

Tunisian Forum for Economic and Social Rights

Between Securitisation and Racialisation:

The sub-Saharan African Experience in Tunisia

Between securitisation and Racialisation: The Sub-Saharan African Experience in Tunisia

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To my mother, without whom my presence here wouldn't be possible.

To my best friend, for keeping me sane during these peculiar times.

*To those made invisible, in the hope this work contributes to a better
tomorrow.*

To my country, so far yet so close.

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INTRODUCTION

Along with its North-African neighbours, Tunisia has long been an issuing country of migrants rather than a welcoming destination.¹ However, the nature of its migration flux started evolving in the 1990s, notably due to the development of Europe's border externalisation policy and the gradual establishment of individual visa requirements for certain categories of third-country nationals, later on becoming the Schengen policy.² The establishment of "Fortress Europe" rendered migratory journeys harder, protracted and increasingly dangerous.³

Similarly to Morocco through the Gibraltar Strait, Tunisia has been witnessing an increasing number of Sub-Saharan migrants transiting from its soil to reach Italy's Lampedusa through risky boat trips, particularly following the escalation of the Libyan conflict that deviated the traditional Libyan migration route to Tunisia.⁴ These new trends of South to South migration transformed the country's migratory status into a complex one, assuming multiple functions from a classic sending country to a transit as well as a receiving country.⁵ Parallely, Tunisia developed a strict legal arsenal so as to both limit the regular access of migrants to workplaces and prevent Tunisians and non-Tunisians from reaching Europe.⁶ Additionally, the multiplication of border phenomena followed by the wave of border closings between Sub-Saharan and Northern Africa interrupted the traditional nomadism and the fluidity of habitual migratory fluxes within the continent.⁷

However, and it is this dissertation's matter, the securitisation of migration's dynamics in Tunisia is not a mere translation of European imperatives, in a classic, essentialising understanding of North/South asymmetric exchanges. In addition, these constraints do not affect all migrants in the same manner. Sub-Saharan African migrants are the overwhelming victims of Maghreb countries' local adaptation of the European will to criminalise both emigration and immigration.⁸

¹ Abdennour Benantar, "Complexe de sécurité ouest-méditerranéen : externalisation et sécurisation de la migration," *L'Année du Maghreb*, no. IX (2013): 57–75, <https://doi.org/10.4000/anneemaghreb.1843>.

² Hassan Boubakri, "Migration et asile en Tunisie depuis 2011 : vers de nouvelles figures migratoires ?," *Revue européenne des migrations internationales* 31, no. vol. 31-n°3 et 4 (2015): 17–39, <https://doi.org/10.4000/remi.7371>.

³ Vasja Badalič, "Tunisia's Role in the EU External Migration Policy: Crimmigration Law, Illegal Practices, and Their Impact on Human Rights," *Journal of International Migration and Integration* 20, no. 1 (2019): 85–100, <https://doi.org/10.1007/s12134-018-0596-7>.

⁴ Benantar, "Complexe de sécurité ouest-méditerranéen."

⁵ Tunisie Terre d'Asile, "Portraits de migrants : les composantes migratoires du paysage tunisien," 2016, <https://www.france-terre-asile.org/images/stories/newsletters/Portraits%20de%20migrants.pdf>.

⁶ Riadh Ben Khalifa, "L'émigration irrégulière en Tunisie après le 14 janvier 2011. Le problème des disparus : pouvoirs publics et société civile," *Hommes & migrations. Revue française de référence sur les dynamiques migratoires*, no. 1303 (2013): 182–88.

⁷ Catherine Wihtol de Wenden, "Dynamiques migratoires sub-sahariennes vers l'Afrique du Nord," *Confluences Méditerranée* N° 74, no. 3 (2010): 133–42.

⁸ Vincent Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique," *Migrations Société* N° 177, no. 3 (September 27, 2019): 3–18.

While the political and social transition that started in 2011 in the wake of the former authoritarian regime's fall⁹ has reopened discussions about *harraga*¹⁰ - Tunisian irregular migrants leaving by hundreds on boats each year to reach Europe through the Mediterranean sea as well as, to a lesser extent, transition refugees fleeing conflict-driven zones and humanitarian disasters, mainly from Libya¹¹ – the living conditions of Sub-Saharan migrants as well as the understanding of Tunisia as a new host country *per se* remained largely absent from public debates and policy-making.¹² Some major factors contribute to the “invisibility” of this form of migration as notably the importance of the informal employment sector in Tunisia, the absence of adequate support structures for newcomers, the complexity and multiplicity of migrants' profiles and journeys¹³, the unstable political and socio-economic post-revolution environment that pushed migration to the end of the line of the State priorities¹⁴, and the absence of a unified database scaling the phenomenon.¹⁵ Nonetheless, scholars started denouncing the lack of visibility and representation of a fast-growing phenomenon in the country's metropolises starting from 2005, parallelly to human rights organizations' denial of the expansion of irregular African migrants' presence in agglomerations.¹⁶

Numbers gathered by local and international organisations are indicative of the scale of both the presence and precariousness of this category of migrants, specifically post-2011. According to the Tunisian Forum for Economic and Social Rights (FTDES)¹⁷, the number of Sub-Saharan migrants in the country has multiplied between 2004 and 2018.¹⁸ 79% of the respondents in a 2019 quantitative study¹⁹ conducted by the same organisation amongst Sub-Saharan migrants residing in Tunisia declared having arrived in the country after the revolution, specifically between 2014 and 2018.²⁰ 78% of

⁹ Pierre Blavier, “Sociogénèse de la révolution tunisienne : expansion scolaire, chômage et inégalités régionales,” *Actes de la recherche en sciences sociales* N° 211-212, no. 1 (May 23, 2016): 55–71.

¹⁰ Word in Tunisian dialect that could be translated to “burners” in reference to migrants “burning borders” in an attempt to join Europe.

¹¹ Adriana Vidano, “Réfugiés de Choucha à La Marsa : Abandonnés Par Les Autorités Tunisiennes et l'UNHCR,” *Nawaat*, 2018, <https://nawaat.org/portail/2018/03/14/refugies-de-choucha-a-la-marsa-abandonnes-par-les-autorites-tunisiennes-et-lunhcr/>.

¹² Emanuela Roman and Ferruccio Pastore, “Analysing Migration Policy Frames of Tunisian Civil Society Organizations: How Do They Evaluate EU Migration Policies?,” *Working Papers*, no. 14 (2018): 29.

¹³ Nicholas Van Hear, Rebecca Brubaker, and Thais Bessa, “Managing Mobility for Human Development: The Growing Salience of Mixed Migration,” *Centre on Migration, Policy and Society (COMPAS) at the University of Oxford* 20 (June 1, 2009), <https://mpira.ub.uni-muenchen.de/19202/>.

¹⁴ Roman and Pastore, “Analysing Migration Policy Frames of Tunisian Civil Society Organizations: How Do They Evaluate EU Migration Policies?”

¹⁵ Roman and Pastore.

¹⁶ Monia Benjemia, “La répression des migrations clandestines en Tunisie,” in *Le Maghreb à l'épreuve des migrations subsahariennes. Immigration sur émigration*. (KARTHALA Editions, 2009), 267–78, <https://books.google.be/books?id=TOJZxGhXCDMC&pg=PA270&lpg=PA270&dq=tunisie+loi+1975+et+loi+2004+passerport&source=bl&ots=sgk79KeJGK&sig=ACfU3U2BdSYNEAN6FmfTYQ3GN73LGDDXug&hl=en&sa=X&ved=2ahUKEwi3oKaC3oboAhXB-qQKHx26D9MQ6AEwB3oECAYQAQ#v=onepage&q=tunisie%20loi%201975%20et%20loi%202004%20passerport&f=false>.

¹⁷ Amongst the main Tunisian organizations advocating for migrants' rights.

¹⁸ 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.

¹⁹ Msakni.

²⁰ Ibid, p.28.

registered irregular migrants in 2018 were of Sub-Saharan origins.²¹ The latest 2014 population census conducted by the National Institute of Statistics (INS) reported 53 490 foreign residents in the country, 7524 of them originating from Sub-Saharan Africa,²² compared to an approximate 3000 in 2004²³. Undoubtedly, Sub-Saharan African immigration to Tunisia has considerably increased in a decade.²⁴

Amongst the Sub-Saharan migrants living in Tunisia, individuals in need of protection represent a significant proportion. The United Nations High Commissioner for Refugees (UNHCR) registered around 1000 asylum-seekers in 2015 compared to 2700 refugees and asylum-seekers in November 2019.²⁵ According to the ministry of social affairs, the majority are Syrians and Sub-Saharan Africans.²⁶ In its latest data update in February 2020, the Refugee Agency declared 2123 of the 3983 individuals having applied for protection in 2019, either having already obtained it or still seeking it, are of Sub-Saharan origins.²⁷

How does the International Relations (IR) notion of State agency translate in the case of Tunisia's treatment of Sub-Saharan migrants? Does the security paradigm still structure migration policies in post-2011 Tunisia? Is it the unique factor to take into account in the analysis of Sub-Saharan migrants' experience in the country pre and post 2011?

This paper relies on two main prisms to analyse the precarious status of Sub-Saharan migrants in Tunisia: a broad one which relates to both the external and internal dynamics of the securitisation of migration in the country; a specific one pertaining to the racialisation of the Sub-Saharan African migration in Maghreb countries. Both aim to explain the status of Sub-Saharan African migrants as the most fragile category of migrants present in Tunisia.

The paper first argues Tunisia continued with the security paradigm imposed by the externalisation of EU's borders post-2011 and the consequent criminalisation of migration. However, this approach, as it is the case in most transposition processes, is continuously subtly readjusted to fit local interests, mainly pertaining to legitimisation

²¹ 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_semestre_2018_final_.pdf, p.8.

²² Institut National de la Statistique, "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.

²³ 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>.

²⁴ See Annex 1 for a detailed presentation of the numbers of Sub-Saharan Africans in Tunisia per citizenship.

²⁵ 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/>.

²⁶ Ibid.

²⁷ "UNHCR Tunisia Registration Factsheet - February 2020" (UN High Commissioner for Refugees (UNHCR), February 2020), <https://data2.unhcr.org/en/documents/download/74655>.

and control²⁸. The consequences of the securitisation of migration is particularly visible *vis-à-vis* Sub-Saharan African migrants in the country. Secondly, migration securitisation is not the only prism through which to assess the extreme precariousness of Sub-Saharan migrants in Tunisia. This work will also explore the racial dynamics of Sub-Saharan presence, based on Edward Said's Orientalism²⁹ and on Mustapha El Miri's work on racialisation³⁰. The term "Sub-Saharan African migrant" will be used to qualify black Africans and the term "irregular migrant" as a reference to both economic migrants and asylum-seekers.

1. Theoretical Framework and Methodology

This dissertation aims to be interdisciplinary and analyse the Sub-Saharan African presence in Tunisia throughout the Ben Ali era and following the onset of the democratisation process in 2011 through multiple prisms. Regarding the State's position, the notion of agency in IR literature will constitute this work's principal theory in understanding authorities' management of external constraints – the EU's growing border externalisation policies – and internal considerations in dealing with Sub-Saharan African immigration. Regarding racial discrimination, the aforementioned Edward Said's orientalism and Mustapha El Miri's reflection will be this work's main prism in understanding the Tunisian malaise regarding Blacks in general, its historical origins and its development. From a post-colonial perspective, the author will argue Tunisia, similarly to its neighbours, is suffering from internalised orientalism as well as denial of racism. I will attempt to develop this approach in regards to the treatment of Sub-Saharan African migrants both from an institutional and a social perspective.

I will also critically analyse the concept of transit migration using Giorgio Agamben's notion of *homo sacer*³¹, arguing the assigned "transitory" status is used to justify maintaining categories of migrants in extremely precarious social, economic and legal conditions.

This study will primarily use data collected by official State organisations as well as civil society organisations (CSOs) on the presence and conditions of Sub-Saharan migrants in Tunisia. The INS takes into account the number of foreign residents in Tunisia in its annual reports and some of its studies analyse certain categories of migrants, yet no official information nor recent documentation seem to encompass irregular or marginalised migrants. Hence, this study will also rely on the quantitative and qualitative studies conducted by the main CSOs dealing with migration, acknowledging each

²⁸ Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58, no. 2 (2004): 239–75.

²⁹ Edward W. Said, *Orientalism*, Penguin Modern Classics (Penguin Random House UK, 2003).

³⁰ Mustapha El Miri, "Devenir « noir » sur les routes migratoires : Racialisation des migrants subsahariens et racisme global," *Sociologie et sociétés* 50, no. 2 (2018): 101, <https://doi.org/10.7202/1066815ar>.

³¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998), <http://www.sup.org/books/title/?id=2003>.

sample's limits. These data will be contrasted with the legal dispositions governing the stay and work of foreigners in the country to explain the way these restrictions disproportionately affect Sub-Saharan migrants.

The aforementioned 2019 FTDES study³² will be largely relied on in this study, as it is the most recent as well as the most comprehensive piece of data on Sub-Saharan migrants in Tunisia, both regular and irregular. It samples 962 migrants, women and men, using surveying as a method. The questionnaire is structured into four major topics: the migrants' socio-demographic characteristics; individual trajectories in the country of origin; migratory journeys; and the Tunisian experience and migrants' aspirations. Questions were disseminated between June and September 2019 in private and public locations. The study has some limits as it only covers seven districts out of twenty-four in Tunisia. Additionally, the respondents are mainly university students and regular workers, which does not necessarily reflect the situation of Sub-Saharan African migrants in the country. However, this study will be used to demonstrate the generalised precarity of these migrants, as well as the racial discrimination they are victims of, independently of their socio-economic status.

2. The Gradual Securitization of Tunisia's Migration

The securitisation of migration in Tunisia occurred gradually since the sixties.³³ The first enacted legislation that provides for punitive measures towards irregular migration is the Law No. 1968-0007 of March 8, 1968 on foreigners' conditions in Tunisia³⁴ and its implementing decree, at a time when the phenomenon of irregular migration was considerably less prominent.³⁵ The late sixties did not yet witness the global securitisation of world policies, and authoritarian and democratic regimes alike were not yet presented with the opportunity to instrumentalise the securitisation narrative.³⁶ In application until today, the 1968 law remains almost unchanged although the context has greatly evolved since. The sanctions provided for those irregularly crossing the borders, as in without proper travel documents, through unofficial checkpoints, and without a visa when the latter is required are relatively lenient. Penalties vary between fifteen days and a year in

³² Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations."

³³ Monia Benjemia, "La répression des migrations clandestines en Tunisie," in *Le Maghreb à l'épreuve des migrations subsahariennes. Immigration sur émigration*. (KARTHALA Editions, 2009), 267–78, <https://books.google.be/books?id=TOJZxGhXCDMC&pg=PA270&lpg=PA270&dq=tunisie+loi+1975+et+loi+2004+passport&source=bl&ots=sgk79KeJGK&sig=ACfU3U2BdSYNEAN6FmfTYQ3GN73LGDDXug&hl=en&sa=X&ved=2ahUKEwi3oKaC3oboAhXB-qQKHX26D9MQ6AEwB3oECAYQAQ#v=onepage&q=tunisie%20loi%201975%20et%20loi%202004%20passport&f=false>, p. 267.

³⁴ Parlement de la République de Tunisie, "Loi N° 1968-0007 Du 8 Mars 1968 Relative à La Condition Des Étrangers En Tunisie." (Journal Officiel de la République Tunisienne, 1968), <https://www.refworld.org/pd/54c25b2b4.pdf>.

