Tunisian relations**

51. Following the launching of the Euro-Mediterranean Partnership, established in Barcelona in November 1995, Tunisia was the first country to sign an Association Agreement with Europe. The Agreement, which entered into force in 1998, still constitutes the legal basis for European Union–Tunisian relations; current cooperation between Tunisia and the European Union has since been reconstituted within the framework of the Union for the Mediterranean. A first action plan, for the period 2005–2010, was established between the European Union and Tunisia, and negotiations are currently under way for a second action plan.

52. Within the framework of the Association Agreement, a key pillar was the fight against irregular migration. Tunisia and the European Union created a working group to deal with social affairs and migration. A number of areas relating to migration, such as co-development, social integration, visas, illegal migration, transit migration, improving information and concrete cooperation projects, have also been identified and are the subject of regular dialogue.

53. Following the revolution of 2011, there was a deepening of relations between the European Union and Tunisia, culminating in November 2012 with the establishment of a “privileged partnership” between Tunisia and the European Union, and negotiations towards a new action plan to be developed on the basis of the existing Association Agreement.<sup>3</sup> The new action plan should define common priorities for bilateral cooperation, and provide a strategic framework for European Union support of the ongoing democratic reform process.

54. It is significant to note that the issue of migration remains one of key importance, with Tunisia noting mobility as one of its highest priorities in the context of the renewed partnership with the European Union.<sup>4</sup> Indeed, the Special Rapporteur has learned that the action plan has identified migration as a key concern, and foresees the conclusion of a mobility partnership with Tunisia. Such a partnership will have as its goal the establishment a balanced framework for cooperation and responsible movement of people, management of legal migration, the links between migration and development, protection of migrants’ rights and the fight against illegal migration, and organized crime related to immigration and readmission”.

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

56. In the wake of the Arab Spring, the European Union also launched in 2011 a new dialogue for migration, mobility and security with the southern Mediterranean countries.<sup>5</sup> A key pillar of this new dialogue are mobility partnerships, which are joint political statements between the European Union and southern Mediterranean States conceptualized as an effort to move away from a security focus on migration towards a comprehensive approach. The goal of such partnerships is to allow Tunisian citizens greater access to the territory of the European Union in return for a commitment by Tunisia to work with the European Union in the field of migration management, especially in the fight against irregular immigration. Tunisia might be one of the first countries in the southern

---

<sup>3</sup> EU/Tunisia Action Plan, available from [http://ec.europa.eu/world/enp/pdf/action\\_plans/tunisia\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_en.pdf).

<sup>4</sup> See “Conseil d’Association UE Tunisie” (Brussels, November 2012). Available from [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/FR/foraff/133564.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/FR/foraff/133564.pdf).

<sup>5</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0292:FIN:EN:PDF>.

Mediterranean to benefit from such an initiative, and opportunities could include better access for Tunisians to the European Union labour market; financial or technical assistance, such as scholarships, for Tunisians wishing to study in the European Union; linguistic or technical training before leaving, for economic migrants; reintegration programmes for migrants who choose to return to their countries; and/or a twinning of employment services of the member States and their counterparts in third countries. The partnership will also ensure the creation of measures to reduce the brain drain and will encourage circular migration or return and visa facilitation, including the easing of procedures for issuing short-stay visas.

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

## **B. Bilateral agreements with European Union member States**

58. The Special Rapporteur also notes the importance of bilateral agreements with European Union member States in the field of migration management in the context of European Union–Tunisian relations. In this regard, the two most significant bilateral partnerships with migration-related content are with Italy and France.

59. However, the Government of Tunisia noted the increasing tendency of bilateral agreements with European countries to focus on the security aspect, including readmission of irregular Tunisians, and border control. For example, in 1998, Italy and Tunisia finalized an agreement that set conditions for the readmission of Tunisian and third-country nationals. As part of this agreement, Italy agreed to provide 500 million liras (€260,000) expressly for the creation of migrant detention facilities (*centri di permanenza*).<sup>6</sup> A more recent agreement between the two countries, entered into since the Arab Spring, allows for

<sup>6</sup> Scambio di Note tra l'Italia e la Tunisia concernente l'ingresso e la riammissione delle persone in posizione irregolare, Rome, 6 August 1998.

expedited returns of irregular arrivals. However, it does not appear to safeguard the necessary procedural and substantive rights of those returned.<sup>7</sup>

## VI. Detention of migrants

### A. Reception and orientation centres

60. Although the Government denies the existence of immigration detention centres in Tunisia, migrants who are found to be on the territory irregularly are sometimes sent to *centres d'accueil et d'orientation* – essentially holding facilities from which migrants are identified and deported. The Government insisted that only one such centre exists in Tunisia, the Ouardia Centre in the south of Tunis. However, the Special Rapporteur learned through a number of reliable sources that, in fact, 13 centres exist around the country. The Special Rapporteur regrets that the Government did not facilitate his request to verify this fact, or his request to visit another of the 13 centres. He also regrets the lack of transparency around these centres, and urges the Government to be more open and forthcoming regarding not only information about the existence of these centres, but also with regard to allowing full and free access to these centres by international observers and civil society organizations, among others.

