



'THEY NEVER TELL ME WHY'

ARBITRARY RESTRICTIONS ON MOVEMENT IN TUNISIA

AMNESTY
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1. EXECUTIVE SUMMARY

Since the uprising that ousted the government of Zine El Abidine Ben Ali in 2011, Tunisian authorities have repeatedly expressed their commitment to upholding the rule of law and international human rights standards, and international media outlets have dubbed Tunisia the biggest or only success story of the “Arab Spring”. However, the security threats that the country has faced since 2011 and the authorities’ response to these have undermined attempts to break with the patterns of violations that were common pre-2011.

In the context of a “national plan to combat terrorism”, the authorities have imposed executive border control orders that have restricted the right to freedom of movement of thousands of individuals since 2013. In many cases, these have amounted to de facto travel bans. Amnesty International’s research concludes that the authorities have imposed these measures in a discriminatory manner based on appearance, religious practices or previous criminal convictions and without providing a justification or obtaining a court order. The measures have negatively affected individuals’ livelihoods or have involved their arbitrary arrest and short-term detention.

Since 2011, armed groups affiliated with al-Qa’ida, Ansar al-Shari’a and the armed group calling itself the Islamic State (IS) have claimed responsibility for a series of fatal attacks in Tunisia. The attacks have killed dozens, including members of the public, tourists and members of the security forces. The Tunisian authorities initially declared a state of emergency in 2011 and repeatedly renewed it until 2014, when it was allowed to expire. They reimposed it in 2015 and have regularly renewed it since through presidential decrees. Its provisions authorize the Ministry of Interior to restrict certain rights, including the rights to freedom of expression, association and movement.

Amnesty International condemns unreservedly all attacks by armed groups that target civilians and recognizes the duty of the Tunisian authorities to protect their own population from such actions and to prevent them happening abroad. However, the implementation of the state of emergency and other security measures have undermined human rights and the rule of law. The implementation of these measures has often been arbitrary, discriminatory and disproportionate, and has led to a range of human rights violations, including arbitrary restrictions on freedom of movement, torture, arbitrary arrests, and searches of homes without warrants.

A particular security concern of the authorities relates to the several thousand people from Tunisia who have left the country to join IS, particularly in Syria. Between 6,000 and 7,000 Tunisians were estimated to have joined the group as of December 2015. In 2013, in an effort to contain the flux, the Tunisian Ministry of Interior put into effect a set of measures to monitor the movements of individuals it suspected of affiliation with “jihadi groups” and believed might attempt to join armed groups in Libya, Iraq or Syria and control them at the country’s borders. Known as S17, from the French word “*signalisation*” (signalling) and the number of the directive, the measures were instituted as part of a “national plan to combat terrorism”.

The full extent to which the authorities have applied S17 measures has not been made public. The only information provided by the government in this regard is that, as of January 2018, the Ministry of Interior had prevented 29,450 people from travelling to conflict areas on the basis of S17 measures since 2013.

Amnesty International conducted research into the application of S17 measures between April 2017 and August 2018. It documented 60 cases of individuals who have faced restrictions of their right to freedom of movement within the country or have been banned from travelling abroad on the basis of S17 measures. Amnesty International researchers conducted interviews in person in Tunis and by phone with 26 individuals subjected to border control measures. The organization received information from lawyers and Tunisian non-governmental organizations regarding the remaining 34 cases. It also interviewed executive and judicial officials, reviewed relevant national legislation and studied official documents regarding some of the cases.

Under provisions of Tunisia's Access to Information Law, Amnesty International submitted an access to information request to the Ministry of Interior to seek clarification on the S17 measures. It also communicated its findings and recommendations to the Tunisian Ministry of Interior in a memorandum on 3 October 2018. It had not received a response to either communication as of 24 October 2018.

Amnesty International's research concludes that the application of S17 measures has resulted in arbitrary restrictions on the right to freedom of movement of people within the borders of the country as well as on travel abroad. The issuance of S17 border control measures is based on executive orders issued by the Ministry of Interior without any form of judicial oversight. The authorities have also applied restrictions on movement in a discriminatory and disproportionate manner. In some cases, the authorities appear to have targeted individuals subjected to S17 measures on the basis of their perceived religious beliefs or practices, physical appearance, such as having a beard and wearing religious clothing, or previous convictions without providing any evidence linking them to armed group activity.

Such measures have had a significant impact on the human rights of those targeted, including the right to a family life and employment, the right to a private life and the right not to be subjected to arbitrary arrest and detention.

Ministry of Interior officials have repeatedly stated that S17 measures apply only at Tunisia's border crossing points, such as airports. However, Amnesty International's research shows that police and National Guard officers sometimes use S17 measures within Tunisia's borders to restrict individuals' movement between cities in a manner that often amounts to an arbitrary restriction on freedom of movement. In 37 cases documented for this report, individuals discovered they were subjected to S17 measures during routine police or National Guard identity checks while travelling within Tunisia, sometimes within their cities or neighbourhoods.

The S17 border control measures are not explicit travel bans, but sometimes amount to de facto ones. Amnesty International has documented in depth 23 cases of persons who were arbitrarily banned from travelling abroad on the basis of S17 orders.

Najem, a truck driver from a small town near Tunisia's border with Algeria, told Amnesty International that he was the sole breadwinner for his family and had made a living transporting goods for small businesses across the border for 20 years before he discovered that he had been subjected to the S17 measure. On 2 October 2016, border police officers told him he was no longer allowed to travel, but provided him with neither any document nor any indication that a court order had been issued banning him from travelling.

"I don't understand why they would prevent me from working. I have been crossing the Tunisian-Algerian border back and forth for a very long time. It's my only source of income. Algeria is closer to me than Tunis. Now I am living off relatives and don't know what I should do."

The criteria for issuing an S17 order are not made public and the person affected is provided with neither a notification of the decision nor a justification for it. Constitutional guarantees, along with international standards, require that the individuals facing restrictions on their rights, notably their right to freedom of movement and their right to leave their own country, must be able to access and challenge any evidence against them.

Tunisia's responsibility to prevent its nationals from travelling to join the ranks of armed groups abroad must not result in arbitrary restrictions that deprive individuals of their right to freedom of movement. Border control measures that are not based on clear and specific legal provisions and that cannot be

effectively challenged constitute unlawful restrictions, and thus violations of the right to freedom of movement.