³⁵ Benjemia, "La répression des migrations clandestines en Tunisie."

³⁶ Benantar, "Complexe de sécurité ouest-méditerranéen."

prison, in addition to a limited fine³⁷. These sanctions are harsher in case of forged travel documents, as they could reach three years of imprisonment.³⁸

Starting from 1998 with the signature of the first readmission agreement with Italy³⁹ – both for Tunisians and third-country nationals that transited by the country⁴⁰ – Tunisia became one of Europe’s “buffer zones”, a securitised area between the West and the rest of Africa in the fight against irregular migration⁴¹. The late nineties marked the onset of the country becoming an integral part of Europe’s border externalisation process, a way for western countries – traditional receiving countries of migration from the global South – to outsource the control of their borders to North-African countries.⁴²

There was a clear intention not to publicise this new strategy as the readmission agreement has never been published in the official journal of the Tunisian Republic (JORT).⁴³ Ben Jemia contends the measures were perceived as too abrupt to be directly presented to the public.⁴⁴ The agreement has also been adopted through a “simplified procedure”, thus by circumventing the parliamentary approval⁴⁵ normally requested for international arrangements.⁴⁶ Cassarino argues avoiding formal procedures in signing bilateral agreements has increased since the nineties, thus by rendering them more opaque.⁴⁷ The fifth point of the agreement specifies Italy should not proceed to mass refoulement to avoid media campaigns and spare the “dignity” of the deported migrants⁴⁸, although it is unclear in what way smaller-scale expulsions are more dignifying than larger campaigns. Ben Achour and Ben Jemia have pointed to the fact the agreement violates the principle of non-refoulement from Italy’s part, and the right to leave the territory from Tunisia’s part.⁴⁹ It notably entails harsher border control and the creation of detention centers in order to prevent migrants, nationals and non-nationals, from leaving the country.⁵⁰

The harshest evolution in the country’s migratory policies pertained to sanctioning assistance to irregular entrance to and exit from the territory. The 1968

³⁷ A maximum of 120 Tunisian Dinars, equivalent to 46 euros presently.

³⁸ Benjemia, “La répression des migrations clandestines en Tunisie.”

³⁹ Monia Benjemia and Souhayma Ben Achour, “Plaidoyer pour une réforme des lois relatives aux migrants, aux étrangers et à la nationalité en Tunisie” (EuroMed Rights, 2014), 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.

⁴⁰ With the exception of citizens of the Arab Maghreb Union, which essentially leaves Tunisians and Sub-Saharan Africans.

⁴¹ Benantar, “Complexe de sécurité ouest-méditerranéen.”

⁴² Ibid.

⁴³ Benjemia, “La répression des migrations clandestines en Tunisie.”

⁴⁴ Ibid.

⁴⁵ The law was adopted following a discrete yet controversial debate within the parliament, which was uncommon under the former authoritarian era. This was due to the harsh sentences provided for in the legislation and its deceptive title, having little to do with the modalities of granting travel documents as indicated.

⁴⁶ Migreurop, “Fiche pays - Italie” (Migreurop, 2013), http://www.migreurop.org/IMG/pdf/fiche_pays_italie.pdf.

⁴⁷ Haifa Mzalouat, “Comment l’Europe contrôle ses frontières en Tunisie ?,” *Inkyfada*, March 2020, <https://inkyfada.com/fr/2020/03/20/financements-ue-tunisie-migration/>.

⁴⁸ Benjemia, “La répression des migrations clandestines en Tunisie.”

⁴⁹ Benjemia and Ben Achour, “Plaidoyer pour une réforme des lois relatives aux migrants, aux étrangers et à la nationalité en Tunisie.”

⁵⁰ Benjemia, “La répression des migrations clandestines en Tunisie.”

legislation⁵¹ already sanctioned⁵² individuals who, directly or indirectly assist, or attempt to assist the irregular entrance, exit, circulation or stay in Tunisia. Ben Jemia argues⁵³ it is a classic penal law scenario in which the accomplice is punished as harshly as the infraction author. Yet, starting from 1977, with the disciplinary and penal maritime code⁵⁴, assistance to irregular migrants has been singled out as an independent infraction, its penalty being separately assessed from the initial infraction, i.e., attempting to migrate irregularly.

A new milestone has been reached in the criminalisation of migration in the early 2000s. It is following the model of sanctioning complicity in irregularly entering or exiting the territory as an independent crime that the infamous 2004 law⁵⁵ modifying and completing the 1975 law on passports and travel documents⁵⁶ has been conceived.⁵⁷ Initially designed to combat smugglers, the law has been widely used to punish migrants themselves and people who assist them in their journeys.⁵⁸ Hamza Meddeb argues the law allowed Ben Ali's regime to demonstrate its will to combat clandestine departures to European countries, while simultaneously enforcing its control on social categories evolving on the fringe of legality.⁵⁹ Fear officially evolved into a State policy in regard to irregular migration, inducing an overall enhancement of the security aspect of governance. It allowed Ben Ali's authoritarian regime to exert greater control over society and legitimise local anti-terrorist policies, both nationally and internationally.⁶⁰ Regimes, regardless of their nature, have long become aware of the formidable tool the security narrative represents to justify repressive policies and a perpetual state of emergency⁶¹.⁶²

The 2004 law's underlying motive could be interpreted as policing migrants' bodies by placing them outside the scope of legality, thus by legitimising inhumane treatment. In this sense, the law lacks protective measures of any nature for the benefit of irregular working migrants, as well as any possibility for them to regularise their situations.⁶³ Although Ben Ali's regime seemingly enacted the law in an effort to appear

⁵¹ Parlement de la République de Tunisie, "Loi N° 1968-0007 Du 8 Mars 1968 Relative à La Condition Des Étrangers En Tunisie."

⁵² From a month to a year of imprisonment and a fine from 6 to 120 Tunisian Dinars (from around 2.3 to 46 euros).

⁵³ Benjemia, "La répression des migrations clandestines en Tunisie."

⁵⁴ Parlement de la République de Tunisie, "Code Disciplinaire et Pénal Maritime" (Journal Officiel de la République Tunisienne, 1977), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88040/100558/F1260683681/TUN-88040.pdf>.

⁵⁵ Parlement de la République de Tunisie, "Loi Organique N° 2004-6 Du 3 Février 2004 Relative Aux Passeports et Aux Documents de Voyage" (Journal Officiel de la République Tunisienne, 2004), <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2004/2004F/011/TF200461.pdf>.

⁵⁶ Parlement de la République de Tunisie, "Loi No. 1975-40 Du 1975, Relative Aux Passeports et Aux Documents de Voyage" (Journal Officiel de la République Tunisienne, 1975), <https://www.refworld.org/docid/3ae6b54e8.html>.

⁵⁷ Mzalouat, "Comment l'Europe contrôle ses frontières en Tunisie ?"

⁵⁸ Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique."

⁵⁹ 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.

⁶⁰ Meddeb, p. 389.

⁶¹ Tunisia has been in a continuous state of emergency since 2015, following two terrorist attacks. See: <https://www.lefigaro.fr/flash-actu/2019/03/07/97001-20190307FILWWW00084-la-tunisie-prolonge-encore-l-etat-d-urgence-d-un-mois.php>.

⁶² Benantar, "Complexe de sécurité ouest-méditerranéen."

⁶³ Parlement de la République de Tunisie, "Loi Organique N° 2004-6 Du 3 Février 2004 Relative Aux Passeports et Aux Documents de Voyage."

cooperative in front of European stakeholders⁶⁴, it greatly benefited from its dispositions.⁶⁵ The law allocated unchecked repressive prerogatives to local authorities in the name of the sacrosanct fight against irregular migration and smuggling networks. Any type of help to migration is included, independently of its rationale, as even benevolent assistance is incriminated whether it be individual or organized. In addition to smugglers and clandestine labor networks, humanitarian organizations, friends, family members or any other person that would assist irregular migrants are equally incriminated in the law.⁶⁶ This enabled the regime to constrain the work of local CSOs and justify the non-access of international organisations to the country.⁶⁷ Salvatore Palidda argues incriminating assistance to irregular migrants, even that of benevolent nature, aims to isolate the migrant from her or his social environment, and *de facto* from any human contact, thus permanently placing her or him at the margin of society.⁶⁸

The law was voted shortly after Tunisia's ratification of the Protocol against the smuggling of migrants by land, air and sea supplementing the UN Convention against transnational organised crime.⁶⁹ The country has thus adopted the same repressive measures against clandestine migration as those provided for in the law sanctioning attacks against public order, terrorism and transnational organised crime⁷⁰.⁷¹ Hence, the foundation of the nexus between migration, terrorism and transnational crime has been firmly established in 2004, thus by authorizing and justifying all the subsequent violations of penal law's general principles intended to prevent arbitrariness and guarantee fundamental human rights⁷². It allowed Ben Ali's regime to implement an increasingly repressive regime and an enlarged police State that was seldom held accountable for its continuous human rights abuses by its western counterparts, the supposedly norm-diffusers of democratic principles across the world.⁷³ The hierarchy of norms balancing imperatives of democratisation and imperatives of security clearly tipped in favor of the second.⁷⁴

Moreover, the legal discrimination between foreigners and nationals has been widened.⁷⁵ An irregular migrant in Tunisia has no possibility to regularise her or his

⁶⁴ Ben Khalifa, "L'émigration irrégulière en Tunisie après le 14 janvier 2011. Le problème des disparus."

⁶⁵ Meddeb, "Courir Ou Mourir, p. 287."

⁶⁶ Benjemia, "La répression des migrations clandestines en Tunisie."

⁶⁷ Badalić, "Tunisia's Role in the EU External Migration Policy."

⁶⁸ Salvatore Palidda, "Avant-propos," in *Migrations critiques: Repenser les migrations comme mobilités humaines en Méditerranée*, Editions Karthala, 2011, <https://www.cairn.info/migrations-critiques--9782811104054.htm>.

⁶⁹ Présidence de la République Tunisienne, "Décret N°2003-777 Du 31 Mars 2003, Portant Ratification Du Protocole Contre Le Trafic Illicite de Migrants Par Terre, Air et Mer Additionnel à La Convention Des Nations Unies Contre La Criminalité Transnationale Organisée" (Journal Officiel de la République Tunisienne, 2003), <https://legislation-securite.tn/sites/default/files/lois/D%C3%A9cret%20n%C2%B02003-777%20du%2031%20mars%202003%20%28fr%29.pdf>.

⁷⁰ Parlement de la République de Tunisie, "Loi Organique N° 2015-26 Du 7 Août 2015, Relative à La Lutte Contre Le Terrorisme et La Répression Du Blanchiment d'argent." (Journal Officiel de la République Tunisienne, 2015), <http://www.legislation.tn/sites/default/files/news/tf2015261.pdf>.

⁷¹ Benjemia and Ben Achour, "Plaidoyer pour une réforme des lois relatives aux migrants, aux étrangers et à la nationalité en Tunisie."

⁷² Ibid.

⁷³ Blavier, "Sociogenèse de la révolution tunisienne."

⁷⁴ Ibid.

⁷⁵ Benjemia, "La répression des migrations clandestines en Tunisie."

situation and obtain a residence permit.⁷⁶ S/he is automatically exposed to an expulsion procedure, with the theoretical exception⁷⁷ of refugees under the 1951 Geneva convention.⁷⁸ Expulsion can also be undertaken if a regular migrant is considered a threat to public order⁷⁹, a vague legal term that has historically been used for repressive aims.⁸⁰ No appeal is provided for in the law, although a recourse before the administrative tribunal is possible.⁸¹ However, migrants who fall under a deportation decision are not provided enough time to initiate a legal procedure as expulsion is executed instantly, or within eight days in case of confiscation of the residence permit.⁸²

3. The European Weight in Tunisia Post-2011: Incentives, Pressures and Contradictions

Although at first hesitant, the EU has since 2011 pledged to support the democratic transition in Tunisia through various programs.⁸³ However, the 2015 European migration crisis⁸⁴ coupled with the terrorist attacks that occurred in two Tunisian cities the same year⁸⁵ enhanced western concerns *vis-à-vis* a growing flux of irregular migration and refugees, and replaced migration's management at the top of the EU agenda.⁸⁶ Although the externalization of European borders' control already started in the early 1990s, Koch et al. argue three major trends emerged in 2015: i/- A widening of the European Neighbourhood area to countries neighboring Syria and to the African continent as a whole; ii/- An increasing conditionalization of EU development aid to the implementation of harsh migration policies in receiving countries; iii/- A re-positioning of European Nation-States as crucial actors in development aid, notably through their national implementing organizations.⁸⁷

Because promoting legal migration routes falls beyond the prerogatives of the Union⁸⁸, there is a growing tendency to replace the unfulfilled prospects of regular migration *vis-à-vis* emigration countries by financial incentives, notably through the

⁷⁶ Parlement de la République de Tunisie, "Loi Organique N° 2004–6 Du 3 Février 2004 Relative Aux Passeports et Aux Documents de Voyage."

⁷⁷ Article 34 of the 1975 law pertaining to passports and travel documents. This point will be developed later on.

⁷⁸ Benjemia, "La répression des migrations clandestines en Tunisie."

⁷⁹ Parlement de la République de Tunisie, "Loi Organique N° 2004–6 Du 3 Février 2004 Relative Aux Passeports et Aux Documents de Voyage."

⁸⁰ Meddeb, "Courir Ou Mourir, p. 390."

⁸¹ Badalić, "Tunisia's Role in the EU External Migration Policy."

⁸² Ibid.

⁸³ Mzalouat, "Comment l'Europe contrôle ses frontières en Tunisie ?"

⁸⁴ UN High Commissioner for Refugees (UNHCR), "2015: The Year of Europe's Refugee Crisis," UNHCR, the UN Refugee Agency, 2015, <https://www.unhcr.org/news/stories/2015/12/56ec1ebde/2015-year-europes-refugee-crisis.html>.

⁸⁵ BBC News, "Militants Jailed for 2015 Tunisia Attacks."

⁸⁶ Anne Koch, Annette Weber, and Isabelle Werenfels, "Profiteers of Migration? - Authoritarian States in Africa and European Migration Management," *German Institute for International and Security Affairs*, SWP Research Paper 4, 2018, p.9.

⁸⁷ Ibid.

⁸⁸ Ibid.

promotion of a €44 billion investment fund by 2020 called the External Investment Plan.⁸⁹ Within the framework of regional dialogues, there is a clear focus on the African continent as the most relevant target of EU's migration policy.⁹⁰ Hence, under the framework of the Global Approach to Migration and Mobility (GAMM) – the Union's overarching framework of external asylum and migration policy – priority is given to the Africa-EU Partnership on Migration and Employment and the Rabat Process since 2005.⁹¹ Tunisia is part of the former.⁹²

Since 2016, the EU has invested 58 million euros in the country through three different funds linked to migration: the EU Emergency Trust Fund for Africa (EUTF) created in 2015 to promote stability and remedy the root causes of irregular migration and the phenomenon of displacement in Africa⁹³; the Asylum, Migration and Integration Fund (AMIF)⁹⁴; and the Regional European Neighbourhood Policy Instrument (ENP)⁹⁵.⁹⁶ These contributions do not take into account bilateral agreements between European countries and Tunisia, nor other development aid investments or counter-terrorism programs that entail migratory aspects.⁹⁷ What funds, programs and funding actors are mobilized to what aim is hard to track, as pointed out by a journalistic investigation in Niger regarding European funds' allocation in relation to migration.⁹⁸ What is sure is that since 2011, the EU has invested an overall 2.5 billion euros in Tunisia.⁹⁹

The majority of funds originate from the FFU which has been denounced by organizations as OXFAM for being overly security-oriented, as a significant part of its funds are directed towards security measures and border control.¹⁰⁰ OXFAM's 2017 report pointed to the contradiction between the official EU rhetoric aiming to “promote

⁸⁹ European Commission, “Factsheet - 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.