61. The Special Rapporteur further observes that, even though the Government of Tunisia insists that the Ouardia Centre is a reception and orientation centre (*centre d'hébergement et d'accueil des migrants*) and not a detention centre, the fact that persons in such centres are not free to leave contradicts this assertion. As long as individuals are being held against their will and thus deprived of their liberty in such facilities, the Special Rapporteur considers that they must, under international law, be considered detention centres.

62. The Special Rapporteur had the opportunity to visit the Ouardia Centre in the course of his mission. The Centre, which has nine rooms and a maximum capacity of 100 beds, is managed by the Ministry of the Interior, and is where migrants are held prior to their expulsion from Tunisia. While the Special Rapporteur was told that persons are usually processed and removed within 10 days, he was also informed that a number of cases require more lengthy detention, particularly where persons lack adequate identifying or travel documentation, and particularly in the case of individuals whose consulates do not recognize them, or who have no consular presence in Tunis. According to the information received, a maximum stay is generally no longer than three weeks. This did not contradict the Special Rapporteur's observations during his visit or other anecdotal evidence. It appears that migrants, however, are required to pay for their own deportation, and thus the length of detention can depend on the ability of migrants to raise the necessary finances.

63. The majority of those in the Ouardia Centre were persons who were irregularly in the territory or without valid documents. The Special Rapporteur also noted that a significant number of detainees were foreigners who had completed their prison sentence and who were awaiting expulsion. Furthermore, the Special Rapporteur was also informed that in 2011, many Tunisians were held in the Ouardia Centre for having left the country irregularly.

64. Overall, the Special Rapporteur found the facilities in the Ouardia Centre to be in reasonable condition; the facilities appeared clean. Persons were free to move around

---

<sup>7</sup> See the report of the Special Rapporteur on the human rights of migrants on his mission to Italy (A/HRC/23/46/Add.3).

during the day in designated areas, however, the bedrooms were locked at night. The kitchen area was large, stocks were replenished and migrants were allowed to cook for themselves. There appeared to be adequate access to health services, and at the time of the visit the Ouardia Centre was not overcrowded, and men and women were held in separate facilities. Staff at the Centre appeared to respect the rights of the migrants, and migrants, when interviewed independently, did not report mistreatment or poor conditions. Anecdotal evidence that the Special Rapporteur received confirmed his impressions. The Special Rapporteur also notes that a permanent social assistant is present in the Centre, sent from the Ministry of Social Affairs.

65. One issue that gravely concerned the Special Rapporteur was the fact that minors, including unaccompanied minors, are held at Ouardia Centre. Although minors appear to be kept separate from other detainees, this remains troubling. In one case, a minor had been in the centre for 21 days, charged with crossing the border into Tunisia illegally. He was sentenced to nine days' prison, which he served in a juvenile facility, and was thereafter transferred to Ouardia, where he awaited deportation. In this time, he had not been in touch with his family, and he was not taken to meet with consular authorities until he self-harmed in order to get the attention of the staff. The Special Rapporteur observes that detention, as a measure of last resort, should never be applied in the case of minors, especially unaccompanied minors, who are particularly vulnerable and who should be housed in shelters appropriate to their age. Moreover, irregular crossing of a border should not be a criminal offence, and a minor should never be criminalized for having crossed a border irregularly.

## **B. Detention in prisons**

66. The Special Rapporteur also met with migrants who had been charged with criminal offences and who were detained in Tunisian prisons. Tunisia has 26 main prisons, although specific data on the number of non-nationals detained does not appear to be currently available.

67. The Special Rapporteur visited the Harboub Prison in Medenine. This prison was selected due to its proximity to the Libyan border and in light of the relatively high numbers of migrants detained there. At the prison, numerous migrant inmates were able to share their experiences with the Special Rapporteur in confidentiality.

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

69. Furthermore, the Special Rapporteur notes that where migrants are charged with a crime, many appear to be charged with the crime of illegal border crossing. Of particular concern is the fact that irregular border crossing remains a criminal offence in Tunisia (*franchissement illégal de la frontière*). This contravenes fundamental principles of human rights, including the right to leave one's country (International Covenant on Civil and Political Rights, art. 12). While the Tunisian authorities insist that this is not regularly



applied, the Special Rapporteur learned of cases where it was in fact used, including against both Tunisians and foreigners entering Tunisia irregularly, and who were subsequently imprisoned for the alleged offence. In fact, this offence seems to be applied indiscriminately, regardless of other protection concerns, including in the problematic case of the unaccompanied minor who was charged with this offence.