Amnesty International recommends that, in order to ensure that the human right to freedom of movement is respected and protected, the Tunisian authorities should ensure that all emergency measures taken are prescribed by law and comply with the principles of necessity and proportionality; publish in full and make easily accessible to the public all administrative measures directly impacting individuals' human rights, including S17 border control measures; and reform border control measures in order to ensure clear and effective oversight by the judiciary.

2. METHODOLOGY

This report is based on research Amnesty International conducted between April 2017 and August 2018. The research focused on the Ministry of Interior's restrictions of the right to freedom of movement in the name of security measures imposed within the framework of a national strategy to combat terrorism since 2013. The report highlights the effects executive border control orders have had on the lives of those subjected to them and on their human rights.

Amnesty International compiled information on 60 cases of individuals who have faced arbitrary restrictions on their human right to freedom of movement within the country or who have been banned from travelling abroad through border control measures established by an order from the Ministry of Interior in 2013 and known as S17. Twenty-three of the 60 cases involved travel bans, while the remaining 37 involved restrictions on movement within the country. Amnesty International documented seven of the 60 cases in 2016 and the remaining 53 cases in 2017-2018.

Amnesty International researchers conducted interviews in person in Tunis and by phone with 26 individuals subjected to border control measures. Those interviewed were residents of Tunis, Mahdia, Nabeul, Ben Guerdane, Hidra, Medinine, Sousse and Bizerte. The persons interviewed were all men. Amnesty International is aware of three women subjected to restrictions under the S17 order, but none of them was willing to speak with Amnesty International for fear of reprisal. The organization received information from lawyers and Tunisian non-governmental organizations regarding the remaining 34 cases.

Amnesty International researchers interviewed a border control officer and a director at the General Inspectorate for National Security regarding the scope of application of the S17 measures, including the process followed by the authorities to issue an S17 order and the means available to those affected to appeal against the decision and seek a remedy when an order had been arbitrarily imposed. Both preferred to remain anonymous. The researchers also gathered information on the Ministry of Interior's response to the Administrative Court's queries about S17 cases and the difficulties faced by those seeking to challenge the measures imposed on them by appealing to the Administrative Court, as well as the broader issue of patterns of restrictions on people's freedom of movement in Tunisia, through interviews with four lawyers, one administrative court judge and representatives of the Tunisian Observatory of Rights and Freedoms and the Tunisian League for the Defence of Human Rights, both based in Tunis.

All interviews were conducted in Arabic with no interpretation. Some interviewees chose to be identified by their real names, while others were assigned pseudonyms to protect their identities. Identifying details such as dates, names of places and occupations have in some cases also been withheld at the request of interviewees. The amount of information revealed on the victims interviewed varies according to their security concerns.

Amnesty International reviewed official documents pertaining to 14 of the 60 cases described, including written complaints against border control measures submitted to the Ministry of Interior and the Administrative Court, decisions issued by the Administrative Court and written responses to the Court submitted by the Ministry of Interior. In cases relating to travel bans, the organization had access to supporting documents such as boarding passes, hotel reservations, visas and visa invitation letters.

Amnesty International also reviewed national legislation pertaining to the right to freedom of movement as well as legislation pertaining to the state of emergency in light of international human rights law and standards, to assess the lawfulness of the measures adopted by the Ministry of Interior.

Under provisions of Tunisia's Access to Information Law, Amnesty International submitted an access to information request to the Ministry of Interior to seek clarification on the S17 measure. The request concerned the legal grounds of the border control measures and the number of people affected by it to date. The Ministry received the request on 11 December 2017 but had not responded as of 1 October 2018.

Amnesty International communicated its findings and recommendations to the Tunisian Ministry of Interior in a memorandum on 3 October 2018. It had not received a response as of 24 October 2018.

Amnesty International is grateful to the human rights defenders and lawyers who provided information for this report. It also wishes to express its deep gratitude to all victims who agreed to share their experiences.

3. BACKGROUND

Since the uprising that ousted the government of former president Zine El Abidine Ben Ali in January 2011, Tunisia has made significant progress in opening up political and civil space, including by adopting a constitution which guarantees key human rights and by introducing positive legislative reforms. International media outlets have since praised Tunisia for being the only country in the Middle East and North Africa to have successfully transitioned to a democracy.¹ However, the security threats that the country has faced since 2011 and the authorities' response to these have undermined progress in ensuring respect for and protection of human rights. Social protests and strikes have been frequent since 2011, at times occurring at a nationwide level. People have taken to the streets to express their dissatisfaction with social and economic policies, high unemployment rates and lack of development projects in marginalized interior regions.² The Tunisian Constitution adopted in 2014 is widely considered to have provided the foundation for a process of legislative and institutional reform to strengthen the rule of law and respect for human rights, but efforts to bring existing laws into line with it, to hold officials accountable for human rights violations committed during former Tunisian President Zine El Abidine Ben Ali's 24-year rule and during the transitional period and to provide truth and reparation to victims have had limited success so far.³

The creation in 2013 of a Truth and Dignity Commission (IVD)⁴ to address human rights violations committed between July 1955 and December 2013 was a significant milestone. The IVD held 11 public hearing sessions during 2017. During these sessions, victims and perpetrators testified on a range of violations including election fraud, enforced disappearance and torture.⁵ However, government institutions, including the ministries of interior and defence, have often failed to provide the IVD with key information it requested for its investigations such as secret police records and military trial files.

