

TUNISIA IS **NOT** A PLACE OF SAFETY

SOS MEDITERRANEE

July 2024



Legal analysis for background information:

The criteria to determine a Place of safety extracted from the different SAR Conventions and the legal analysis developed by SOS MEDITERRANEE are the following:

General criteria:

Criteria 1 : Place where the survivors' safety of life is no longer threatened

IMO Regulation MSC.167(78) 2004

Criteria 2 : Ensuring people are protected against further ill treatments/torture

IMO Regulation MSC.167(78) 2004 APPENDIX

Specific criteria for asylum seekers:

Criteria 3 : Place where the lives and freedoms of those alleging a well-founded fear of persecution are not threatened

IMO Regulation MSC.167(78) 2004 APPENDIX

Criteria 4 : Ensuring people are protected against direct or indirect refoulement

IMO Regulation MSC.167(78) 2004 APPENDIX

Criteria 5: Rescued asylum seekers should be referred to the responsible asylum authority for an examination of their asylum request.

IMO Circular FAL.3/Circ.194 -2009



Stefano Belacchi / SOS MEDITERRANEE

SOS
MEDITERRANEE



General Criteria

Safety of Life, torture and ill treatment

Institutionalized racism and xenophobia against black people in the country.

In the wake of President Saïed's February 2023 statement, which blasted "hordes of illegal migrants" as part of a "criminal plan" to "change the demographic composition" by breaking from its "Arab-Islamic affiliation," hostility has been unleashed against students and immigrants from sub-Saharan Africa. Since this announcement, the number of voluntary repatriation requests has notably increased, as has the number of sea departures.

In July 2023, Tunisian security forces in Sfax conducted a mass roundup of hundreds of people from sub-Saharan Africa, including children, abandoning them in a no man's land between the Tunisian and Libyan border, without food or water.^{1,2,3} A [UN Expert has urged the Tunisian authorities to immediately halt any further deportations](#) and to expand humanitarian access to this perilous area on the Tunisian-Libyan border.⁴ The situation has been marked by increasing violence and hostility. In Sfax, Tunisia's second-largest city, stabbings, stone-throwing, and violent clashes^{1,2} between sub-Saharan migrants and local residents have been reported. Since the beginning of July 2023, this has escalated into what has been described as a ["hunt for the black man"](#).⁵ The tension and violence continued into the following year. On Friday, 3 May 2024, before dawn, [Tunisian security forces evicted hundreds of migrants and refugees](#), including children, pregnant women, and asylum seekers registered with the UNHCR, from a public park near the Tunis offices of the IOM and UNHCR.⁶ During the eviction, according to Amnesty International's documentation, security forces used teargas and tasers against them, including against children, and subjected them to kicking, punching, and baton strikes. In his address to the Security Council on 6 May, the President also indicated that Tunisian security forces had forcibly returned 400 people to the Libyan border, in what appears to be a collective unlawful deportation.

In a [report of July 2023 – Human Rights Watch](#) affirmed that Tunisia is not a safe place for Black African migrants, who have been victims of "beatings", "arbitrary detentions" and "theft of money and personal belongings" by Tunisian authorities in recent months. In police stations, some victims have been subjected to "electric shocks" and "arbitrary arrests based on their skin colour".⁷

[United Nations Experts and OHCHR](#) stressed that targeting migrants and asylum seekers based on their skin colour violates the prohibition of racial discrimination under international law.⁸ The Tunisian government was requested to take immediate steps to end racist hate speech in the country, protect sub-Saharan migrants from violence, investigate reported acts of violence, and ensure access to justice and remedies for victims, as also recommended by the Committee on the Elimination of Racial Discrimination in its [statement of March 31 2023](#).⁹

Violence and illegal practices by the Tunisian Coastguards.

The Tunisian Coastguards, primarily the National Guard operating in territorial waters, managing potential transfer and disembarkation, have been reported in some cases to engage in violent actions, endangering the lives of migrants at sea, particularly those of sub-Saharan origin. [A recent report by Alarm Phone, published in June 2024](#), details the illegal and violent practices of the Tunisian National Guard in the central Mediterranean. Various testimonies from migrants, refugees, and Tunisian nationals highlight the abuses they encountered during interceptions. Additionally, there is a notable absence of any civil society or UN organizations at disembarkation points to monitor or provide assistance.¹⁰

Repression on civil society and individuals.