⁹⁰ European Commission, “Global Approach to Migration and Mobility” (European Commission, 2018), https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en.

⁹¹ European Commission, “Global Approach to Migration and Mobility”.

⁹² IOM, “Africa-EU Partnership on Migration, Mobility and Employment (MME),” International Organization for Migration (IOM), August 24, 2016, <https://www.iom.int/africa-eu-partnership-migration-mobility-and-employment-mme>.

⁹³ European Commission, “EU Emergency Trust Fund for Africa - Our Mission,” Text, EU Emergency Trust Fund for Africa - European Commission, 2015, https://ec.europa.eu/trustfundforafrica/content/homepage_en.

⁹⁴ European Commission, “Asylum, Migration and Integration Fund (AMIF),” Text, Migration and Home Affairs - European Commission, December 6, 2016, https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en.

⁹⁵ European Commission, “European Neighbourhood Policy (ENP),” Text, European Neighbourhood Policy And Enlargement Negotiations - European Commission, December 6, 2016, https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/european-neighbourhood-policy_en.

⁹⁶ Haifa Mzalouat, “Comment l'Europe contrôle ses frontières en Tunisie ?,” *Inkyfada*, March 2020, <https://inkyfada.com/fr/2020/03/20/financements-ue-tunisie-migration>.

⁹⁷ Mzalouat, “Comment l'Europe contrôle ses frontières en Tunisie ?”

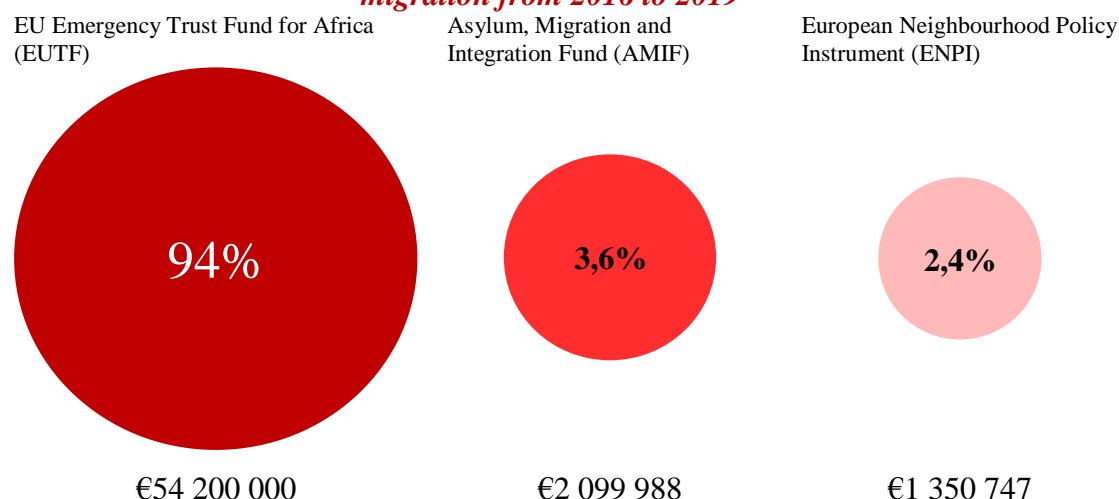
⁹⁸ Maite Vermeulen, Ajibola Amzat, and Giacomo Zandonini, “Europe Spends Billions Stopping Migration. Good Luck Figuring out Where the Money Actually Goes,” *The Correspondent*, December 9, 2019, <https://thecorrespondent.com/154/europe-spends-billions-stopping-migration-good-luck-figuring-out-where-the-money-actually-goes/20366228498-b2c9baad>.

⁹⁹ European Commission, “Tunisia - European Neighbourhood Policy And Enlargement Negotiations,” Text, European Neighbourhood Policy And Enlargement Negotiations - European Commission, 2016, https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/tunisia_en.

¹⁰⁰ 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>.

regular migration and mobility channels from European and African countries, and between them” and “facilitate secure migration and mobility”, and the practice of EU funders being principally oriented towards confinement and control.¹⁰¹

Figure 1: The investments of the European Union in Tunisia in relation to migration from 2016 to 2019¹⁰²



Amongst the numerous EU-funded projects in Tunisia, the Border Management Program for the Maghreb (BMP Maghreb) is, by far, the most expensive.¹⁰³ The EU has invested 20 million euros to provide equipment and training to Tunisian border control operations, almost the third of the BMP’s budget.¹⁰⁴ The project has a clear aim: to protect, surveil and control maritime borders so as to reduce irregular migration.¹⁰⁵ In collaboration with the Ministry of Interior and its different organs – National Guard, Customs, etc. – BMP is managed by the International Centre for Migration Policy Development (ICMPD).¹⁰⁶ Beyond its official mission aiming to provide “technical” trainings to the authorities in charge of migration, the ICMPD’s approach aims to be “apolitical” and “neutral” in its treatment of migration, including in the training its experts provide to States.¹⁰⁷ Camille Cassarini argues this semantic choice is dangerous as it depoliticizes the migration question, giving the illusion of its “management” in a purely “technical” manner. By advancing the “technicity” of border-management, ideology is relegated to the background.¹⁰⁸

¹⁰¹ Ibid. Translated by the author from French.

¹⁰² Mzalouat, “Comment l’Europe contrôle ses frontières en Tunisie ?”. Inkyfada obtained the figures from the EU’s delegation in Tunisia in October 2019.

¹⁰³ Ibid.

¹⁰⁴ “The European Union Emergency Trust Fund for Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa,” accessed April 13, 2020, <https://ec.europa.eu/trustfundforafrica/sites/eutfa/files/t05-eutf-noa-reg-07.pdf>.

¹⁰⁵ EUTF for Africa European Commission, “Border Management Programme for the Maghreb Region (BMP-Maghreb),” Text, ec.europa.eu, August 9, 2018, https://ec.europa.eu/trustfundforafrica/region/north-africa/regional/border-management-programme-maghreb-region-bmp-maghreb_en.

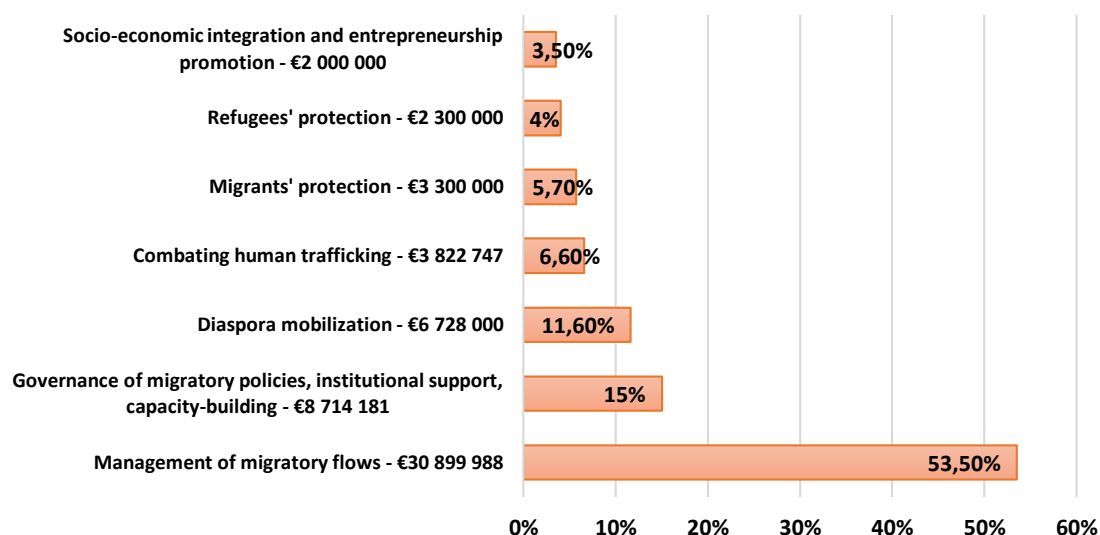
¹⁰⁶ Mzalouat, “Comment l’Europe contrôle ses frontières en Tunisie ?”

¹⁰⁷ Ibid.

¹⁰⁸ Interview by Haifa Mzalouat for Inkyfada. See: Mzalouat, “Comment l’Europe contrôle ses frontières en Tunisie ?”

Individual European States also increased their support to Tunisian authorities in charge of migration management post-2011.¹⁰⁹ Equipment is gifted to Tunisia individually by European States in the framework of bilateral agreements. In the field of border control, Italy per instance donated a dozen of boats in 2011. In 2017, it invested around 12 million euros to modernize the National Guard's patrol boats.¹¹⁰ This is what allowed this European country to hold enough leverage as to conclude four readmission agreements with Tunisia between 1998 and 2011. Germany is also an increasingly significant investor in Tunisia's migratory policies, particularly its land borders. Between 2015 and 2016, it contributed to the creation of a regional center for the National Guard and border police. Germany also contributes to securing the Tunisian-Libyan borders through providing electronic surveillance equipment.¹¹¹

Figure 2: Main Fields of EU Investments in Relation to Migration in Tunisia Post-2015¹¹²



A 2016 report¹¹³ by the European Parliament's Directorate-General for the Union's External Policies highlights the contradiction between the EU's rhetoric insisting on its will to support Tunisia in its democratic transition since 2011 and its practice focusing disproportionately on the security dimension. The report denounces a cooperation in the field of migration focused on counter-terrorism and the management of migration fluxes on the European side in contradiction with the evolution of its narrative on the consolidation of the rule of law and the guarantee of human rights gained post-2011.¹¹⁴ The stakes are indeed high for the EU, as well as for European Nation-States. Although

¹⁰⁹ Mzalouat, "Comment l'Europe contrôle ses frontières en Tunisie ?"

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Direction Générale des Politiques Externes de l'UE, "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/EXPO_STU%282016%29578002_FR.pdf.

¹¹⁴ Ibid.

Tunisia has been cooperative in the field of migration outsourcing, it has persistently refused to be part of the European Council's regional disembarkation platform.¹¹⁵ In simple terms, the project refers to delocalizing the screening process between eligible asylum-seekers and economic migrants aiming to reach Europe to be handled by North-African authorities, on North-African territory.¹¹⁶

4. Democracy for Whom? Irregular Migrants Remain Excluded from the Tunisian Democratization Process

The criminalization of migration, or what Stumpf¹¹⁷ qualifies as *crimmigration*, and the narratives linked to it did not fundamentally change in post-authoritarian Tunisia, although there was a brief attempt to adopt more humane policies in the early stages of the democratization process.¹¹⁸ The narrative linking irregular migration to terrorism survived the revolution, arguing clandestine migratory journeys represent opportunities for terrorists to infiltrate smuggling paths, and pose security threats to the receiving country.¹¹⁹ The second narrative that was prevalent under Ben Ali also persists, framing the State's struggle against irregular migration's primary motivation as preventing human losses through dismantling smuggling networks, which are pointed out as the real enemies.¹²⁰ Both these narratives, initiated by European imperatives¹²¹¹²², have been adopted and adapted by Tunisian authorities.¹²³

During the Ben Ali era, irregular migrants were considered a security threat and this was pretexted to deny protection to asylum-seekers.¹²⁴ Hence, the number of recognized refugees in the country did not exceed one hundred, a way for authorities to convey the image of a hostile territory to asylum-seekers.¹²⁵ Following the revolution, the migration question became particularly prominent within the public debate, notably due to the activism of the families of Tunisian *harraga* who were lost at sea.¹²⁶ Their demands have been widely voiced by some organizations, notably FTDES and the Tunisian Center for

¹¹⁵ Frédéric Bobin, "La Tunisie face aux pressions de l'Europe sur le dossier migratoire," *Le Monde*, September 1, 2018, https://www.lemonde.fr/international/article/2018/09/01/la-tunisie-face-aux-pressions-de-l-europe-sur-le-dossier-migratoire_5348905_3210.html.

¹¹⁶ Benantar, "Complexe de sécurité ouest-méditerranéen."

¹¹⁷ Juliet Stumpf, "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56, no. 2 (2006): 367–419.

¹¹⁸ Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique."

¹¹⁹ Ahmed Driss, "Tunisia and the Mediterranean Region Facing Security Challenges" (Center of Mediterranean and International Studies, 2016), <http://www.cemi-tunis.org/medias/files/bulletin-cemi-ang.pdf>.

¹²⁰ Badalič, "Tunisia's Role in the EU External Migration Policy."

¹²¹ Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the and Member State of the European Union), "Frontex Annual Risk Analysis 2017 - Ecdp.Common.Ckan.Site_title," 2017, http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf.

¹²² European Commission, "Joint Communication to the European Parliament and the Council. Strengthening EU Support for Tunisia.," 2016, <https://op.europa.eu:443/en/publication-detail/-/publication/af317533-8623-11e6-b076-01aa75ed71a1/language-en>.

¹²³ Boubakri, "Migration et asile en Tunisie depuis 2011."

¹²⁴ Benjemia, "La répression des migrations clandestines en Tunisie."

¹²⁵ Boubakri, "Migration et asile en Tunisie depuis 2011."

¹²⁶ Nathalie Janne D'Othée, "Tunisie. Huit ans après la révolution, une politique migratoire inchangée," *cncd.be*, 2019, <https://www.cncd.be/Tunisie-Huit-ans-apres-la>.

Migration and Asylum (CeTuMa).¹²⁷ However, the humanistic momentum of the revolution quickly faded under European as well as national socio-economic and security considerations, despite the country's accession to the United Nations (UN) 1951 Convention Relating to the Status of Refugees¹²⁸ since 1957¹²⁹ and its 1967 Protocol¹³⁰ since 1968¹³¹. The surge of terrorist attacks, notably the aforementioned lethal 2015 attacks¹³² paralleled with the Libyan conflict escalation strengthened the narrative that irregular migration is an opportunity for terrorists to infiltrate the country¹³³.

The question has thus been diverted by authorities from a fight on migrants to a struggle against smugglers and a will to ensure the protection of Tunisians, in a continuation of the old regime's strategy.¹³⁴ Until the present date, Tunisia's disregard for migrants' rights remains a fact as the country still lacks a functional asylum system. Although the right to asylum has been inscribed for the first time in article 26 of the 2014 Constitution¹³⁵, no legislation has followed to concretize this right, despite multiple requests from CSOs and refugees themselves.¹³⁶ A draft law has been introduced to the Parliament yet there is no political will to prioritize it, as this may partially hinder European efforts of outsourcing refugee-determination in Tunisia.¹³⁷

During the Ben Ali era¹³⁸ and following the Revolution¹³⁹, Tunisian authorities did however allow UNHCR to handle the asylum process, specifically through Refugee Status Determination (RSD) on the basis of certain exceptions provided in the 1975 Law¹⁴⁰ within the framework of the 1951 Refugee Convention¹⁴¹.¹⁴² The Refugee Agency signed an agreement with the State in 1992 to be acknowledged as the exclusive

¹²⁷ Riadh Ben Khalifa, "L'émigration irrégulière en Tunisie après le 14 janvier 2011. Le problème des disparus : pouvoirs publics et société civile," *Hommes & migrations. Revue française de référence sur les dynamiques migratoires*, no. 1303 (2013): 182–88.