In May 2018, the Tunisian government and the IVD reached an agreement under which the IVD will continue its work beyond its initial mandate, thereby ending concerns generated by a vote in parliament and communications by the prime minister that its work might end in May.⁶ Between March 2018 and August 2018, the IVD referred at least 258 cases of grave human rights violations to trial before criminal chambers specialized in transitional justice.⁷ These included cases of enforced disappearance, death under torture, unnecessary or excessive use of force against peaceful protesters in general and killings of peaceful protesters during the 2010-2011 uprising in particular. Consequently, trials addressing past violations have started in different courts in Tunisia. According to Tunisia's law on transitional justice,

¹ See, for example, *The Washington Post*, "Tunisia is one of the Arab world's biggest success stories. The Trump administration doesn't seem to care.", 15 March 2018, www.washingtonpost.com/news/democracy-post/wp/2018/03/15/tunisia-is-one-of-the-arab-worlds-biggest-success-stories-the-trump-administration-doesnt-seem-to-care/; and *Foreign Policy*, "The Arab World's Star Student: What Tunisia can teach its neighbors about the value of education", 9 April 2018, www.foreignpolicy.com/2018/04/09/the-arab-worlds-star-student-middle-east-education-tunisia/

² Al Jazeera, "Tunisia austerity protests go on amid wave of arrests", 26 January 2018, www.aljazeera.com/news/2018/01/tunisia-austerity-protests-wave-arrests-180126140735239

³ Human Rights Watch, *Tunisia: Four Years On, Injustice Prevails, Flaws in Military Trials for Uprising Killings*, 12 January 2015, www.hrw.org/news/2015/01/12/tunisia-four-years-injustice-prevails

⁴ This report follows Tunisian convention in referring to the truth commission by the initials of its name in French, Instance Vérité et Dignité.

⁵ IVD, public hearing sessions, 2017, www.ivd.tn/auditions/auditions-publiques/ (in Arabic).

⁶ Amnesty International, *Tunisia: Amnesty welcomes government's commitment to enable Truth Commission's mandate until the end of its work* (Press release, 25 May 2018), www.amnesty.org/en/latest/news/2018/05/tunisia-governments-commitment-truth-commissions/

⁷ IVD, *The referral of 255 cases to the specialized criminal chambers*, 20 July 2018, www.goo.gl/FpMB19 (in Arabic); IVD, *IVD refers first case to the specialized criminal chambers of Monastir Court of First Instance*, 2 August 2018, www.goo.gl/bPiMNf (in Arabic); and IVD, *IVD refers two cases to the Specialized Criminal Chambers in Tunis*, 2 August 2018, www.goo.gl/47XHSB (in Arabic).

issued in 2013, the IVD is also to set up a programme of individual and collective reparations and issue a comprehensive report including recommendations on preventing similar violations and crimes from happening again, by such measures as reforming state institutions and vetting officials for past violations.⁸

Tunisia's parliament, formed following the 2014 elections, has succeeded in passing landmark legislation such as a law on violence against women in 2017⁹ and revising the Code of Criminal Procedure in 2016 to strengthen guarantees of the rights of detainees at the time of arrest and during pre-charge detention.¹⁰ However, it has also passed legislation that has cast doubt over Tunisian legislators' commitment to uphold international human rights standards and human rights guarantees enshrined in the 2014 Constitution. National and international human rights NGOs, including Amnesty International, raised concern that the Law on the Fight against Terrorism and the Prohibition of Money Laundering passed in July 2015 endangers human rights and lacks the necessary safeguards against abuse.¹¹

After an arduous process, parliament in 2016 elected members of the National Preventive Mechanism established after Tunisia's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment five years earlier. Lack of funding and political will have since hampered the body's ability to fulfil its mandate to monitor all places of detention, however.¹²

Tunisia's precarious security situation has also hampered progress in upholding human rights. Since 2011, armed groups affiliated with al-Qa'ida, Ansar al-Shari'a and the armed group calling itself the Islamic State (IS) have claimed responsibility for a series of fatal attacks in Tunisia.¹³ On 12 September 2012, protesters who identified themselves as Salafists attacked the US embassy in Tunis after the trailer of a US film called *The Innocence of Muslims* and perceived as mocking the Prophet Muhammad was posted online. Protesters burned US flags, threw rocks at the embassy and pillaged a US school in Tunis. In late 2012, clashes began to regularly occur between armed men and security forces in the Mount Chaambi area near the Algerian border. Two assassinations of prominent opposition leaders in February and July 2013, shook the country and led to an acute political crisis that resulted in the resignation of the government later in the year.

In 2015, IS claimed at least three deadly attacks in Tunisia. In March, three gunmen killed 21 people, most of them tourists, in a rampage at the Bardo National Museum in Tunis.¹⁴ In June, a man killed 38 people, including 30 British tourists, at a beach in the resort city of Sousse. In November 2015, 12 presidential guards were killed in a November 2015 bomb attack on their bus in central Tunis.¹⁵

Security forces have exchanged fire with armed groups near Tunisia's borders with Libya and Algeria. On 7 March 2016, for example, an armed group affiliated with IS attacked the town of Ben Guerdane, near the Libyan border, resulting in a deadly battle with Tunisian soldiers.¹⁶ On 1 November 2017, a man stabbed two police officers outside the parliament building in Tunis, killing one of them.¹⁷ The last major

⁸ Article 67 of Law No. 53 of 2013 on Establishing and Organizing Transitional Justice, www.ohchr.org/Documents/Countries/TN/TransitionalJusticeTunisia.pdf

⁹ UN Women, *Tunisia passes historic law to end violence against women and girls*, 10 August 2017, www.unwomen.org/en/news/stories/2017/8/news-tunisia-law-on-ending-violence-against-women

¹⁰ The Code of Criminal Procedure was revised by Law No. 5 of 2016. For more details on the legislative reform, see The Legal Agenda, *Criminal Justice in Tunisia: A Revolutionary Reform?*, 26 August 2016, www.legal-agenda.com/en/article.php?id=3163

¹¹ Law No. 26 of 2015. See Amnesty International, *Tunisia: Counterterrorism law endangers rights, legislate safeguards against abuse* (Index: MDE 30/2195/2015); and *Huffpost Maghreb*, "Tunisie: Un collectif d'ONG appelle les autorités à revoir la loi antiterroriste de 2015", 2 February 2017, www.goo.gl/mo5HCZ (in French).

¹² Law No. 43 of 2013 on the National Body to Prevent Torture.