70. However, the Special Rapporteur observed that often migrants were also charged with drug-related offences. While he does not wish to prejudge the validity of these charges, the Special Rapporteur observes that, given the way such cases appear to be uniformly handled, it appears that these charges of drug-related crimes are potentially being misused in order to justify the detention of migrants. In particular, he notes that, in these cases, full fair-trial rights of migrants do not appear to be respected, with long periods of pretrial detention, uncertain evidentiary grounds, and the reality that irregular migrants, despite being charged with a criminal offence, are not provided with any legal assistance. The Special Rapporteur thus urges the Government to guarantee all fair-trial rights for migrants when facing imprisonment in criminal facilities, according to the established principles of international law. The guarantee of those procedures will ensure that criminal charges are not misused against migrants.

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

### **C. Detention of Tunisians for migration-related offences**

72. As noted above, the Special Rapporteur remains concerned that irregular border crossing remains a criminal offence in Tunisia. Such a law contravenes fundamental principles of human rights, including the right to leave one's country, and should immediately be repealed. He was informed that, in the period prior to the revolution, and in particular during the peak of the crisis in 2011, many Tunisians were held at both the Ouardia Centre and in prisons for this crime. However, the Special Rapporteur has learned that since the revolution this has been applied against Tunisians less systematically; when boats are intercepted, Tunisians are often held for just a few days in prison, and then released with a small fine.

73. The Special Rapporteur is pleased to note that this crime does not appear to be prosecuted actively against Tunisians by the new interim Government. However, he urges the complete withdrawal of this law in accordance with the principles of international law.

74. The Special Rapporteur is also concerned by the fact that some Tunisians have been charged with participation in the smuggling of migrants, even though their participation had been limited to peripheral acts, they reportedly had little knowledge of the smuggling

operation and they did not appear to be connected with the organization of the smuggling operation. While the Special Rapporteur recognizes the gravity of migrant smuggling and the criminal nature of such actions, he also notes the importance of ensuring that all activities to combat smuggling are aimed at the highest level in order to ensure the culpability of those most responsible along the chain of criminality.

## VII. Asylum

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

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

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

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

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

persons who do not wish to return home and who could be considered stranded migrants. The Special Rapporteur urges the Government of Tunisia to work with all involved organizations to find an appropriate and durable solution for these persons, including by considering local settlement in Tunisia through the issuance of residency status.

## **VIII. Conclusions and recommendations**

### **A. Conclusions**

80. In the context of the ongoing transition, the Special Rapporteur notes the positive steps the Government of Tunisia has taken towards ensuring an institutional framework conducive to the protection and promotion of human rights. These include the establishment of the Ministry of Human Rights and Transitional Justice, as well as the national mechanism to prevent torture and the revision of the legislation regarding national human rights institution, which are both close to being finalized.

81. The Special Rapporteur notes, however, that the legal framework is relatively weak with regard to migrant rights, with old laws still in place that continue to criminalize irregular border crossing. Moreover, certain provisions of the draft constitution continue to differentiate between citizens and non-citizens, thus undercutting the universality of these rights.

82. Tunisia must ensure that the human rights of migrants are upheld equally to those of citizens, in accordance with international law. While the drafting of the constitution is a true test for the public institutions of Tunisia in the post-revolution era, it is essential that the constitution explicitly protect the rights for all persons within Tunisian territory, regardless of migration status. Moreover, the Special Rapporteur notes that it is essential that the Constitution does not subordinate the obligations of Tunisia under international law to domestic standards.

83. The Special Rapporteur further observes that the system of detention and removal of migrants in Tunisia remains unclear and opaque, with the existence of 13 migrant detention centres remaining unconfirmed by the Government. The Special Rapporteur notes that the Government should deploy all efforts to make transparent all aspects of these detention centres, including by facilitating access by independent observers and service providers to ensure that the human rights of migrants detained therein are at all times respected. Moreover, substantive reforms within the police and the justice system, including comprehensive training of all officers who come into contact with migrants, are urgently required to ensure that the human rights of migrants are guaranteed at all times. In this regard, the Special Rapporteur notes the importance of framing not only bilateral arrangements, but also agreements with the European Union, in a way that will place the protection of the human rights of migrants at the core of all negotiations between all parties on all migration control issues.

84. Bearing in mind the fragile state of the democratic transition in which Tunisia finds itself, the Special Rapporteur strongly recommends the consolidation of a human rights-based approach, which must ensure the respect, protection and promotion of all the rights of all persons within Tunisia, citizens and non-citizens alike.