¹²⁸ United Nations High Commissioner for Refugees (UNHCR), "Convention and Protocol Relating to the Status of Refugees" (UNHCR, 1967 1951), <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

¹²⁹ United Nations High Commissioner for Refugees (UNHCR), "Etats Parties à La Convention de 1951 Relative Au Statut Des Réfugiés et/Ou a Son Protocole de 1967 (Au 31 Décembre 2004)" (UNHCR, 2004), <https://www.unhcr.org/fr/4ad2f34fe.pdf>.

¹³⁰ United Nations High Commissioner for Refugees (UNHCR), "Convention and Protocol Relating to the Status of Refugees."

¹³¹ United Nations High Commissioner for Refugees (UNHCR), "Etats Parties à La Convention de 1951 Relative Au Statut Des Réfugiés et/Ou a Son Protocole de 1967 (Au 31 Décembre 2004)."

¹³² BBC News, "Militants Jailed for 2015 Tunisia Attacks," *BBC News*, 2019, sec. Scotland, <https://www.bbc.com/news/uk-scotland-47183116>.

¹³³ Driss, "Tunisia and the Mediterranean Region Facing Security Challenges."

¹³⁴ Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique."

¹³⁵ Assemblée Nationale Constituante, "Constitution de La République Tunisienne" (Imprimerie Officielle de la République Tunisienne, 2014), <http://www.legislation.tn/sites/default/files/news/constitution-b-a-t.pdf>, p.6.

¹³⁶ Janne D'Othée, "Tunisie. Huit ans après la révolution, une politique migratoire inchangée."

¹³⁷ Bobin, "La Tunisie face aux pressions de l'Europe sur le dossier migratoire."

¹³⁸ Véronique Planes-Boissac et al., "Study on Migration and Asylum in Maghreb Countries: Inadequate Legal and Administrative Frameworks Cannot Guarantee the Protection of Migrants, Refugees and Asylum Seekers" (Euro-Mediterranean Human Rights Network (EMHRN), 2010), <https://www.refworld.org/docid/515018942.html>.

¹³⁹ United States Department of State, "2018 Country Reports on Human Rights Practices: Tunisia," 2019, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/tunisia/>.

¹⁴⁰ Parlement de la République de Tunisie, "Loi No. 1975-40 Du 1975, Relative Aux Passeports et Aux Documents de Voyage" (Journal Officiel de la République Tunisienne, 1975), <https://www.refworld.org/docid/3ae6b54e8.html>.

¹⁴¹ United Nations High Commissioner for Refugees (UNHCR), "Convention and Protocol Relating to the Status of Refugees."

¹⁴² Badalič, "Tunisia's Role in the EU External Migration Policy."

determiner of asylum-seekers' status, and a similar agreement was re-signed in September 2011.¹⁴³ Hence, theoretically, irregular migrants have the right to seek protection at the two UNHCR offices in the country. In reality, both pre-revolutionary and post-revolutionary Tunisia relied on two strategies to prevent asylum-seekers from exercising their right. The first consists of pushing migrants back at the borders or detaining them to prevent them from reaching UNHCR offices.¹⁴⁴ The second targets the work of CSOs and individuals assisting migrants in the procedural phase of RSD.¹⁴⁵

Apart from physically preventing migrants from seeking asylum, article 25 of the 1968 law¹⁴⁶ as well as the 2004 law¹⁴⁷ do not operate any differentiation between smugglers and volunteers providing humanitarian aid to migrants, including those offering medical care.¹⁴⁸ The 2004 law¹⁴⁹ also criminalizes not denouncing irregular migrants and any type of people helping them. This includes professionals (i.e. doctors, lawyers) who are expected to inform the authorities of the whereabouts of migrants.¹⁵⁰ This dual criminalization still severely hinders the work of volunteers and CSOs in providing assistance to irregular migrants on their asylum pathways.¹⁵¹ It thus decreases migrants' chances to receive assistance of any nature. By making it mandatory for these organizations to denounce irregular migrants, the law pushes the latter to further marginality and to be extremely cautious in searching for the already-scarce assistance. It is ultimately refugees' chances to be successful in status determination procedures these policies impact.¹⁵²

Crimmigration is the foundation of the State's ability to prevent asylum-seekers from applying for protection.¹⁵³ Cherry-picking amongst contradictory laws – namely the legislation criminalizing migration and Tunisia's adherence to the Refugee Convention – Tunisia managed to pave the way for the illegal practice of preventing detained irregular migrants from seeking help before the Refugee Agency.¹⁵⁴ The International Committee of the Red Cross (ICRC), the only organization welcomed in detention centers under the

¹⁴³ Véronique Planes-Boissac, Amor Boubakri, and Hassen Boubakri, "Asylum and Migration in the Maghreb - Country Fact Sheet: Tunisia" (Euro-Mediterranean Human Rights Network (EMHRN), 2012), <https://www.refworld.org/docid/514d78422.html>.

¹⁴⁴ Badalič, "Tunisia's Role in the EU External Migration Policy."

¹⁴⁵ Ibid.

¹⁴⁶ Parlement de la République de Tunisie, "Loi N° 1968-0007 Du 8 Mars 1968 Relative à La Condition Des Étrangers En Tunisie."

¹⁴⁷ Parlement de la République de Tunisie, "Loi Organique N° 2004-6 Du 3 Février 2004 Relative Aux Passeports et Aux Documents de Voyage" (Journal Officiel de la République Tunisienne, 2004), <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2004/2004F/011/TF200461.pdf>.

¹⁴⁸ Monia Benjemia and Souhayma Ben Achour, "Plaidoyer pour une réforme des lois relatives aux migrants, aux étrangers et à la nationalité en Tunisie" (EuroMed Rights, 2014), 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.

¹⁴⁹ Parlement de la République de Tunisie, "Loi Organique N° 2004-6 Du 3 Février 2004 Relative Aux Passeports et Aux Documents de Voyage" (Journal Officiel de la République Tunisienne, 2004), <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2004/2004F/011/TF200461.pdf>.

¹⁵⁰ United Nations Human Rights Council, "Report of the Special Rapporteur on the Human Rights of Migrants. Addendum: Mission to Tunisia,," 2013, <https://reliefweb.int/sites/reliefweb.int/files/resources/G1313539.pdf>.

¹⁵¹ Badalič, "Tunisia's Role in the EU External Migration Policy."

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

former authoritarian regime, warned of the presence of foreigners detained for irregular migration infractions, although no exact number was ever provided.¹⁵⁵ Article 23 of the 1968 law allows Tunisian authorities to detain asylum-seekers in migration centers and deport them back to their countries of origin, which is indicative of how entrenched these inhumane practices are, long before irregular migration became a western issue.¹⁵⁶ In post-authoritarian era, Tunisia continued imprisoning irregular migrants, although some human rights organizations as well as UNHCR were allowed to visit them in the country's two recognized "reception and orientation centers", the Wardia and the Ben Guerdene centers.¹⁵⁷ However, these visits remain limited, hindering asylum-seekers' access to protection.¹⁵⁸

"Push-backs" increased starting from 2013 after authorities reached an agreement with neighbouring Libya and Algeria to decrease irregular migration between the three countries through upgrading cross-border security and multiplying crack-downs on smugglers.¹⁵⁹ Moreover, official figures regarding the number of detainees and deportees remain unavailable to the public.¹⁶⁰ In parallel, the practice of secret detention centers did not stop after the revolution. Investigations¹⁶¹¹⁶² point to the existence of ten to thirteen detention facilities in the country, although authorities insist on recognizing only the aforementioned two. The detained migrants are continuously deprived from their most basic human rights, including the right to seek legal protection.¹⁶³ The Global Detention Project (GDP) added they are either forced to pay for their own deportation or, if they lack the necessary financial resources, are abandoned in the Tunisian-Algerian Desert.¹⁶⁴

One post-revolutionary episode is particularly revealing of the absence of local authorities' will to guarantee a decent and humane welcoming to refugees. In 2011, UNHCR created the refugee camp of Choucha, a few kilometers away from the frontier post of Ras Jdir, in order to manage the unprecedented fluxes of refugees that arrived in the country following the Libyan crisis.¹⁶⁵ The Camp mainly hosted Sub-Saharan Africans and the number soon reached 18.000, resulting in a human disaster.¹⁶⁶ In 2013,

¹⁵⁵ Planes-Boissac, Boubakri, and Boubakri, "Refworld | Asylum and Migration in the Maghreb - Country Fact Sheet."

¹⁵⁶ Badalič, "Tunisia's Role in the EU External Migration Policy."

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ The Danish Refugee Council (DRC), "Findings of the Danish Refugee Council on Mixed Migration in Tunisia" (DRC, 2014), https://www.alnap.org/system/files/content/resource/files/main/drc-report-on-mixed-migration-in-tunisia-2014_0.pdf.

¹⁶⁰ Badalič, "Tunisia's Role in the EU External Migration Policy."

¹⁶¹ 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>.

¹⁶² United Nations Human Rights Council, "Report of the Special Rapporteur on the Human Rights of Migrants. Addendum: Mission to Tunisia."

¹⁶³ Badalič, "Tunisia's Role in the EU External Migration Policy."

¹⁶⁴ Global Detention Project (GDP), "The Detention of Asylum Seekers in the Mediterranean Region Global Detention Project Background" (GDP, 2015), <https://www.refworld.org/docid/556736e24.html>.

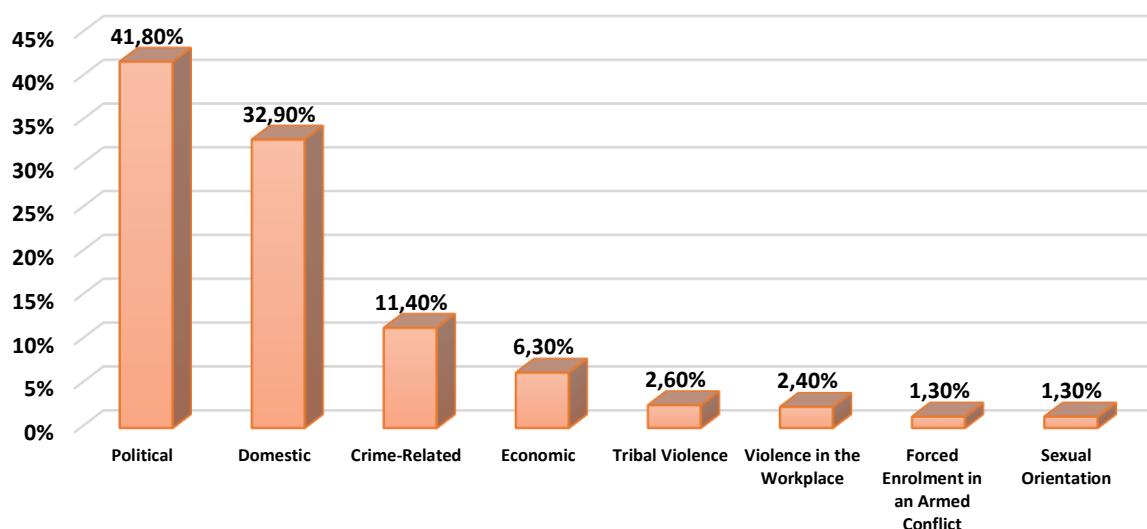
¹⁶⁵ Lilia Blaise, "Tunisie : du camp de réfugiés de Choucha à La Marsa, des migrants de nouveau dans l'impasse," *Le Monde*, 2019, https://www.lemonde.fr/afrique/article/2019/06/10/tunisie-du-camp-de-refugies-de-choucha-a-la-marsa-des-migrants-de-nouveau-dans-l-impasse_5474320_3212.html.

¹⁶⁶ Garms et al., "The Deficiencies of UNHCR's RSD Procedure."

UNHCR unilaterally decided to close the camp, leaving those who were denied asylum in dire conditions.¹⁶⁷ The three hundred camp migrants who were not granted asylum have been contesting UNHCR's decision, arguing they are not economic migrants but refugees who fled violence.¹⁶⁸ This position is also supported by FTDES, the most vocal CSO on migrants' rights in Tunisia since 2012.¹⁶⁹ A number of reports^{170 171} noted several procedural irregularities in UNHCR's Choucha's RSD procedure.

In the 2019 FTDES study, 41,8% of the respondents declared having experienced violence due to their political orientations in their home countries, which would make them entitled to seek asylum or another form of protection in Tunisia.¹⁷² Additionally, 22% of the respondents declared having travelled to Tunisia in search primarily for security.¹⁷³ 79% of the sample's respondents declared having arrived in the country between 2014 and 2018, inducing the Libyan conflict was behind them choosing to migrate to the neighbouring Tunisia.¹⁷⁴

Figure 3: Types of Violence Experienced by Sub-Saharan African Migrants In Their Countries of Origin Prior to their Arrival to Tunisia¹



¹⁶⁷ Ibid.

¹⁶⁸ Lilia Blaise, "Tunisie : du camp de réfugiés de Choucha à La Marsa, des migrants de nouveau dans l'impasse," *Le Monde*, 2019, https://www.lemonde.fr/afrique/article/2019/06/10/tunisie-du-camp-de-refugies-de-choucha-a-la-marsa-des-migrants-de-nouveau-dans-l-impasse_5474320_3212.html.

¹⁶⁹ Adriana Vidano, "Réfugiés de Choucha à La Marsa : Abandonnés Par Les Autorités Tunisiennes et l'UNHCR," *Nawaat*, 2018, <https://nawaat.org/portail/2018/03/14/refugies-de-choucha-a-la-marsa-abandonnes-par-les-autorites-tunisiennes-et-lunhcr/>.

¹⁷⁰ Ibid.

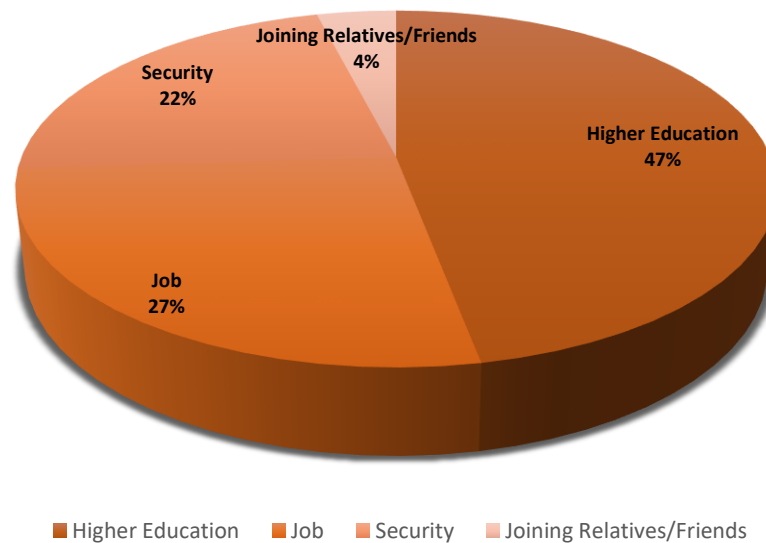
¹⁷¹ Juliette Garms et al., "The Deficiencies of UNHCR's RSD Procedure: The Case of Choucha Refugee Camp in Tunisia," *In Oxford Monitor of Forced Migration* 4, no. 1 (2014): 46–49.

¹⁷² Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.25."

¹⁷³ Ibid.

¹⁷⁴ Ibid.