¹³ Inkyfada, "Terrorism in Tunisia: an interactive map of events after 14 January", 14 June 2014, www.inkyfada.com/maps/carte-du-terrorisme-en-tunisie-depuis-la-revolution/

¹⁴ News 24, "ISIS Claims Deadly Attack on Tunis Museum", 20 March 2015, www.news24.com/Africa/News/ISIS-claims-deadly-attack-on-Tunis-museum-20150320

¹⁵ *The Independent*, "Tunisia Bus Explosion: State of emergency Declared After Bomb Kills 12 on Tunis bus in 'act of terror'", 24 November 2015, www.independent.co.uk/news/world/africa/tunisia-bombing-bus-explodes-near-rcd-party-headquarters-a6747166.html

¹⁶ Al Jazeera, "Tunisia: Deadly clashes erupt in Ben Gardane near Libya", 7 March 2016, www.aljazeera.com/news/2016/03/tunisia-ben-gardane-clashes-160307070914234.html

¹⁷ Reuters, "Suspected Islamist arrested after knife attack near Tunis parliament", 1 November 2017, www.reuters.com/article/us-tunis-security/suspected-islamist-arrested-after-knife-attack-near-tunis-parliament-idUSKBN1D143Y

deadly attack took place on 8 July 2018 when a police unit from Ghar Dimaou in the region of Jendouba close to the Algerian border was ambushed during a regular patrol killing nine officers.¹⁸

The Tunisian authorities initially declared a state of emergency, invoking a decree from 1978,¹⁹ on 15 January 2011 and repeatedly renewed it until March 2014, when it was allowed to expire. Tunisian President Beji Caid Essebsi reimposed the state of emergency on 4 July 2015 following the mass shooting at Sousse. The state of emergency was lifted in October of that year, but was reinstated on 24 November 2015, immediately after the attack on the Presidential Guard in Tunis.²⁰ It has been regularly renewed since. Its provisions authorize the Ministry of Interior to restrict certain rights, including the rights to freedom of expression, association and movement.

Amnesty International condemns unreservedly all attacks by armed groups that target civilians and recognizes the duty of the Tunisian authorities to protect their own population from such actions and to prevent them happening abroad. However, the implementation of the state of emergency and other security measures have undermined human rights and the rule of law. The implementation of these measures has often been arbitrary, discriminatory and disproportionate, and has led to a range of human rights violations, including arbitrary restrictions on freedom of movement, torture, arbitrary arrests, and searches of homes without warrants.²¹

¹⁸ *The Independent*, "Tunisia attack: Nine police officers killed in gun and grenade assault", 8 July 2018,

www.independent.co.uk/news/world/africa/tunisia-jendouba-attack-nine-police-killed-gun-grenade-a8437451.html

¹⁹ Decree No. 78-50 of 26 January 1978 regulating the state of emergency, www.legislation-securite.tn/fr/node/41237 (in French).

²⁰ TV5 Monde, "Tunis: Attentat en plein centre-ville, état d'urgence", 24 November 2015, www.information.tv5monde.com/info/tunisie-explosion-d-un-bus-en-centre-ville-69715 (in French).

²¹ See, for example, Amnesty International, *Tunisia: Sweeping crackdown signals abuse of emergency measures* (Press release, 2 December 2015), www.amnesty.org/en/latest/news/2015/12/tunisia-sweeping-crackdown-signals-abuse-of-emergency-measures/; Amnesty International, *Tunisia: Severe restrictions on liberty and movement latest symptoms of repressive emergency law* (Press release, 17 March 2016), www.amnesty.org/en/latest/news/2016/03/tunisia-severe-restrictions-on-liberty-and-movement-latest-symptoms-of-repressive-emergency-law/; and Amnesty International, 'We want an end to the fear': *Abuses under Tunisia's state of emergency* (Index: MDE 30/4911/2017).

4. S17: TRAVEL RESTRICTIONS ON OBSCURE GROUNDS

“It is just absurd. I have no idea why I find myself in this situation. Nobody seems to have an explanation as to why I have been put under this measure. Sometimes I get the impression that the officers themselves do not understand why they are stopping me.”

Najmeddine, a person subjected to S17 restrictions since 2016.

Research suggests that more people per capita went to join IS from Tunisia than from any other country.²² Between 6,000 and 7,000 Tunisians were estimated to have joined it as of December 2015.²³ In an effort to contain the flux of Tunisians travelling abroad to join IS and other armed groups, the Tunisian Ministry of Interior gradually introduced tighter restrictions on freedom of movement. In 2013 it put into effect a set of measures to monitor the movements of individuals it suspected of affiliation with “jihadi groups” and believed might attempt to join armed groups in Libya, Iraq or Syria and control them at the country’s borders. Known as S17, from the French word “*signalisation*” (signalling) and the number of the directive, the measures were instituted as part of a “national plan to combat terrorism”.²⁴

The full extent to which S17 measures have been applied has not been made public by the Ministry of Interior. In January 2018, then Minister of Interior Lotfi Brahem announced to a parliamentary session that 29,450 people had been prevented from travelling to conflict areas on the basis of S17 measures since 2013.²⁵ This is the only available official figure that gives an indication on the scope of use of the border control measure.

²² International Centre for Counter-Terrorism – The Hague, *Foreign (Terrorist) Fighter Estimates: Conceptual and Data Issues*, 22 October 2015, www.icct.nl/publication/foreign-terrorist-fighter-estimates-conceptual-and-data-issues/

²³ Efraim Benmelech, Esteban F. Klor, “What Explains the Flow of Foreign Fighters to ISIS?”, NBER Working Paper No. 22190, April 2016, www.nber.org/papers/w22190

²⁴ In a response to a communication from the Administrative Court regarding a complaint from an individual petitioning to have the S17 measure imposed on him lifted, the Ministry stated: “This measure is part of the national preventive plan that was put in place by the government to combat terrorism.” Quoted in Administrative Court decision dated 13 September 2017, case no. 4101430.

²⁵ Express FM, “Lotfi Brahem fait le bilan du ministère lors d’une séance d’audition à l’ARP”, 29 January 2018, www.radioexpressfm.com/lire/lotfi-brahem-fait-le-bilan-du-ministere-lors-d-une-seance-d-audition-a-l-arp-3466 (in French).

Border control measures are put in place by the Interior Ministry's Border and Foreigners' Agency through the issuing of internal executive orders. Because these orders are not published, their legal basis and scope, and consequently the avenues for appealing them or seeking redress when they are imposed arbitrarily, are unclear. In a response to a communication from the Administrative Court regarding a complaint from an individual petitioning to have an S17 measure imposed on him lifted, the Ministry stated that the border control measure resulting in a travel ban that was imposed on the plaintiff was not in the form of a "material written decision" but an "implicit ban" and therefore there was no written decision to provide to the Court.²⁶ Amnesty International submitted an access to information request to the Ministry of Interior to seek clarification on the S17 measures. The request concerned the legal grounds of the border control measures and the number of people affected by it to date. The Ministry received the request on 11 December 2017, but had not responded by the time of the report's publication.