Amnesty International's latest report, published in May 2024, describes a repressive crackdown on civil society organizations in Tunisia, highlighting the massive repression and human rights violations on Tunisian nationals having a direct or indirect link with migrants. Criticism of the state apparatus is labeled by President Saied as an act of treason. During the National Security Council meeting on May 6th, the president specifically attacked civil society organizations, describing them as "traitors", "[foreign] agents" and "rabid trumpets driven by foreign wages".¹¹

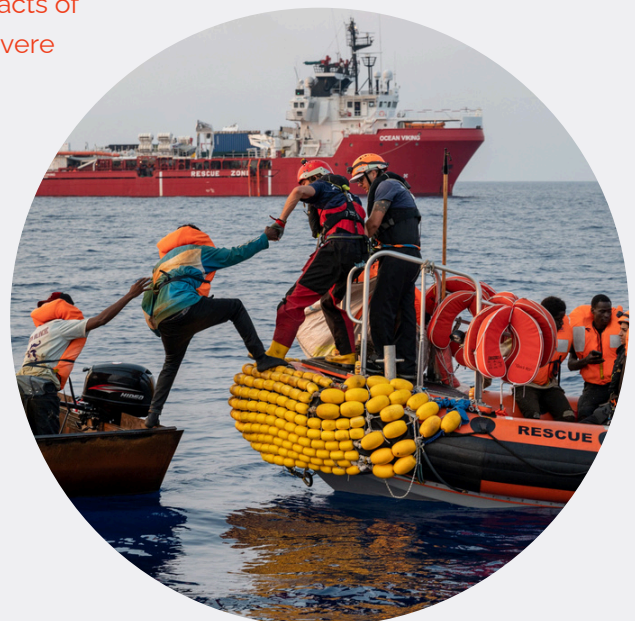
The same day, authorities proceeded with the arrest and detention of Saadia Mosbah, president of Mnementy, a Tunisian anti-racist organization in solidarity with refugees and migrants. Since then, dozens of human rights defenders have suffered the same fate. On May 11th, authorities arrested lawyer and media personality Sonia Dahmani, under Decree law 54, for comments she made on TV, questioning claims by authorities that migrants are coming to Tunisia with the intention of settling in the country. On May 13th, a Tunisian investigative judge ordered her pre-trial detention. According to Amnesty International's report from May 2024, over 70 people, including political opponents, lawyers, journalists, activists, human rights defenders, and social media users, have been subjected to arbitrary prosecutions since the end of 2022.¹² At least 40 remain arbitrarily detained as of May 2024, most of them held in connection with the exercise of their internationally protected rights. "Tunisian authorities must urgently reverse this significant backsliding on human rights. They must cease this judicial harassment and release all those detained solely for the exercise of their freedom of expression and freedom of association. People should have the freedom to express themselves without fear of reprisal," stated Heba Morayef, Regional director for MENA at Amnesty International.

By law, not only is illegal entrance and exit of the country penally sanctioned, but any connections to individuals who attempted to exit illegally is also sanctioned. Between May 8th and 10th, authorities arrested two individuals and sentenced another to eight months in prison for providing housing to undocumented people. Additionally, the law imposes an obligation to report any knowledge of illegal activities, regardless of one's profession¹³ This means that professionals such as doctors or lawyers, who become aware of such activities through their patients or clients, are required to report them. Failure to do so can result in prosecution, thus undermining professional confidentiality.

Conclusion

Physical violence, theft, discrimination, forced displacement in the desert, arbitrary arrest and endangerment at sea all constitute acts of ill-treatment and torture. Sub-Saharan migrants face severe restrictions on their fundamental freedoms and are subjected to ongoing persecution, fueled by a wave of xenophobia and institutionalized discrimination. Arrests and detentions related to the exercise of freedom of expression and association, as well as the criminalization of any assistance to migrants, whether paid or unpaid, and the requirements for professionals to breach confidentiality, further illustrate these abuses.

Therefore, Criteria 1 and criteria 2 are not applicable in this context.



Specific Criteria for Asylum Seekers

Protection of lives and freedoms and respect of non-refoulement for asylum seekers

Lack of Asylum legal framework, interceptions and pushbacks.

Tunisia lacks a formal asylum legal framework. The processing and evaluation of asylum applications are still entirely delegated to UN agencies, which have registered a consistent number of applications over the years despite a rising number of applicants in the country.