Figure 4: Sub-Saharan Africans' Reasons for Migrating to Tunisia¹⁷⁵



5. The Dynamics of the Notion of State Agency in Tunisia's Treatment of Sub-Saharan Migrants

As Barkawi and Laffey noted, the eurocentrism of security studies, and IR more broadly, result in theoretical difficulties in *werless*", referring herein to the global South.¹⁷⁶ Indeed, the fouunderstanding the past and current evolutionary processes of "*the weak and the pondations* of these scientific domains rest on the competition between great powers – overwhelmingly located in the West in modern history – in addition to being profoundly eurocentric and racist, as pointed out by postcolonial scholars.¹⁷⁷¹⁷⁸ Moreover, the relations between North and South, in themselves contested categories, remain understood in terms of subjugation and domination.¹⁷⁹ This limiting prism deprives "weak" actors from their agency by placing them in a perpetual state of passivity, as if the entire spectrum of their actions were out of their control.¹⁸⁰

Tunisia's migratory policies since the independence have consistently suffered from the agency, or absence of agency limitation, as a number of internal and external observers have been associating the State's increasingly repressive, securitized and

¹⁷⁵ Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.29."

¹⁷⁶ Barkawi and Laffey, "The Postcolonial Moment in Security Studies."

¹⁷⁷ Ibid.

¹⁷⁸ El Miri, "Devenir « noir » sur les routes migratoires."

¹⁷⁹ Barkawi and Laffey, "The Postcolonial Moment in Security Studies."

¹⁸⁰ Ibid.

criminalizing approach to migration to a mere translation of constraints imposed by Europe's border externalization policies.¹⁸¹ Although both European concerns and influence on the country, and the region as a whole, should not be minimized, the oversimplification of this seemingly vertical relationship is neither accurate nor representative as showcased in examples above. It does not take into account the "adjustment" phenomenon operated on imposed policies that receiving States undertake in order to fit their interests.¹⁸² In the migration question, Tunisia's "adjustment" process is clearly visible in its treatment of Sub-Saharan African migrants as will be analyzed later on in this dissertation.

The notion of State agency in IR theory holds two interdependent components that Vincent Geisser summarizes as such: i/- the capacity of the State receiving public policies "imposed" by its foreign partners to locally adapt the effects and scope of these policies; ii/- the will displayed by States and international institutions issuing public policies to demonstrate that a transfer has taken place in the direction of the receiving State by means of conditionalities and financial incentives, or by learning or simple emulation, even if each actor is conscious that permeability does not always rhyme with applicability.¹⁸³ Consequently, it is not so much a question of resisting influences or rules imposed by foreign "partners" as it is accommodating these imperatives by "localizing" them, to use the terminology of Amitav Acharya.¹⁸⁴

Acharya argues norm diffusion does not occur without local agents reconstructing foreign norms to ensure these new measures are harmonious with the agent's cognitive priors and identity.¹⁸⁵ Ensuring harmony is thus key to accepting these new norms. This "localization" process resolves what Acharya qualifies as the "normative contestation" risk.¹⁸⁶ It is "*the {...} ability of local agents to reconstruct the norms to ensure a better fit with prior local norms, and the potential of the localized norm to enhance the appeal of some of their prior beliefs and institutions*" that render certain norms more efficiently implemented than others.¹⁸⁷

According to Acharya, the role of local agents, or in this dissertation's context weak States, should not be understood in terms of passivity as they do not remain static targets as powerful agents direct norm diffusion in world politics. Local agents play an equally important role in norm diffusion through "*actively borrowing and modifying transnational norms*" and implementing them in a way that matches their "*preconstructed*

¹⁸¹ Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique."

¹⁸² Ibid.

¹⁸³ Jean-Pierre Cassarino, "Le Gouvernement Des Migrations En Tunisie : Vers Un Nouveau Paradigme ?," in *Tunisie : Une Démocratisation Au-Dessus de Tout Soupçon ?* (Paris: CNRS Éditions, 2018), 295–309, [https://www.academia.edu/37399475/Jean-](https://www.academia.edu/37399475/Jean-Pierre_Cassarino_2018_Le_gouvernement_des_migrations_en_Tunisie_Vers_un_nouveau_paradigme_In_Amin_Allal_et_Vincent_Geisser_dir._Tunisie_Une_d%C3%A9mocratisation_au-dessus_de_tout_soup%C3%A7on_Paris_CNRS_%C3%89ditions)

[Pierre_Cassarino_2018_Le_gouvernement_des_migrations_en_Tunisie_Vers_un_nouveau_paradigme_In_Amin_Allal_et_Vincent_Geisser_dir._Tunisie_Une_d%C3%A9mocratisation_au-dessus_de_tout_soup%C3%A7on_Paris_CNRS_%C3%89ditions](https://www.academia.edu/37399475/Jean-Pierre_Cassarino_2018_Le_gouvernement_des_migrations_en_Tunisie_Vers_un_nouveau_paradigme_In_Amin_Allal_et_Vincent_Geisser_dir._Tunisie_Une_d%C3%A9mocratisation_au-dessus_de_tout_soup%C3%A7on_Paris_CNRS_%C3%89ditions), p.296.

¹⁸⁴ Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58, no. 2 (2004): 239–75.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Acharya, "How Ideas Spread."

normative” arsenal.¹⁸⁸ This paradigm offers two advantages in line with a post-colonialist approach to world politics: i/- it offers an alternative to understanding norm diffusion as only pertaining to powerful States or material benefits of agents transnationally interdependent; ii/- it contributes to replacing non-western norm-recipients at the heart of the literature on norm diffusion.¹⁸⁹

6. A Highly Restrictive Labour Code for All Foreigners? “National Preference” at Whose Expense?

In many respects, Tunisia seems to have followed the same changes in its migratory processes as developed countries. Until the mid-1970s, low-skilled labour migration was encouraged in western countries so as to both secure cheap labour and limit wage growth through increasing labour supply.¹⁹⁰ Today, there is rather a shift in the opposite direction as highly-skilled migrants are encouraged to immigrate, either temporarily or permanently, while low-skilled migrants are mostly unwelcome.¹⁹¹ However, the latter’s contribution to the economy remains important although States often do not recognize it.¹⁹² In Tunisia, the importance of the informal sector and the shortage of a qualified labour force renders Sub-Saharan African migrants an essential component for the survival of several businesses.¹⁹³ However, the invisibility of this category of migrants, due to their current relatively small number in North-African countries, might not last. European countries are setting increasingly harsh migratory policies, especially towards low-skilled migrants so there are less and less chances for Sub-Saharan migrants to settle in the West.¹⁹⁴ Refugees are equally very little welcomed as European countries are increasingly restricting their asylum process.¹⁹⁵ In parallel, economies and socio-political instability in Africa are worsening and North-South disparities are widening.¹⁹⁶ There is thus little reason to believe mass migration from the continent’s poorest countries could come to a halt in the future as people will remain on the road in look for decent livelihood and security. However, as it is increasingly difficult for migrants and refugees to reach European coasts, it is expected to see a growing migration flow to countries that are both developing and geographically close to the West, namely North-African countries in this study’s matter. This phenomenon induces requisitioning the concept of transit migration, as this “transit period” is increasingly

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Stephen Castles and Mark J. Miller, *The Age of Migration*, Third Edition (The Guilford Press, 2003), p.225.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Lassaad Labidi, Lotfi Bennour, and Ali Jaidi, “L’emploi Formel et Informel Des Travailleurs Immigrés En Tunisie: Cartographie et Profils Socioéconomiques Des Travailleurs Immigrés En Tunisie” (International Labour Organization (ILO), 2017), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_554853.pdf.

¹⁹⁴ Wenden, “Dynamiques migratoires sub-sahariennes vers l’Afrique du Nord.”

¹⁹⁵ Wenden, “Dynamiques migratoires sub-sahariennes vers l’Afrique du Nord.”

¹⁹⁶ Ibid.

protracted, while migrants retain that “in-between” status.¹⁹⁷ Transit migration in itself is often pretexted by traditional transition countries as a reason not to offer any rights or opportunities to migrants.¹⁹⁸ Paradoxically, and as explained above, these countries, including Tunisia, often contribute to the extension of migrants’ transit periods.

The legal framework governing labour in Tunisia is based on a quasi-explicit “national preference” logic.¹⁹⁹ However, foreigners are far from being equally discriminated in the access to the legal labour market as this exclusion of non-Tunisian nationals disproportionately affects Sub-Saharan African migrants. Tunisia’s labour code as well as the totality of the legal framework regulating the entry and stay of foreigners in the country remain theoretically confined to a binary rationale linking the leniency of access to the labour market for foreigners to the rate of unemployment.²⁰⁰ The country has persistently known high rates of unemployment, especially among the youth in disadvantaged regions.²⁰¹ The absence of working opportunities, as well as the failure of the development model were amongst the main initiators of the 2011 Revolution that ousted former president Ben Ali.²⁰² Since 2011, unemployment has been growing, registered at 14,9% in the fourth semester of 2019 and at 33,8% among the country’s youth.²⁰³ In 2010, the rate was of 13%, 32,6% between the 25-29 year old age bracket.²⁰⁴ It is thus expectable for Tunisia to severely hinder access to the job market for all foreigners, particularly post-2011.

Foreigners’ access to the labour market is regulated by two highly restrictive legislations: the aforementioned 1968 law on foreigners’ condition²⁰⁵, and the law no. 66-27 of April 30, 1966 that promulgated the Labour Code²⁰⁶, supplemented by the law no. 96-62 of July 15, 1996²⁰⁷. In addition to the necessity to navigate an archaic bureaucratic system in order to obtain the documents necessary for the entry and stay²⁰⁸, the 1968 law provides in its article 23 that every foreigner that does not request a resident

¹⁹⁷ Franck Düvell, “Transit Migration: A Blurred and Politicised Concept,” *Population, Space and Place* 18, no. 4 (2012): 415–27, <https://doi.org/10.1002/psp.631>.

¹⁹⁸ Ibid.

¹⁹⁹ Nasraoui, “Les travailleurs migrants subsahariens en Tunisie face aux restrictions législatives sur l’emploi des étrangers.”

²⁰⁰ Said Ben Sedrine, “Défis à Relever Pour Un Accueil Dément de La Migration Subsaharienne En Tunisie” (Friedrich Ebert Stiftung, 2018), https://www.fes-mena.org/fileadmin/user_upload/pdf-files/publications/De_fis_a_relever-accueil_de_cent_mig_subaharienne_TN_PROMIG-FES_2018.pdf.

²⁰¹ Pierre Blavier, “Sociogénèse de la révolution tunisienne : expansion scolaire, chômage et inégalités régionales,” *Actes de la recherche en sciences sociales* N° 211-212, no. 1 (May 23, 2016): 55–71.

²⁰² Ibid.

²⁰³ Institut National de la Statistique, “Indicateurs de l’emploi et du chômage, quatrième trimestre 2019” (INS, 2020), <http://www.ins.tn/sites/default/files/publication/pdf/chomage.pdf>.

²⁰⁴ Institut National de la Statistique, “Enquête Nationale sur l’Emploi 2010” (INS, 2011), http://www.ins.tn/sites/default/files/publication/pdf/emploi_2010.pdf, p.30.

²⁰⁵ Parlement de la République de Tunisie, “Loi N° 1968-0007 Du 8 Mars 1968 Relative à La Condition Des Étrangers En Tunisie.”

²⁰⁶ Parlement de la République de Tunisie, “Loi N° 66-27 Du 30 Avril 1966, Portant Promulgation Du Code Du Travail” (Journal Officiel de la République Tunisienne, 1966), [https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44414/61784/F839958379/TUN-44414%20\(2\).pdf](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44414/61784/F839958379/TUN-44414%20(2).pdf).

²⁰⁷ Parlement de la République de Tunisie, “Loi N° 96-62 Du 15 Juillet 1996, Portant Modification de Certaines Dispositions Du Code Du Travail” (Journal Officiel de la République Tunisienne, 1996), <https://legislation-securite.tn/fr/node/45202>.

²⁰⁸ Nasraoui, “Les travailleurs migrants subsahariens en Tunisie face aux restrictions législatives sur l’emploi des étrangers.”

permit or its renewal once expired risks one year in prison and cumulative fines.²⁰⁹ These fines do not have a ceiling. Moreover, in order to legally obtain a job, the residence permit has to be supplemented by an authorization attesting the non-existence of national competences in the concerned specialties.²¹⁰ The 1966 complemented by the 1996 law regulating labour in the country also introduced major restrictions to the work of foreigners, specifically its article 258 paragraph 2 providing that any foreigner who wants to exercise salaried work of any kind must be granted an employment contract and a residence permit marked "authorized to exercise salaried work in Tunisia", reiterating no foreigner can be hired in a field in which Tunisian competences are available.²¹¹ This "irregularity-producing machine" as qualified by Vincent Geisser²¹² has dramatic consequences on "overstayers" that find themselves quasi-sequestered in the country, having to accept the most precarious, difficult and/or dangerous jobs in order to save enough money to be allowed to leave the territory.²¹³ Another noteworthy restriction concerns the right to mobility guaranteed by article 14 (a) of the International Labour Organization (ILO)'s Convention 143 on migrants workers²¹⁴. The Convention establishes a distinction between the momentary restrictions to the free choice of work and the right to geographic mobility that has to be protected regardless of the length of stay or the nature of the job.²¹⁵ Yet, article 259 of the Tunisian Labour Code²¹⁷ provides that a foreigner is obliged to work exclusively in the governorate and in the profession indicated in her or his work contract. This disposition is in sharp contrast with the principle of equal treatment between national and foreign workers provided for in the Convention.

In 2017, Sub-Saharan African migrants only represented 4% of the total number of foreign workers having obtained a work permit in the country, the lowest compared to all other non-nationals.²¹⁸ This rate went as low as 2% in the first two years following the Revolution (2011-12).²¹⁹

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Geisser, "Tunisie, des migrants subsahariens toujours exclus du rêve démocratique."

²¹³ Ibid.

²¹⁴ International Labour Organization (ILO), "Convention C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)," 1975,

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143.

²¹⁵ Said Ben Sedrine, "Défis à Relever Pour Un Accueil Décemment de La Migration Subsaharienne En Tunisie"

(Friedrich Ebert Stiftung, 2018), https://www.fes-mena.org/fileadmin/user_upload/pdf-files/publications/De_fis_a_relever-accueil_de_cent_mig_subsaharienne_TN_PROMIG-FES_2018.pdf, p.23.

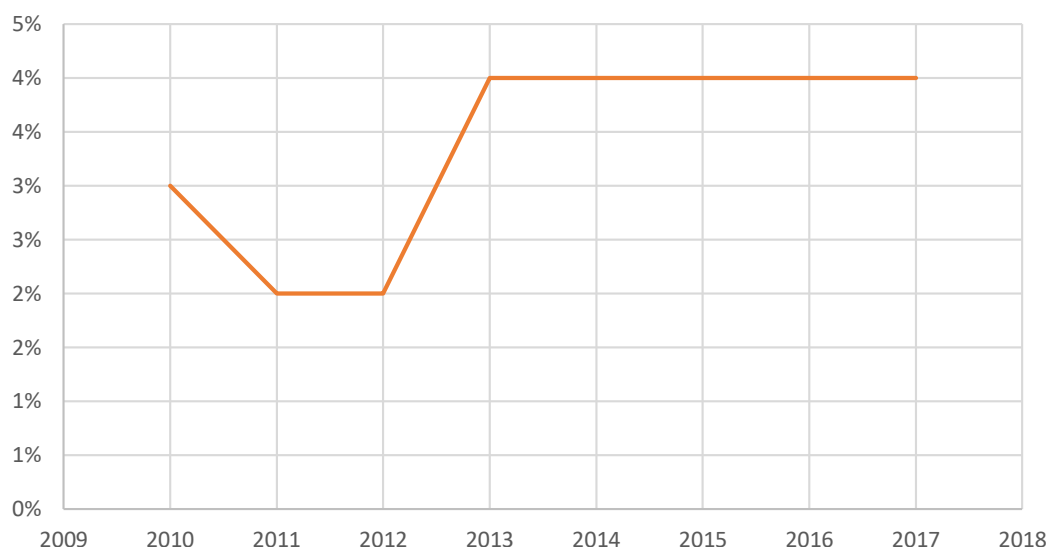
²¹⁶ It should be noted Tunisia did not ratify the ILO Conventions on migrant workers (C 97 and C 143) and these are evoked as an example of the country's violation of the international norms of migrant workers' rights.