In testimony given to parliament's Rights and Liberties' Committee on 20 April 2017, Hedi Majdoub, the then Interior Minister, said that individuals were subjected to S17 travel restrictions only if there was "serious information" leading to "suspicion of their involvement with armed groups", that the state's priority was to prevent Tunisians from joining armed groups abroad and that the measures respect the principles of necessity and proportionality.²⁷ According to the Minister's statement, border officials checking the identity of persons subjected to a S17 measure must exceptionally obtain authorization from the division of the Interior Ministry that issued the S17 notification before allowing the person to travel.²⁸ In his testimony, the then Minister acknowledged that "in a democratic rule of law and an environment of freedoms, this measure might appear arbitrary", but said that "sometimes we need to prioritize. The Ministry of Interior received much criticism for the number of Tunisians that travelled to conflict zones. How are we supposed to prevent them from doing so within the existing legal framework?"²⁹

The human right to freedom of movement is a key right, enshrined in Article 13 of the Universal Declaration of Human Rights. Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which binds Tunisia as a state party, stipulates:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

"2. Everyone shall be free to leave any country, including his own.

"3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

"4. No one shall be arbitrarily deprived of the right to enter his own country."

The Human Rights Committee, the UN expert body charged with overseeing the implementation of the ICCPR, has held that any exceptional restrictions on the right to freedom of movement must meet the tests of necessity and proportionality, must not "impair the essence of the right"³⁰ and must be based on "clear legal grounds".³¹ The Committee has explicitly stated that conditions under which rights may be limited must be specified by law and that such determinations must not be left "to [the] unfettered discretion of those charged with the execution".³² The Committee has furthermore held that the reasons for the application of restrictive measures must be provided.³³

S17 border control measures are not explicit travel bans, in that persons subjected to them are not necessarily barred from travel. In practice, however, an S17 order has sometimes amounted to a de facto travel ban. Amnesty International has documented in depth the cases of 23 persons – 22 men and one

²⁶ Communication on 12 August 2016, case no. 148694.

²⁷ Statement made by then Minister of Interior Hedi Majdoub to parliament on 20 April 2017 (hereinafter: Statement by Hedi Majdoub to parliament on 20 April 2017). See Al Bawsala's account of the hearing at www.majles.marsad.tn/2014/chroniques/58f9d39ccf4412226ec752ba

²⁸ Statement by Hedi Majdoub to parliament on 20 April 2017.

²⁹ Statement by Hedi Majdoub to parliament on 20 April 2017.

³⁰ Human Rights Committee, General Comment 27, The right to Freedom of Movement (article 12 of the International Covenant on Civil and Political Rights), 1999, UN Doc. CCPR/C/21/Rev.1/Add.9 (1999), www.refworld.org/docid/45139c394.html (hereinafter: *HRC, General Comment 27*), para. 13.

³¹ *HRC, General Comment 27*, para. 16.

³² *HRC, General Comment 27*, paras 12-13.

³³ *HRC, General Comment 27*, para. 15.

woman – who have been arbitrarily banned from travelling abroad on the basis of S17 orders. Aged between 29 and 59, the individuals are from diverse social and economic backgrounds, including university graduates, small-business owners, an engineer and a state employee. None had received notice they were subjected to a S17 measure before they attempted to travel, and none were given any written documentation indicating why they had been prevented from travelling. The Passport Law of 1975, as amended on 23 May 2017,³⁴ is Tunisia's only law that sets out the criteria and procedures for travel bans. According to the Law, people banned from travel must be promptly informed of the decision and its grounds and their right to challenge the decision must be guaranteed. The Law also limits travel bans to a maximum of 14 months in all circumstances, after which they must be lifted. By contrast, S17 is an executive order issued by the Ministry of Interior, which defines it as a “preventive and precautionary security measure inherently pertaining to the state of emergency and the war on terror”.³⁵ S17 orders are not subjected to any judicial oversight as the Ministry of Interior does not seek a court order or a prosecutor's approval before imposing them. It is not clear whether such orders expire in 14 months, as specified by the Passport Law, or only with the expiration of the state of emergency, whether or how they must be renewed, or how restrictions can be removed.

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism raised concerns on the restrictions of the right to leave one's country following his mission to Tunisia from 30 January to 3 February 2017. In his subsequent mission report, he stated:

“These restrictions [of the right to leave the country] appear to have no basis in the 2015 Law [Law on the Fight against Terrorism and the Prohibition of Money Laundering]. Suspects have been systematically banned from leaving the country. No judicial order sanctions or oversees the travel ban and those subjected to it did not receive any written order or explanation... The restriction of movement similarly stems from a secret administrative order by the Ministry of Interior, and referred to as “S17 order”... The Special Rapporteur reminds the Government of its obligation to ensure freedom of movement and the right to travel abroad under article 12 ICCPR. Even if this right is restricted by the executive or law-enforcement decision it must be legal, reasoned, justified and subject of judicial oversight and appeal.”³⁶

In none of the cases that Amnesty International has documented have the authorities compensated individuals prevented from travelling on the basis of S17 orders for their unused airline tickets or any other costs they had incurred in preparation for their travel.

³⁴ Amnesty International, *Tunisia: Changes to passport law will ease arbitrary restrictions on travel* (Press release, 26 May 2017), www.amnesty.org/en/latest/news/2017/05/tunisia-changes-to-passport-law-will-ease-arbitrary-restrictions-on-travel/

³⁵ See point 4 on page 45 of the Ministry of Interior's response to Amnesty International, 16 December 2016, in Annex 1 of Amnesty International, *'We want an end to the fear': Abuses under Tunisia's state of emergency* (Index: MDE 30/4911/2017).

³⁶ Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Tunisia*, UN Doc. A/HRC/37/52/Add.1, February 2018, paras 45-46.

5. IMPACT ON LIVES AND LIVELIHOODS

“I don’t understand why they would prevent me from working. I have been crossing the Tunisian-Algerian border back and forth for a very long time. It’s my only source of income. Algeria is closer to me than Tunis. Now I am living off relatives and don’t know what I should do.”

Najem, a person subjected to S17, in an interview with Amnesty International, 20 December 2017.