By law, illegal entrance and exit of the country are penalized for all individuals, regardless of nationality, with prison sentence and fines. Non-Tunisian nationals are systematically detained after disembarkation. Tunisian nationals are systematically detained if alleged to have facilitated the journey (organization of the journey, driving the boat). However, numerous testimonies indicate detention without any grounds of having facilitated the journey, solely for attempting to exit the country illegally. This is the case of Adam, who spent six months in jail after being intercepted as a passenger in a boat⁴. This is enforced under Art.35 of the Tunisian law 1975-40, which punishes each Tunisian who leaves the country illegally¹⁵.

Reports indicate that forcible expulsions of people on the move, including from detention sites along Tunisia's borders with Algeria and Libya, have increased over the past few months. In July 2023, the IOM and UNHCR stated concern over the safety and well-being of hundreds of migrants, refugees and asylum-seekers in Tunisia¹⁶, who remain stranded in dire conditions after being forcibly relocated to remote and desolate areas near the country's borders with Libya and Algeria. Others have been forcibly pushed across the borders into Libya or Algeria. Such practices have been documented since mid-February 2018, when a boat was intercepted and all non-Tunisian people brought to the Tunisian Red Crescent (TRC) center in Medenine disappeared after identification. Also, in late 2021, UN experts condemned a collective pushback conducted by Tunisia¹⁷. Reports of pushbacks also surfaced in 2022, including those following rescues at sea conducted by the Tunisian Coast Guard.

Conclusion

The forced displacements and increased interceptions reflect a disregard for the non-refoulement principle, a fundamental tenet of international human rights law that prohibits all forms of expulsion regardless of nationality or migration status. In Tunisia, the law criminalizes illegal exit from the country, which directly conflicts with the right to seek asylum for those fleeing persecution. As a result, Tunisian nationals who seek asylum abroad are criminalized upon their return to their home country.

Therefore, criteria 5, 6, and 7 do not apply.

In the current context described above, Tunisia does not meet the legal requirements to be considered as a Place of Safety to disembark people rescued at sea.

FOOTNOTES

1. <https://observers.france24.com/en/africa/20230707-tunisia-deportations-sub-saharan-african-migrants-border-no-mans-land>
2. <https://www.reuters.com/world/africa/tunisia-removes-hundreds-migrants-desert-border-region-rights-group-lawmaker-2023-07-05/>
3. <https://euromedrights.org/publication/tunisia-anatomy-of-a-forced-deportation-to-libya/>
4. <https://www.ohchr.org/en/press-releases/2023/07/un-experts-urge-tunisia-act-swiftly-uphold-migrants-rights>
5. <https://www.france24.com/fr/afrique/20230705-tunisie-entre-crise-migratoire-et-absence-de-l-%C3%A9tat-la-ville-de-sfax-sombre-dans-le-chaos>
6. https://www.lemonde.fr/afrique/article/2024/05/08/en-tunisie-la-repression-s-accentue-sur-les-migrants-subsahariens-et-les-associations-qui-les-soutiennent_6232218_3212.html
7. <https://www.hrw.org/news/2023/07/19/tunisia-no-safe-haven-black-african-migrants-refugees>
8. <https://www.ohchr.org/en/press-releases/2023/07/un-experts-urge-tunisia-act-swiftly-uphold-migrants-rights>
9. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FTUN%2F9716&Lang=en
10. <https://alarmphone.org/en/2024/06/20/interrupted-sea/>
11. <https://www.amnesty.org/en/latest/news/2024/05/tunisia-repressive-crackdown-on-civil-society-organizations-following-months-of-escalating-violence-against-migrants-and-refugees/>
12. <https://www.hrw.org/news/2024/05/30/tunisia-authorities-escalate-clampdown-media-freedom-expression>
13. https://euromedrights.org/wp-content/uploads/2015/07/REMDH_CETUMA_Monia-BJ_Souhayma-BA_Plaidoyer_r--forme-des-lois-sur-la-migration-les---trangers-et-la-nationalite_fr-2.pdf
14. https://www.lemonde.fr/afrique/article/2020/08/27/je-brule-ou-je-me-fais-bruler-adem-25-ans-et-deja-quat-tentatives-de-quitter-la-tunisie_6050118_3212.html
15. <https://www.refworld.org/legal/legislation/natlegbod/1975/fr/63329>
16. <https://www.iom.int/news/iom-and-unhcr-appeal-urgent-solutions-migrants-and-refugees-stranded-tunisia-and-libya-borders>
17. <https://news.un.org/fr/story/2021/11/1108322>