²¹⁷ Parlement de la République de Tunisie, "Loi N° 96-62 Du 15 Juillet 1996, Portant Modification de Certaines Dispositions Du Code Du Travail."

²¹⁸ Ben Sedrine, "Défis à Relever Pour Un Accueil Décemment de La Migration Subsaharienne En Tunisie.", p.28.

²¹⁹ Ibid.

Figure 5: Evolution of the share of regular Sub-Saharan African workers compared to the rest of foreign workers in Tunisia (in %) 2010-17²²⁰



Ben Sedrine argues the Tunisian State has been following a neo-liberal logic linking the proportionality of States' foreign investments to the allocation of work permits for their nationals.²²¹ Indeed, 40% of the regular foreign workers in the country are of West European citizens.²²² As previously mentioned, European countries are Tunisia's most significant foreign investors. According to the 2019 data of the Foreign Investment Promotion Agency (FIPA), France (171,860 million euros) followed by Germany (57,450 million euros) then Italy (55,220 million euros) are the three most significant foreign investors in the country.²²³ France alone holds 34% of the overall foreign investments in Tunisia.²²⁴ In contrast, a 2017 document²²⁵ published by the Tunisian Center for Export Promotion (CEPEX) indicated the Sub-Saharan African market only represents 2,2% of Tunisia's exportations compared to 73,7% destined to the EU. Tunisia is the 62nd supplier of Sub-Saharan countries.²²⁶

Although no bilateral agreement exists between the two shores of the Mediterranean sea in respect to free movement, the Barcelona Process provides this

²²⁰ Ibid.

²²¹ Ben Sedrine, "Défis à Relever Pour Un Accueil Décemment de La Migration Subsaharienne En Tunisie, p.28.

²²² Ibid.

²²³ WMC and TAP, "Près de 8% de baisse du flux des investissements étrangers en Tunisie en 2019 (FIPA)," *Web Manager Center*, February 6, 2020, sec. A ne pas rater, <https://www.webmanagercenter.com/2020/02/06/444538/pres-de-8-de-baisse-du-flux-des-investissements-etrangeers-en-tunisie-en-2019-fipa/>.

²²⁴ Ibid.

²²⁵ Centre tunisien de promotion des exportations (CEPEX), "Tour d'horizon Sur La Coopération Commerciale Entre La Tunisie et l'Afrique Subsaharienne" (CEPEX, 2017), http://www.tunisiaexport.tn/actualites/cooperation_commerciale_Tunisie_Afrique_Subaharienne.

²²⁶ Ibid.

aspect will be favoured.²²⁷ In reality, favouritism only benefits one side of the Mediterranean - Europe. Although Libya and Algeria do impose a visa for European nationals, Morocco and Tunisia exempt them from any visa requirement.²²⁸ There have been unanimous requests from Maghreb countries to establish the mutuality of free movement between the Maghreb and Europe, notably prior to the launch of the Union for the Mediterranean (UPM) in July 2008, yet these requests were never positively advanced.²²⁹ Delphine Perrin argues it is notably because both Morocco and Tunisia have already agreed on the principle of “selective migration” regarding the mobility of their nationals to Europe.²³⁰

The second largest community of regularly working foreigners in Tunisia in 2017 was constituted by Arab workers (31%).²³¹ Ben Sedrine advances the argument of the privileged cultural relations that exist between Arab countries, referring more to an identity linker rather than an economic one.²³² Per instance, Tunisia has ratified a bilateral convention²³³ for the free movement of the workforce with Morocco in 1966. It is thus not exclusively financial incentives that motivate the Tunisian State to discriminate between foreigner workers.

68% of the interviewees by FTDES estimate their inability to speak Arabic as a major obstacle to their social integration and their ability to secure a job in the country.²³⁴ However, this does not match the data provided earlier in this study. If the language barrier is a significant factor in Sub-Saharan Africans’ inability to secure a job, then this should be the same for all non-Arabic speaking communities in Tunisia. Yet, western Europeans holding 40% of all work permits in 2017²³⁵ while being non-Arabic speakers might be pointing to other reasons for Sub-Saharans’ exclusion from the job market.

Hence, it is true that Tunisia has a highly restrictive body of laws governing the work of foreigners in the country, yet it manages to alleviate those restrictions for almost every category of foreign workers except for Sub-Saharan Africans. Consequently, although the irregularity phenomenon is rapidly increasing amongst this category of migrants, authorities do not seem to be willing to take into account the volume of Sub-Saharan migrant workers present in the country and the reality of their situation. Rather

²²⁷ Delphine Perrin, “La Circulation Des Personnes Au Maghreb” (European University Institute - Robert Schuman Centre for Advanced Studies, 2008),

https://cadmus.eui.eu/bitstream/handle/1814/10090/CARIM_AS&N_2008_46.pdf?sequence=1, p.7.

²²⁸ Perrin.

²²⁹ Ibid.

²³⁰ Ibid, p.7-8.”

²³¹ Ben Sedrine, “Défis à Relever Pour Un Accueil Décent de La Migration Subsaharienne En Tunisie, p.29.”

²³² Ibid.

²³³ “Décret Royal N° 208-66 Du 14 Safar 1386 (3 Juin 1966) Portant Ratification de Deux Conventions Signées à Tunis Le 9 Décembre 1964 Entre Le Royaume Du Maroc et La République Tunisienne.” (The Kingdom of Morocco, August 24, 1966),

<http://adala.justice.gov.ma/production/Conventions/fr/Bilaterales/Tunisie/conventions%20signees%20a%20Tunis%20le%209%20decembre%201964%20entre%20le%20Royaume%20du%20Maroc%20et%20la%20Republique%20tunisienne.htm>.

²³⁴ Msakni, “From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.28.”

²³⁵ Ben Sedrine, “Défis à Relever Pour Un Accueil Décent de La Migration Subsaharienne En Tunisie, p.29.”

than aiming to regularize their residency status, the State turns a blind eye to their exploitation by the informal sector as to continue providing Tunisian companies with a cheap, non-claimant foreign workforce. It is thus in the interest of the State Sub-Saharan African workers remain in a state of irregularity in Tunisia.

Figure 6: Distribution of Regular Migrant Workers per Region of Origin in 2017²³⁶

Region	Work Permits Issued	%
Western Europe	2200	40%
Arab Countries (not Sub-Saharan Countries)	1686	31%
Asia	749	14%
Eastern Europe	395	7%
Sub-Saharan Africa	237	4%
North America	117	2%
South America	79	1%
Australia	7	0%
Total	5470	100%

7. Sub-Saharan African Migrants in Tunisia: Unqualified Workers?

Amongst the 962 migrants who took part in the 2019 quantitative study of FTDES, more than 50% declared holding a university diploma, 12.20% of these degrees being masters or doctorates.²³⁷ The quasi totality of the interviewees (97.1%) self-identified as part of the upper social class in their home countries, either having obtained a university degree back home, or having joined graduate school in Tunisia and having settled in the country after the end of their cursus.²³⁸ 1.5% of the sampled participants declared holding a university degree from France.²³⁹ Tunisian authorities have been reluctant to recognizing Sub-Saharan migrants' diplomas. Only 46% of the interviewees declared their degrees have been officially approved by the State, while 48% were not provided with any information regarding the matter.²⁴⁰ FTDES's quantitative set of data deconstructs the common perception of Sub-Saharan migrants as low-skilled, uneducated workers who are merely transiting by north African countries to reach Europe.

²³⁶ Ibid.

²³⁷ 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/subsaharianstates.en.pdf>, p.20.

²³⁸ Msakni, p.20.

²³⁹ Ibid, p.21.

²⁴⁰ Ibid, p.22.

8. The Irregular Sub-Saharan African Migrant in Tunisia as Homo Sacer: The Dynamics of the Bio-Politicization of Migration

The Tunisian State's will to control Sub-Saharan African bodies to the point of dehumanization reminds of Giorgio Agamben's notion of *Homo Sacer*²⁴¹, the "accursed man". The State's bio-politicization of the existence of certain categories of individuals evolving within a society could be understood in Foucault's terms. Radically breaking with the American naturalistic approach to political behavior, Foucault posits biopolitics is a historical process through which the State's prerogatives to "seize, repress, and destroy life" are accompanied by a new form of power aiming to regulate, order and secure life.²⁴²

Derived from ancient Roman law, *Homo Sacer* refers to a person that is placed outside the law, and could thus be killed in total impunity.²⁴³ The irregular migrant's "bare life" is an illustration of her or his categorization as a detritus, one that is denied fundamental human rights and that has no avenue to claim them.²⁴⁴ Kumar Rajaram and Carl Grundy-Warr argue the "state of exception" the irregular migrant is placed in is not an anomaly to the functioning of nation States but the very basis of their existence.²⁴⁵ By their categorization as "outcasts", irregular migrants contribute to strengthening a nation's political borders and ensuring national cohesion.²⁴⁶

Biopolitics refers to the process by which Foucault qualifies the thorough transformation of sovereign administration of life and societies whose onset was in the seventeenth century West.²⁴⁷ Foucault notes sovereign juridical power transformed from a capacity to "take life or let live"²⁴⁸ to a biopower that allows "to foster life or disallow it to the point of death"²⁴⁹. It is this shift from "a politics of sovereignty to a politics of society"²⁵⁰ that characterizes biopolitics, and that led to the development of Foucault's notion of State racism.²⁵¹ This transformation induces a change of target from a "sovereign who must be defended"²⁵² to a society or population that must be defended. In

²⁴¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998), <http://www.sup.org/books/title/?id=2003>.

²⁴² Michael Laurence, "Biopolitics and State Regulation of Human Life," *Oxford University Press*, Oxford Bibliographies/Political Science, 2016, <https://www.oxfordbibliographies.com/view/document/obo-9780199756223/obo-9780199756223-0170.xml>.

²⁴³ Prem Kumar Rajaram and Carl Grundy-Warr, "The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand.," *International Migration* 42, no. 1 (2004): 33–64.

²⁴⁴ Agamben, *Homo Sacer*, p.7.

²⁴⁵ Rajaram and Grundy-Warr, "The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand."

²⁴⁶ Ibid.

²⁴⁷ Rachel Adams, "Michel Foucault: Biopolitics and Biopower," *Critical Legal Thinking* (blog), May 10, 2017, <https://criticallegalthinking.com/2017/05/10/michel-foucault-biopolitics-biopower/>.

²⁴⁸ Michel Foucault, *The Will To Knowledge, The History Of Sexuality: I* (London: Penguin Books, Limited, 1998), p.136.

²⁴⁹ Ibid, p.138.

²⁵⁰ Adams, "Michel Foucault."

²⁵¹ Ibid.

²⁵² Foucault, *The Will To Knowledge, The History Of Sexuality: I*, p.137.

his book *Society Must Be Defended*, Foucault explains that “{a} battle that has to be waged not between races, but by a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from that norm, against those who pose a threat to the biological heritage.”²⁵³

Giorgio Agamben considers politics as a perpetual duality of inclusion/exclusion processes. Politics determines who the sovereign is both representing and protecting and who it is not. This allows the State to assert and maintain its rule. The category of people it perceives as threatening to its jurisdiction is legally and, at times, physically excluded from what it considers the “norm”. Those who are not protected by the sovereign law are confined to what Agamben calls “zones of exemption” – places of legal exception where either laws are not applied or a certain category of repressive legislations are. Herein, the State distinguishes between “the politicized human being”, the one the sovereign power understands and aims to integrate under one of its legal categories, and the “detritus” or what Schütz calls the “no longer human”. The modern State outlines the population under its jurisdiction. Those who are excluded are perceived not merely as a threat to internal cohesion, but as a legitimation to the sovereign power’s existence. One should remember modern Nation-States are a perilous construction that managed to assemble disparate groups of people under the umbrella of an imagined nation, based on a narrative-construction to this effect.²⁵⁴

Hence, what Agamben calls the “no longer human” represents both a threat to the sovereign State and a necessity for its continuation. Meeting the “other” sheds the light on the inside homogeneity through her or his heterogeneity and existence beyond the State’s legal framework. The “other” is a reminder that Nation-States are a construction, and, perhaps, a fragile one. Yet, that other is intrinsically connected to the State’s legitimacy as her or his “unruliness serves to define the norm”. Herein lies the paradox. The very concept of a Nation-State is based on border delimitation. By excluding “zones of exception” from the norm, the sovereign blurs the line between the inside and the outside as exclusion is, *per se*, a sovereign act. It is what De Genova calls “the obscene of inclusion”.²⁵⁵ He links migrant “illegality” to broader socio-political interests that work, through exclusionary discourses, to transform the original irregular act of migrants trespassing borders into a perpetual state of “illegality”. Hence, they are included through exclusion.²⁵⁶²⁵⁷

In this context, Stephanie Pouessel noted the law for the elimination of all forms of racial discrimination voted in 2018 is inapplicable in case of irregularity.²⁵⁸ On paper, it criminalizes racist comments, hate speech and racism-based discrimination, punishable

²⁵³ Michel Foucault, *Society Must Be Defended*, First edition, Lectures at the Collège de France (Book 5) (New York: Picador, 2003), p.61.

²⁵⁴ Rajaram and Grundy-Warr, “The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand.”

²⁵⁵ Nicholas De Genova, “Spectacles of Migrant ‘Illegality’: The Scene of Exclusion, the Obscene of Inclusion,” *Ethnic and Racial Studies* 36, no. 7 (July 1, 2013): 1180–98, <https://doi.org/10.1080/01419870.2013.783710>.

²⁵⁶ Rajaram and Grundy-Warr, “The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand.”

²⁵⁷ The two paragraphs are extracted from a previous paper submitted by the author for PO941.

²⁵⁸ Stéphanie Pouessel, “Tunisie : la loi contre les discriminations raciales ne profite pas à ceux qui en ont besoin,” *Middle East Eye édition française*, 2019, <http://www.middleeasteye.net/fr/reportages/tunisie-la-loi-contre-les-discriminations-raciales-ne-profite-pas-ceux-qui-en-ont-besoin>.

by a 3000 dinar fine and a year to three years in prison.²⁵⁹ However, as the majority of Sub-Saharan Africans in Tunisia live in poor neighborhoods and lack an official status, they cannot resort to the 2018 legislation.²⁶⁰ Worse, a number of them have reported police abuse due to the vulnerability of their legal status when attempting to file a complaint.²⁶¹ The Tunisian State's main strategy to deter migration seems to be depriving migrants from their basic working rights, and more generally from their fundamental human rights, making it almost impossible for them to obtain a legal status. However, this has proven not to deter migration but rather to push migrants into protracted clandestine situations, reproducing irregularity and rendering them exposed to exploitation.²⁶²

This bio-politicization of Sub-Saharan Africans is not only exerted by the State but also by society. The testimonies gathered by FTDES²⁶³ in Tunisia as well as Mustapha El Miri²⁶⁴ in Morocco point to the weight of the systematic social regard exerted on the *racialized*²⁶⁵ as to maintain the superiority of the "non-racialized" group.²⁶⁶ The geographic organization of space segregates Sub-Saharan Africans by maintaining them outside of public spaces as cafés, beaches, certain neighbourhoods and even trains.²⁶⁷ This segregation persists through time. 23.3% of the participants interviewed by FTDES declared having arrived to Tunisia between 2009 and 2014.²⁶⁸ Hence, almost a quarter of the sample's participants have been Tunisian residents for a minimum of five years.