Amnesty International has documented the cases of five people whose lives have been seriously affected by S17 orders imposed on them without justification. Three of the individuals depend on cross-border trade for their livelihoods; two of them can no longer earn a living because they have been prevented from leaving the country, while the third has been subjected to detention and repeated delays and questioning when travelling, interfering with his work. For a fourth individual, the S17 order imposed on him had had a dire effect on his job at an airport. For a fifth, it had arbitrarily restricted his right to a family life by preventing him from travelling abroad to see his family and care for his ill mother.

Najem,³⁷ a 59-year-old truck driver from Hidra, a small town near Tunisia’s border with Algeria, told Amnesty International that he was the sole breadwinner for his family and had made a living transporting goods for small businesses across the border for 20 years before he discovered that he had been subjected to the S17 measure. On 2 October 2016, border police officers asked Najem to wait at the Hidra crossing point as he attempted to leave Tunisia and, after roughly 90 minutes, told him he was no longer allowed to travel. The officers did not provide Najem with any written document and gave no indication that any court order had been issued banning him from travelling. Najem said he tried to travel to Algeria again in 2017, but was again prevented from leaving Tunisia. He told Amnesty International that, because officers provided no justification for the decision, he could only guess at what the reason for it was. He said that, in 2005, a court sentenced him to two years’ imprisonment on charges of smuggling for attempting to carry a person who lacked proper travel documents from Tunisia to Algeria. He served the sentence. He said the fact that he was subjected to a S17 measure had made his peers suspicious of him and unwilling to hire him for other work, as they assumed, given the stigma attached to the measure, that he might be a suspect in a terrorism case. He said:

³⁷ Full name has been withheld for security concerns.

“I don’t understand why they would prevent me from working. I have been crossing the Tunisian-Algerian border back and forth for a very long time. It’s my only source of income. Algeria is closer to me than Tunis. Now I am living off relatives and don’t know what I should do.”³⁸

Cherif,³⁹ a truck driver from Kasserine, also located near Tunisia’s border with Algeria, told Amnesty International that, while the S17 measure imposed on him had not prevented him from travel, it had interfered with his work. Cherif said that, every time he had crossed the border at Hidra since December 2016, officers had asked him to wait while they consulted with the main police station in the region before they let him cross and that on three occasions officers briefly detained him for questioning on the outskirts of Kasserine before allowing him to continue. He said officers asked him how often he went to the mosque, whether his wife wore a headscarf or *niqab*⁴⁰, and which religious TV shows he watched. Cherif told Amnesty International that the delays have ranged from 30 minutes to two hours, and have had repercussions on his work performance.⁴¹

In another case, Mohamed Guerfel, a 34-year-old resident of Ben Guerdane, a town near Tunisia’s border with Libya, formerly owned a small business that depended on selling goods he transported into the country from Libya. In 2014, he attempted to renew his passport at the local police station, but officers there told him he was subjected to S17 restrictions and could not do so. The officers gave him no reason for the restriction and no written record of the refusal of his passport application. Without a valid passport, Mohamed Guerfel has been unable to cross the Libyan border and has lost his only source of income, leaving him, his wife, and their three children completely dependent on financial support from his wife’s family.

Mohamed Guerfel told Amnesty International that he did not know why he had been subjected to the restriction – he has never been arrested or charged with any crime – and could only speculate that perhaps a competitor had given security forces a false tip. The S17 measure had also made it difficult for him to leave Ben Guerdane, he said. Since 2014, police or National Guard officers have stopped him for questioning every time he has left Ben Guerdane.⁴² He said the S17 order had deprived his eight-year-old autistic daughter of adequate health care. He told Amnesty International that he had to regularly take his daughter to a doctor in the nearby town of Zarzis for treatment because there were no doctors who specialize in autism in Ben Guerdane. He said that, every time police or National Guard officers had stopped him at a checkpoint since 2015, they had questioned him about his movements and his religious beliefs and practices. Ben Guerdane’s proximity to the Libyan border has led security forces to set up checkpoints around the entrances to and exits from the town, making Mohamed Guerfel’s trips to Zarzis so difficult he decided he could no longer go. He told Amnesty International that, on 9 February 2017, a police officer in Zarzis took his phone, asked him about the people in his photos and told him that he would be jailed if he ever returned to Zarzis. He explained:

“The last time I took my daughter to the doctor in Zarzis, a police officer came into the waiting room of the doctor’s office and asked me to follow him to the police station. I went with my daughter and was questioned there all morning. It was a horrifying experience for me to be there with my sick daughter, answering the usual questions about why and when I started praying and how my wife dressed. The officer would not understand that my daughter had a condition and aggressively and repeatedly asked me to keep her quiet. It is not enough that people in my town prefer to stay away from me because there is this terrorism suspicion hanging over my head, it is not enough that I cannot work any more because they wouldn’t let me renew my passport and all my work is in Libya... They also had to kill my daughter’s chances at getting better. This is destroying my life.”⁴³

“Karim”⁴⁴, a 28-year-old engineer, told Amnesty International that being subjected to S17 restrictions had had a dire effect on his work in the aeroplane maintenance department at an airport. He told Amnesty International he believed S17 measures were taken against him after two police officers who worked in the same airport as him falsely accused him of religious extremism in reprisal for an argument he had with them in January 2017. The next month, airport authorities informed him that he could no

³⁸ Telephone interview with Najem, 20 December 2017.

³⁹ Full name has been withheld for security concerns.

⁴⁰ A long, loose garment covering the face, hair and body, worn by some Muslim women.

⁴¹ Phone interview with Cherif, 5 December 2017.

⁴² Phone interview with Mohamed Guerfel, 13 February 2018.

⁴³ Phone interview with Mohamed Guerfel, 13 February 2018.

⁴⁴ Name has been changed for security reasons.

longer access the areas of the airport where he formerly worked because they were within the border zone and he had an S17 flag next to his name. He was asked to return his access badge.