85. The Special Rapporteur thanks the Government of Tunisia for its cooperation during his visit. He remains available to provide any technical assistance the Government may require in the implementation of the recommendations herewith.

## B. Recommendations to the Government of Tunisia

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

- (a) Ensure the protection of all human rights for everyone, including migrants, regardless of their status, in the new constitution;
- (b) Develop an updated legal framework for the protection of migrants in line with international human rights law. Such a law should abolish any criminal penalty for irregular migration;
- (c) Ensure that domestic implementation of international obligations, such as those under the Smuggling of Migrants Protocol and the Trafficking in Persons Protocol, supplementing the United Nations Convention against Transnational Organized Crime, does not infringe on fundamental principles of human rights law;
- (d) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- (e) Establish an independent national human rights institution in accordance with the Paris Principles, with a mandate to monitor the human rights of everyone in the territory or under the jurisdiction of Tunisian authorities, including migrants;
- (f) Ensure the establishment of a fully independent national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture, mandated to visit *proprio motu* all places where migrants may be deprived of their liberty, including airport transit zones.

87. Regarding border management, the Government should:

- (a) Decriminalize irregular border crossing;
- (b) Provide training for all persons working at border points, including port authorities, border police and customs officials, with programmes focusing on the human rights of migrants, relevant protection concerns and procedural rights;
- (c) Ensure that readmission agreements entered into take explicitly into account the human rights of those returned;
- (d) Strengthen the mechanisms to detect, identify and assist vulnerable migrants at the border, including minors, potential asylum seekers and victims of trafficking.

88. Regarding detention of migrants, the Government should:

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

(e) Develop regulations in line with international human rights standards concerning procedural safeguards and conditions of detention; ensure that all migrants deprived of their liberty are able to promptly contact their family, and have access to interpretation services, consular authorities and a lawyer, which should be free of charge if necessary; ensure that all detained migrants have access to proper medical care, food and hygienic conditions;

(f) Ensure that migrants who are not able to pay for their own deportation are not kept in detention;

(g) Establish a system of independent monitoring of all detention facilities, including by the national preventive mechanism, the national human rights institution, civil society organizations and international organizations;

(h) Improve the human rights training of all staff working in detention centres.

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

(a) Engage in a full transparent consultative process in the drafting of the new law on asylum, in order to develop a final text that meets international standards on refugee and asylum-seeker protection, and ensure its swift passage into law;

(b) Conduct trainings for all Government officials who may come into contact with migrants, including law-enforcement officials, on the principle of non-refoulement and the right of persons to seek asylum;

(c) Ensure that all migrants who claim protection concerns are adequately informed of their right under international law to seek asylum;

(d) In the context of the pending closure of the Choucha camp, ensure that those persons with approved refugee claims who are unable to be resettled in third countries are settled in Tunisia. For those migrants in Choucha with failed refugee claims, work together with international organizations to find appropriate and durable solutions.

90. Regarding cross-cutting concerns, the Government should:

(a) Facilitate capacity-building for all levels of government on the rights of migrants;

(b) Develop mechanisms to protect vulnerable migrants in the context of mixed migration flows;

(c) Develop a comprehensive and transparent national system of data collection, analysis and dissemination regarding immigration policies and practices, which should be used as a foundation for rights-based policymaking on migration. The data collection should include migrants in detention and deportations;

(d) Encourage and support, both technically and financially, civil society organizations that offer services and support to migrants regardless of their status.

## **C. Recommendations to the European Union**

91. The European Union should:

(a) Taking into account that the human rights of migrants have an important place in any democratic transition, encourage the Tunisian authorities to pay attention to the human rights of migrants during the democratic transition;

(b) In the context of the migration and mobility partnership currently being negotiated, adopt a more nuanced approach to migration policy with Tunisia that moves beyond security and border-control discourse and develops a real partnership that focuses on the respect, protection and promotion of the human rights of migrants; in particular, support the development by Tunisian authorities of alternatives to the detention of migrants, in order to ensure that detention is considered only as a measure of last resort;

(c) Encourage individual European Union member States having bilateral migration-related agreements with Tunisia to place human rights at the core of these agreements;

(d) Ensure that European Union member States take all necessary measures to rescue migrants in distress in the Mediterranean Sea in their own territorial waters, including rescuing ships and taking those on board to safe ports of disembarkation in those member States;

(e) Intensify efforts to search for the 300 Tunisians who are reported to have disappeared in the Mediterranean Sea in 2011;

(f) In the context of any agreement on migration with the Tunisian authorities, insist on transparency with regard to migrants rights, including making public all detention centres.

---