9. The Racialization of the Sub-Saharan African Migration in Tunisia: Becoming Black in a Migratory Journey

To borrow Mustapha El Miri's expression, Sub-Saharan Africans embody both "racial and social otherness" on their migratory journeys across North-Africa to Europe.²⁶⁹ Miri argues they are not "black" by essence but they become "black"²⁷⁰ on migration routes.²⁷¹ He contests the racial analysis of the Sub-Saharan African migratory experience as a by-product of a class prism. This dissertation's author aims to equally replace racism at the heart of the Sub-Saharan experience, specifically in North-Africa. This racism draws in two principal ways. The first is institutional through migratory policies of racial separatism, between Europe and Africa, but also between Sub-Saharan

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Benjemia, "La répression des migrations clandestines en Tunisie, p.278"

²⁶³ Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations."

²⁶⁴ El Miri, "Devenir « noir » sur les routes migratoires."

²⁶⁵ Referring in here to a person of color.

²⁶⁶ El Miri.

²⁶⁷ Ibid.

²⁶⁸ Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.28."

²⁶⁹ El Miri, "Devenir « noir » sur les routes migratoires."

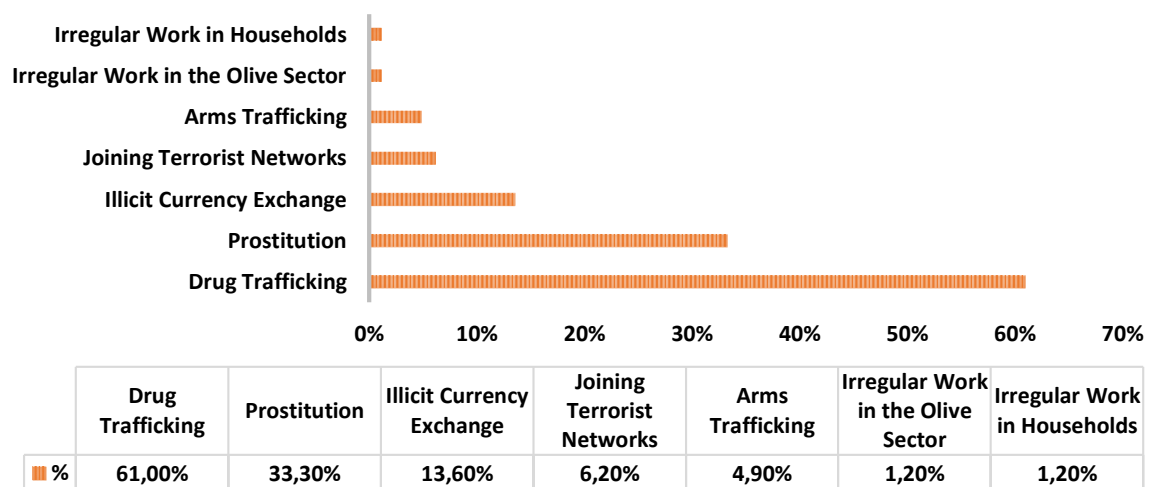
²⁷⁰ By analogy to Simone de Beauvoir's "'One is not born a woman, one becomes one", a concept developed in her 1949 book "The Second Sex".

²⁷¹ El Miri.

and North Africa as demonstrated above.²⁷² Dumitru contends Nation-States are inherently racist because they are a colonial heritage.²⁷³ The institutional dissuasion rationale is supported by militarized interceptions in the sea, bilateral readmission agreements into authoritarian regimes and even support to armed military groups in Libya as to increase their migrants' detention capacities in the utterly inhumane facilities.²⁷⁴ The second is socio-corporal, relating to the proximity of disease, abuse and death to the Sub-Saharan migrant or what Sharpe qualifies as "living in the wake"²⁷⁵. Per instance, 90.3% of the interviewed Sub-Saharan migrants by FTDES declared they are not covered by health insurance in Tunisia.²⁷⁶

In the same study, the Sub-Saharan African respondents declared the nature of illegal acts they had to commit in order to survive their migration journeys to Tunisia, specifically between 2015 and 2018 in Libya.²⁷⁷ The banality coupled with the dangerousness of the said acts should put in question the notion of security so dear to modern States. As shown in figure 7, most of the migrants were blackmailed into committing serious offences, including drug and arms trafficking and joining terrorist networks.²⁷⁸ 52% of the interviewees declared they were either blackmailed, victim of a fraud or misled into committing these illicit acts while 27% declared economic precarity was the cause.²⁷⁹

Figure 7: Illegal Activities Committed by Sub-Saharan African Migrants in their Journey to Tunisia²⁸⁰



²⁷² Jenna M Loyd, "Carceral Citizenship in an Age of Global Apartheid," *Occasion* 8 (n.d.): 1–15.

²⁷³ Speranta Dumitru, "Qu'est-ce que le nationalisme méthodologique ?," *Raisons politiques* N° 54, no. 2 (September 11, 2014): 9–22.

²⁷⁴ El Miri.

²⁷⁵ Christina Sharpe, *In the Wake: On Blackness and Being* (Duke University Press, 2016), <https://www.dukeupress.edu/in-the-wake>.

²⁷⁶ Ibid, p.76.

²⁷⁷ 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.33.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Msakni, p.33.

The contradictory dynamics between Tunisia refusing to soften its migration laws and offer basic guarantees to its migrants while simultaneously accepting to be Europe's border-guard transformed it into an "airlock"²⁸¹, a State that neither welcomes migrants nor allows them to pursue their migration project. By holding Sub-Saharan African migrants hostage in the country, the State is both obeying European imperatives and exerting institutional racism.

10. Internalized Orientalism: A tale of a Tunisian Denial of "Africanity": Blacks in Tunisia from Slavery to Servitude

The theory outlined by Edward Said in his 1978 book "Orientalism"²⁸² is a second good prism in understanding the conflictual relationship Tunisians, and by extension North-Africans have developed towards blackness and "Africanity". Said defines Orientalism as the western acceptance of "*the basic distinction between East and West as the starting point for elaborate theories, epics, novels, social descriptions, and political accounts concerning the Orient, its people, customs, 'mind,' destiny and so on*".²⁸³ The Orient is not limited to the Arab-Muslim world but could be extended to the global East, encompassing Asia, Africa as well as South America.²⁸⁴ Said writes "*{i}t is Europe that articulates the Orient; this articulation is the prerogative, not of a puppet master, but of a genuine creator, whose life-giving power represents, animates, constitutes the otherwise silent and dangerous space beyond familiar boundaries.*"²⁸⁵ For the post-colonial scholar, the aim of orientalism is to tame a set of cultures perceived as a threat to the West. Thus, "*the European representation of the Muslim, Ottoman, Arab was always a way of controlling the redoubtable Orient, and to a certain extent the same is true of the methods of contemporary Orientalists, whose subject is not so much the East itself as the East made known, and therefore less fearsome, to the Western reading public*".²⁸⁶

It should be reminded North-Africa was part of the slave trade of black Africans, a part of its history that remains largely ignored.²⁸⁷ The regions of Djerid in Tunisia, Ghadames in Libya, and Tamanrasset in Algeria represented hubs during the slave

²⁸¹ Wenden, "Dynamiques migratoires sub-sahariennes vers l'Afrique du Nord."

²⁸² Said, *Orientalism*.

²⁸³ Said, *Orientalism*, p.9.

²⁸⁴ Ibid.

²⁸⁵ Ibid, p.57

²⁸⁶ Ibid, p.60.

²⁸⁷ Inès Mrad Dali, "De l'esclavage à la servitude. Le cas des Noirs de Tunisie," *Cahiers d'études africaines* 45, no. 179–180 (December 19, 2005): 935–56, <https://doi.org/10.4000/etudesaficaines.15058>.

trade.²⁸⁸ The most inhumane form of slavery, exerted in plantations in North America, the Caribbean and Brazil was not practiced in North Africa.²⁸⁹ Slaves, who were not only blacks but also non-Muslim prisoners including *roumis* – white Europeans – were given diverse tasks. However, the difference of treatment between black and white slaves was considerable, as the former were given domestic or farming work, and the latter could be promoted as ministers, *aghas*²⁹⁰, or treasurers.²⁹¹ Per instance, in the Southern oasis of Tunisia, tedious tasks (i.e. digging irrigation canals) were exclusively reserved to black slaves.²⁹² This aspect persists until today, and could be found in several of the testimonies²⁹³ of Sub-Saharan irregular migrants working in Tunisia's informal sector.²⁹⁴ Moreover, in a study published by the International Labour Organization (ILO) in 2017 on the informal and formal work of migrants, Tunisian employers cite their incentives as to hire irregular Sub-Saharan African migrants rather than Tunisian nationals: diligence; a non-demanding and non-claiming workforce; availability; profitability.²⁹⁵ El Miri argues this perception derives from a binary rationale that could be understood as such: what Sub-Saharan Africans lack intellectually they must have physically.²⁹⁶ This reminder is important as blindness to the reality of racism in North-African societies remains a defining trait of the Sub-Saharan African migratory experience. In her 2017 book “Why I’m no longer talking to white people about race”, black journalist and activist Reni Eddo-Lodge states that denial is amongst the fundamental characteristics of anti-black racism.²⁹⁷

Today, the black person remains linked in the collective Tunisian imaginary to slavery, as the experience of blackness was originally formed in the contact of the Maghreb's aboriginal black communities.²⁹⁸ Ined Mrad Dali observed that in the North-African context, the official abolition of slavery, the emancipation of slaves by their masters, or Islamic law are poor indicators of the reality of when slaves were actually freed.²⁹⁹ Tunisians often take pride in having abolished slavery in 1846 – prior to a number of western countries – by order of the French during the conquest of Algeria (1830-47).³⁰⁰ Yet, slavery continued in reality to be practiced discretely and it took

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ An honorific title for a civilian or military officer, or often part of such title, and was placed after the name of certain civilian or military functionaries in the Ottoman Empire.

²⁹¹ Inès Mrad Dali.

²⁹² Ibid.

²⁹³ See: Nasraoui, “Les travailleurs migrants subsahariens en Tunisie face aux restrictions législatives sur l’emploi des étrangers.” The author argues Sub-Saharan migrant workers are victims of stereotypes as, per instance, the “physical endurance” of blacks.

²⁹⁴ Samy Ghorbal, “Le racisme au Maghreb – Jeune Afrique,” *Jeune Afrique*, August 23, 2004, sec. News (General), <https://www.jeuneafrique.com/99821/archives-thematique/le-racisme-au-maghreb/>.

²⁹⁵ Lassaad Labidi, Lotfi Bennour, and Ali Jaidi, “L’emploi Formel et Informel Des Travailleurs Immigrés En Tunisie: Cartographie et Profils Socioéconomiques Des Travailleurs Immigrés En Tunisie” (International Labour Organization (ILO), 2017), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_554853.pdf, p.61-62.

²⁹⁶ El Miri, “Devenir « noir » sur les routes migratoires.”

²⁹⁷ Reni Eddo-Lodge, *Why I’m No Longer Talking to White People About Race* (Bloomsbury Publishing, 2017), <https://www.amazon.co.uk/Longer-Talking-White-People-About/dp/140887055X>.

²⁹⁸ Ghorbal, “Le racisme au Maghreb – Jeune Afrique.”

²⁹⁹ Dali, “De l’esclavage à la servitude. Le cas des Noirs de Tunisie.”

³⁰⁰ Ibid.

another abolition by the French protectorate in 1890 for the practice to utterly disappear. Hence, the 1846 abolition, framed as a local humanist initiative was actually more the translation of external pressures, notably British imperatives.³⁰¹

One of the few exceptions to Tunisians' perception of black Africans³⁰² as socio-economically disadvantaged and even "uncivilized" occurred during the momentary move of the African Development Bank from 2003 to 2014 from Abidjan to Tunis³⁰³. For the first time in the country's modern history, Tunisians were confronted to an image of wealthy and educated black Africans who were sometimes served by "whites".³⁰⁴ Although some understood their perception of blackness remained frozen in the mid twentieth century, there was no radical paradigm shift and racism remained a fundamentally social and institutional problem. The *invisibilisation*³⁰⁵ of racial discrimination renders the latter's expressions pervasive and uninhibited in quotidian social interactions, what M'Bembé qualifies as "nanoracism"³⁰⁶. Nanoracism is essentially a labelling process³⁰⁷ entailing long-lasting social consequences. It echoes the institutional racism³⁰⁸ that contributes to the *alterisation* and exclusion from the community of reference.³⁰⁹ Sub-Saharan Africans are thus grouped under the banner of *Afriqiyin*³¹⁰ the moment they reach Tunisia, losing any specific identity, language or culture they had.³¹¹ This term is then easily replaced by other offensive, racialized terms as "oussif"³¹², "kahlouch"³¹³ or "abd"³¹⁴. El Miri argues these qualifications of Sub-Saharan migrants, often used in non-hostile situations, are a way of "preparing" them to the perpetual subordination and *singularisation* they will undergo throughout their migration journeys.³¹⁵

Said reminds orientalism both preceded colonialism and enabled it.³¹⁶ The feeling of superiority of "white" Africans compared to their black counterparts is rooted in factors that are deeply intertwined with slavery and colonialism. Notably, Youssef Chahed, Tunisia's former prime minister, recently denounced the "burden" of Sub-Saharan migrants at the Tunisian frontiers, calling for the EU to share the "burden" these migrants represent, while simultaneously denouncing the difficulty for Tunisians to obtain

³⁰¹ Ibid.

³⁰² Black Africans are often just called Africans in the Maghreb as North-Africans do not auto-define as Africans. Africanity is almost always associated with blackness.

³⁰³ Following the onset of the Ivorian civil war of 2002.

³⁰⁴ Ghorbal, "Le racisme au Maghreb – Jeune Afrique."

³⁰⁵ French word for the process of rendering invisible.

³⁰⁶ Achille M'Bembé, *Politiques de l'inimitié* (Éditions La Découverte, 2016),

https://editionsladecouverte.fr/catalogue/index-Politiques_de_l_inimite_-9782707188182.html.

³⁰⁷ Howard S. Becker, *Outsiders: Études de sociologie de la déviance* (Métailié, 1985), <https://editions-metailie.com/livre/outsideers/>.

³⁰⁸ Frantz Fanon, *Black Skin, White Masks*, 31616th ed. (Grove Press), accessed March 19, 2020, <https://www.abebooks.co.uk/Black-Skin-White-Masks-Frantz-Fanon/30062814366/bd>.

³⁰⁹ El Miri, "Devenir « noir » sur les routes migratoires."

³¹⁰ Africans in classic Arabic.

³¹¹ El Miri, "Devenir « noir » sur les routes migratoires."

³¹² Black slave in Tunisian Arabic.