“Now I can no longer do my job. Since I can’t access the area where I am supposed to work on the aeroplanes, I have been transferred to the administration, where I have nothing to do. I do not even have an assigned desk. It has devastated my professional career. I don’t know what I should do to prove that the S17 order against me is based on false intelligence... from police officers with a vendetta against me.”⁴⁵

In the case of “Lotfi”⁴⁶, a 35-year-old resident of Kasserine, an S17 measure prevents him from travelling to France to join his family and care for his ill mother. In February 2007, when “Lotfi” was a law student, a court sentenced him to one year suspended prison term after he was held in custody for nine months on charges of belonging to a banned political group. After the 2011 uprising, he received reparations in the context of the general amnesty for political prisoners sentenced during Ben Ali’s reign. In that year, he successfully applied for a passport and travelled to France to visit his family there. In November 2015, after the deadly attack targeting a bus carrying members of the Presidential Guard in Tunis,⁴⁷ police searched his home as part of sweeping raids across Kasserine and found a computer containing speeches from a religious leader they deemed suspect. Despite his claims that the computer was borrowed from a friend, counter-terrorism investigators summoned “Lotfi” for questioning in Tunis, releasing him without charge that same month. He told Amnesty International that he travelled to France without difficulty in December 2015, but that, when he attempted to travel again in May 2016, Tunisian border police at the airport detained him for two hours before informing him that he could not travel because of a border control measure. “Lotfi” described the incident to Amnesty International:

“They asked me to wait until they consulted with the Ministry of Interior. I did not understand what that meant and waited for two hours until I knew there was no way I could make my flight. They just sent me away without any explanation or opportunity to understand what this was based on. This is an injustice. There is no reason I can think of to ban me from travelling... My entire family is in France. I have always been able to go back and forth without a problem. I have a residency permit in France, and now my mother is ill and needs surgery. I need to be there with her, but I doubt they will let me travel if I try again.”⁴⁸

⁴⁵ Telephone interview with “Karim”, 23 January 2018.

⁴⁶ Name has been changed for security reasons.

⁴⁷ *Le Monde*, “Tunisie: Ce que l’on sait de l’attentat contre la sécurité présidentielle”, 25 November 2015, www.lemonde.fr/afrique/article/2015/11/25/tunisie-ce-que-l-on-sait-de-l-attentat-contre-la-securite-presidentielle_4816768_3212.html (in French)

⁴⁸ Interview with “Lotfi”, Tunis, 12 December 2017.

6. HARASSMENT DURING TRAVEL WITHIN TUNISIA

“They [police officers] would just ask me to wait every time, then let me go. It’s just absurd. I don’t know what I did. If I did do something wrong, I implore them to put me in prison instead of living with this anxiety all the time.”

“Mehdi”, a person subjected to S17 restrictions, in an interview with Amnesty International, 1 February 2018

Senior Ministry of Interior officials have repeatedly stated that S17 border control measures are intended to apply only at Tunisia’s borders and airports. Responding on 10 February 2018 to a lawmaker’s question in a plenary session of parliament, then Minister of Interior Lotfi Brahem, said: “I insist on clarifying to you that the borders measures are not applied outside of border areas.”⁴⁹ In an interview with Amnesty International on 23 January 2018, a senior Ministry of Interior official who preferred to remain anonymous said: “Officers outside of border areas and border checkpoints do not have the access to know if a person is under border measures or not. The code is not supposed to show on their systems.”⁵⁰

Nonetheless, Amnesty International’s research shows that Ministry of Interior officials have routinely used S17 orders to restrict individuals’ movement between cities within Tunisia’s borders in a manner that sometimes amounts to an arbitrary restriction on freedom of movement. Samir Ben Amor, a lawyer who told Amnesty International he was representing at least 20 plaintiffs subjected to S17 orders, said that there was no legal basis for using such border control measures inside the country:⁵¹

“The use of S17 orders inside the country is arbitrary, and there is no legal basis for it in the Passport Law or the Emergency Decree. We cannot identify any legislation that could provide for the use of such measures or regulate them procedurally.”⁵²

None of the 60 people whose cases Amnesty International documented for this report were notified that they had been subjected to S17 measures before they came into contact with security forces. Since the declaration of a state of emergency in November 2015, random identity checks by police or the National Guard in the street have become more frequent, and it is often in these routine checks that individuals discover they have been subjected to the restrictions. In 37 of the 60 cases documented by Amnesty

⁴⁹ Statement made by then Minister of Interior Lotfi Brahem to parliament on 10 February 2018, www.youtube.com/watch?v=O9RnzvlgZhA; see also statement by Hedi Majdoub to parliament on 20 April 2017.

⁵⁰ Interview with senior Ministry of Interior official, Tunis, 21 January 2018.

⁵¹ Interview with lawyer Samir Ben Amor, Tunis, 13 January 2018.

⁵² Interview with lawyer Samir Ben Amor, Tunis, 13 January 2018.

International, the individuals concerned only discovered they had been subjected to S17 measures during such checks by the police or National Guard while travelling within Tunisia.

Police officers often stop public buses and taxis at checkpoints on roads between cities and towns, particularly the roads to border towns, and ask passengers to present their personal identification documents. Men with long beards and women who wear *niqabs* often report being singled out from the outset. In cases where the code S17 appears when police run a check on someone's identity, police typically remove the individual from the vehicle and question them on the side of the road or at a nearby police station, sometimes for several hours. Contrary to the Ministry of Interior's assertions that these checks are based on serious security concerns and are applied only at Tunisia's borders, Amnesty International's research suggests that, in many cases, restrictions on freedom of movement are enforced in a discriminatory manner based on security officials' assumptions regarding individuals' religious beliefs and practices.

According to testimonies, police officers often create what is called an "information card" on individuals subjected to S17 measures following their detention for questioning. This means that the officers open a file on the person containing information about them such as their profession, marital status and place of residence, as well as their religious practices, reading habits and social activities. Twenty people Amnesty International interviewed about their experiences of being subjected to S17 restrictions said that security officials repeatedly questioned them about their religious practices and beliefs, how their spouses dressed and what they read. The routine use of such questions is invasive and discriminatory.