³¹³ Racial slur in Tunisian Arabic, often ignored as being such.

³¹⁴ Literal translation of slave in classic Arabic.

³¹⁵ El Miri, "Devenir « noir » sur les routes migratoires."

³¹⁶ Said, *Orientalism*, p.53.

Schengen visas for Europe³¹⁷. In his statement, Chahed opposed Sub-Saharan Africans – having difficulties securing their most basic human rights in Tunisia as explained – and Tunisians who are largely prevented from reaching Europe, without ever making a parallel between these two very similar situations in nature. Authorities’ narrative is framed as if Tunisians are superior to Sub-Saharan Africans and should not face discriminatory migration policies in the same way the former do. This indicates the extent of how pervasive the denial of “Africanity” is in Tunisia, even at the highest spheres of decision-making.

As explained by Said³¹⁸, Fanon³¹⁹ and numerous other decolonial and post-colonial scholars, the “norm” remains “whiteness”, and the closer someone is to it, the superior s/he is entitled to feel. Said hence links the persistence and durability of orientalism to the West’s cultural hegemony. This work’s notion of internalized orientalism is a reproduction of the essence of classic orientalism: as the latter is a permanent reiteration of “*European superiority over oriental backwardness*”³²⁰, this Orient has found a way to reproduce ramifications following the same logic within it. Orientalism has been internalized to regulate the exchanges of dominees with each other. Hence, in the case of Tunisians’ attitude towards black Africans, race replaces ethnicity. Said writes orientalism is “*an indication of how streamlined a general doctrine had become by the time they put it to use – how streamlined and effective*”³²¹. When creating the foundational North/South division, sub-divisions followed and have been appropriated by the “powerless” to attempt gaining a further agency, hence greater power. Often, it is those categories inherited from colonial times that are re-mobilized by the dominees. Hence, if the dominant is “white” then the closer one nation is to “whiteness”, the more it will look down on those who are “farther” from “whiteness”. Tunisians are thus reluctant to identify as “Africans” because “Africanity” is equated with “blackness”, which adds to the status of former colonized the status of former enslaved.

The purely orientalist logic in display *vis-à-vis* Sub-Saharan Africans by Tunisians is rooted in an “Africanity” that is fantasized, “*contained and represented by dominating frameworks*”³²². Said notes “*(...) {the} mind requires order, and order is achieved by discriminating and taking note of everything, placing everything of which the mind is aware in a secure, refindable place, therefore giving things some role to play in the economy of objects and identities that make up an environment.*”³²³ This “*secure, refindable place*” obeys the pre-existing dominating frameworks put in place through centuries by the “white man”. It is through him, his understanding, interests and limits

³¹⁷ Camille Lafrance, “Présidentielle en Tunisie : le show de Youssef Chahed pour lancer sa campagne,” *Jeune Afrique*, 2019, <https://www.jeuneafrique.com/823572/politique/tunisie-pour-lancer-sa-campagne-youssef-chahed-presente-son-programme-et-defend-son-bilan/>.

³¹⁸ Said, *Orientalism*.

³¹⁹ Fanon, *Black Skin, White Masks* by Frantz Fanon.

³²⁰ Said, *Orientalism*, p.7.

³²¹ Said, p.36.

³²² Ibid, p.40.

³²³ Ibid, p.53.

the world makes sense, and it is thus through him the experience of dominees, including amongst each other, remains shaped.

North-Africa is far from being the most dramatic representation of the hierarchy of “races” implemented by white settlers. Scholars have linked the colonial enterprise, and its “divide to conquer” motto, to many modern civil wars, genocides and other humanitarian disasters amongst former colonized countries.³²⁴ Perhaps, the Tutsi genocide and the South-African apartheid are amongst the most dramatic modern examples. The Belgian colonial administration in Rwanda was known to have set a hierarchy between Hutu, Tutsi and Twa, the socio-economic and political status of each population depending on the shades of their skin color, their height and the size of their skulls. Starting from 1933, this social stratification was encoded in Rwandan identity cards.³²⁵

Said argues modern European imperialism rationalized racism by replacing its narrative with “neutral” terms as security or criminality.³²⁶ It is based on a fundamental assumption that survives until today: the superiority of the white race, and hence the hierarchical superiority of races which are closer to “whiteness”. Hanna Arendt herself explained European imperialism played a significant role in the rise to power of Nazi totalitarianism, as well as the post-colonial conflicts that have erupted in former colonies.³²⁷ In this sense, Peter Ekeh³²⁸ warns against the confusion between colonization and colonialism: the former is a historical event, limited by nature in time, the latter is a process, a social movement perpetuated through the persistence of the social forms stemming from its original sequences.³²⁹

In Tunisia, mixed race marriages remain overly complicated, and utterly disapproved by white Tunisian families, as they are unconsciously seen as impurifying the family lineage per instance.³³⁰ In the 2019 FTDES study, 57% of the migrants interviewed with one or more children born in Tunisia estimate they did not manage to earn the Tunisian citizenship due to racial discrimination.³³¹ 40% of them consider they were badly received by the Tunisian society and remain at the margin of it.³³² Additionally, a fourth of participants declared feeling constantly threatened and insecure

³²⁴ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (December 1, 2006): 387–409, <https://doi.org/10.1080/14623520601056240>.

³²⁵ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (December 1, 2006): 387–409, <https://doi.org/10.1080/14623520601056240>.

³²⁶ Said, *Orientalism*, p.297.

³²⁷ Hannah Arendt and the *Uses of History: Imperialism, Nation, Race, and Genocide*, 1st ed. (Berghahn Books, 2008), <https://www.jstor.org/stable/j.ctt9qcjrb>.

³²⁸ Peter Ekeh, “Colonialism and Social Structure. An Inaugural Lecture,” in *ResearchGate* (University of Ibadan, Nigeria: Ibadan University Press, 1983), https://www.researchgate.net/publication/271134410_Colonialism_and_Social_Structure_An_Inaugural_Lecture.

³²⁹ Sabelo J. Ndlovu-Gatsheni, *Epistemic Freedom in Africa: Deprovincialization and Decolonization*, 1st ed. (London: Routledge, 2018), <https://www.routledge.com/Epistemic-Freedom-in-Africa-Deprovincialization-and-Decolonization-1st/Ndlovu-Gatsheni/p/book/9781138588592>, p.64.

³³⁰ Dali, “De l’esclavage à la servitude. Le cas des Noirs de Tunisie.”

³³¹ Msakni, “From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.18.”

³³² *Ibid*, p.57.

in Tunisia, with 61% thinking Tunisians are racist.³³³ More than half of the interviewees were directly subjected to racist attacks from the local population.³³⁴ Violence is pervasive, and is exerted both from individuals and institutions, an evidence of the generalized nature of racial discrimination Sub-Saharan Africans are faced with in Tunisia, as well as their difficulty to guarantee their most basic rights.³³⁵ It should be noted that 92,8% of the respondents declared those acts of aggression occurred in public places.³³⁶ Around 10% of the victims pressed charges and none of them have received any follow-up to their complaints.³³⁷

In the conclusion of his *Black Skin, White Masks*³³⁸, Frantz Fanon operates a distinction between a black person who holds a privileged social status and a working class black person, in their “quest for disalienation”. The former is a quasi-intellectual process “(i)nsofar as he conceives of European culture as a means of stripping himself of his race, he becomes alienated”³³⁹. The latter is “a victim of a system based on the exploitation of a given race by another, on the contempt in which a given branch of humanity is held by a form of civilization that pretends to superiority.”³⁴⁰ Trading social class with race, similar dynamics are in display between black and white Africans in the Maghreb.

11. Findings and Conclusion

This study’s main objective was to link the precarious situation of Sub-Saharan African migrants in Tunisia to a larger context, both national, regional and international. Beyond the classic analyses equating European injunctions to the implementation of local policies in “weak” States, I argued authorities often operate a subtle adjustment of received dispositions as in to serve local interests. I explained the way Tunisia balances European pressures to contain Sub-Saharan migration in its territory and its own socio-economic considerations. Although authorities continuously attempt to prevent irregular migrants from reaching Europe, they maintain them outside the scope of legality as to never allow them to regularly work or reside in the country. This prolonged irregularity serves Tunisia’s significant informal work sector by providing cheap, skilled Sub-Saharan African labor. Hence, Tunisia guaranteed its interests converge with the main European requisites in respect to Sub-Saharan African migrants, in a use of its agency.

³³³ Ibid, p.58.

³³⁴ Msakni, p.59.

³³⁵ Ibid, p.60.

³³⁶ Msakni, p.61.

³³⁷ Ibid.

³³⁸ Fanon, *Black Skin, White Masks* by Frantz Fanon.

³³⁹ Ibid, p.224.

³⁴⁰ Ibid.

I then proceeded to address the problematic from a racial/sociological angle, drawing principally on the work of two post-colonial scholars, Edward Said and Mustapha El Miri. Giorgio Agamben's *Homo Sacer* served as a background theory to understand the politicisation process of certain categories of migrants' existence. I argued Sub-Saharan African migrants in Tunisia are specifically discriminated due to their race, drawing on North-Africa's slavery past as well as the reminiscences of European colonialism.

This dissertation contributes to replacing the question of "race", and consequently racism, at the heart of States' securitisation and criminalisation policies. It reminds the apparent "technicity" and "neutrality" of increasingly inhumane migratory policies are entrenched in the deeply-seated historical and sociological subordination of categories of human beings. This dissertation also questions the topicality of Tunisia, and by extension North Africa's slavery past and the persistence of its rationale until the present.

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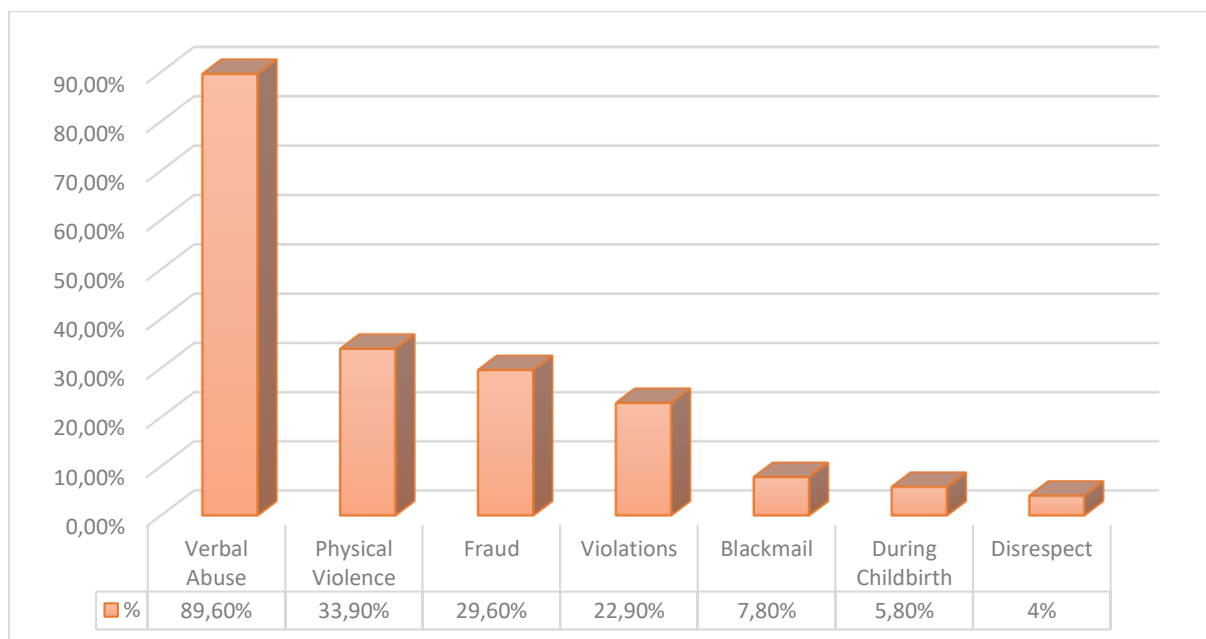
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Annex 1: Categories of racial violence experienced by the Sub-Saharan Migrants interviewed by FTDES³⁴¹



Annex 2: Individual Acts of Violent Racism³⁴²

Perpetrator	%
Ordinary Citizens	87,20
Taxi Drivers	56,80
Commercial Shop Owners	3

Annex 3: Institutional Acts of Violent Racism³⁴³

Perpetrator	%
Police Officers	9,6
Reception Centers	6,6
Private Institutions	5,5
Employers	5
Work Colleagues	4,6

³⁴¹ Msakni, "From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.59."

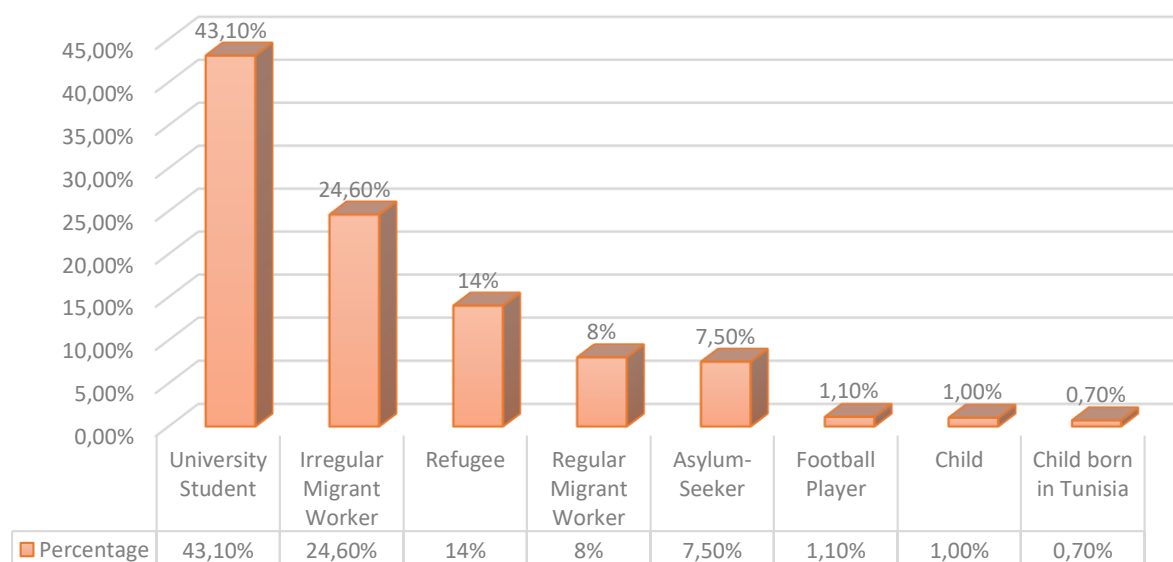
³⁴² Ibid, p.60.

³⁴³ Ibid.

Annex 4: Evolution of Sub-Saharan Africans legally residing in Tunisia within a decade³⁴⁴

Citizenship	Number of citizens residing in 2004	Number of citizens residing in 2014
Nigerian	129	522
Ivorian	609	607
Cameroonian	n/a	689
Malian	222	958
Senegalese	360	394
Other African Countries	1697	4354

Annex 5: Sub-Saharan Migrants Interviewed by FTDES Per Category³⁴⁵



³⁴⁴ Institut National de la Statistique, “Recensement Général de la Population et de l’Habitat 2014 Principaux indicateurs.”, p.34

³⁴⁵ Msakni, “From Sub-Saharan African States to Tunisia: A Quantitative Study on the Situation of Migrants in Tunisia: General Aspects, Pathways and Aspirations, p.16.”

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