Najmeddine,⁵³ a 42-year-old fisherman and father of four who lives in a coastal city in Tunisia, has routinely been subjected to arbitrary movement restrictions under an S17 measure since 2016.⁵⁴ Najmeddine told Amnesty International that the Ministry of Interior's Anti-Terrorism Brigade summoned him to Tunis in June 2016 for questioning after a man he used to work with travelled to Syria, allegedly to join IS. Soon after, police began pulling Najmeddine aside for questioning every time they checked his identity at routine stops. The first time this happened, in August 2016, police patrolling his town stopped him for a routine identity check and brought him to the local police station for three hours of questioning before releasing him. An acquaintance who works at the police station later told him that this was because his name was flagged under the S17 directive. Najmeddine told Amnesty International that, every time a police patrol had stopped him since, they had taken him to the police station to question him for roughly 30 minutes about his movements before releasing him. He said that at no time had the officers questioning him ever disclosed the reasons for his treatment and that the Ministry of Interior had not responded to a complaint he sent on 23 August 2017. He explained to Amnesty International:

"I have never been arrested before, let alone convicted, and they never tell me why I was placed under this measure. At a certain point, they even stopped asking questions; they would just ask me to wait, then let me go. It's just absurd. I don't know what I did. If I did do something wrong, I implore them to put me in prison instead of living with this anxiety all the time."⁵⁵

"Mehdi"⁵⁶, a 29-year-old computer science teacher and journalist from a northern suburb of Tunis, told Amnesty International that being subjected to S17 restrictions had up-ended his life. In 2012, "Mehdi" wrote an article about a rally staged by the armed group Ansar al-Shari'a in Kairouan, roughly 160km south of Tunis. On 4 January 2015, the Anti-Terrorism Brigade arrested him from his home in the middle of the night and detained him for seven days on suspicion of affiliation with the group before releasing him without charge. "Mehdi" said that, in July 2016, police stopped him in central Tunis for a routine identity check, ran his name through a database, and told him that his name was flagged under the S17 directive. The police then escorted him to the nearest police station, where he was questioned for four and a half hours about his religious beliefs and practices. Twice that summer, police summoned him to his local police station. Both times, he complied and responded to similar questions about the mosque he attends, the books he reads, and who his friends and acquaintances are. In a separate incident, police came to his place of work and took him to the police station without an arrest warrant. There, "Mehdi" told Amnesty International that police asked the same questions again:

⁵³ Full name and other identifying details have been withheld for security reasons.

⁵⁴ Phone interview with Najmeddine, 11 December 2017.

⁵⁵ Phone interview with Najmeddine, 11 December 2017.

⁵⁶ Name has been changed and other identifying details, including place of residence, have been withheld for security reasons.

“They would ask me the same questions every time: ‘Do you pray?’ ‘Do you go to the mosque?’ ‘Do you listen to sheikhs on TV?’ Once they even took a DNA sample from me without explaining for what purpose.”⁵⁷

“Mehdi” said he believed the order had finally been lifted in 2017, because police stopped questioning him after routine identity checks or summoning him for further questioning. But in January 2018, a national guard officer questioned him by the side of the road following a routine identity check in the north-western Tunisian town of Ain Drahem. “Mehdi” said the officer asked him about the purpose of his visit to Ain Drahem, phoned the police in his neighbourhood and told him he was free to go, but that he might be detained for questioning again because of the S17 flag by his name and because he seemed to have “unresolved issues”.⁵⁸

“I had plans to apply for a master’s programme abroad, but now I have put it off. Because of the S17 measure I am not sure I will be allowed to travel. I hear so many stories about people being turned back at the airport because of S17. I can’t live normally and make plans like all people without taking it into consideration at every step. It’s a nightmare.”⁵⁹

In another case, “Samir”⁶⁰, an employee of the Finance Ministry from the south-eastern Tunisian town of Medenine, told Amnesty International that he had been detained for questioning at least seven times since 2014, though on no occasion did officers ever charge him with any offence or tell him that he was the subject of a formal investigation. “Samir” said officers typically asked about his religious practices, including why he had grown a beard and which school of Islam he followed. “Samir” said that, when he protested that the questions violated his privacy, the officers insisted he answer:

“They asked me since when I had started growing my beard and why. They asked me which religious books I read and which religious scholars I followed. They even asked me questions about my wife and my sisters who wear the *niqab*. Every time the same questions and the same answers.”⁶¹

Three people told Amnesty International that they were made to sign a written statement recording their answers, but that they were not permitted to read the statement before signing. In two cases, police asked people to sign statements promising they would not attend religious gatherings or lessons at mosques.

“Samir” told Amnesty International that he was asked to sign commitments several times for different purposes:

“I was once asked to sign a commitment to no longer attend religion lessons at the mosque. Another time they asked me to promise in a written statement not to ‘hang out with bearded men’, while I am a bearded man myself! I do not understand what all of this is for. I will not change my practices or my beliefs, if that is what they want to achieve through all of this harassment. I did not do anything wrong. It’s my personal freedom.”⁶²

⁵⁷ Interview with “Mehdi”, Tunis, 1 February 2018.

⁵⁸ Interview with “Mehdi”, Tunis, 1 February 2018.

⁵⁹ Interview with “Mehdi”, Tunis, 1 February 2018.

⁶⁰ Name has been changed for security reasons.

⁶¹ Phone interview with “Samir”, 18 December 2017.

⁶² Phone interview with “Samir”, 18 December 2017.

7. OBSTACLES TO CHALLENGING S17 ORDERS

“How would we know what the legal options are? We hardly know what this measure is and, when I tried to get a lawyer to help me, I could not afford his fee. All I could do is send communications to the Ministry of Interior, but they never replied.”

Najem, a person subjected to S17, in an interview with Amnesty International, 20 December 2017.

Individuals subjected arbitrarily to S17 measures face serious difficulties when seeking a remedy because they do not receive written notification of the measure or the justification for it and because such measures are based on an executive security order from the Ministry of Interior. Without knowing what evidence, if any, led to the S17 measure, those affected face an uphill struggle in challenging it.

Since S17 measures are administrative orders issued by the Ministry of Interior, administrative courts are the ones competent to review complaints against them.⁶³ Until February 2018 there was one Administrative Court in Tunisia. Since then regional administrative courts have been set up and become operational. To date, neither the Administrative Court in Tunisia nor any of the newer regional administrative courts has issued a final verdict in any appeal of an S17 measure, meaning there is no jurisprudence on the measure's legality.⁶⁴

Individuals appealing against administrative decisions may submit requests for an administrative court to suspend the implementation of such decisions until it issues a verdict on the case.⁶⁵ Such requests should be treated with urgency and decisions are taken by the head judge of the administrative court.⁶⁶ According to lawyers consulted by Amnesty International during its research, decisions on requests for

⁶³ According to Law No. 40 of 1972 relating to the Administrative Court, issued on 1 June 1972, the Administrative Court is the court competent to receive challenges to administrative orders by government institutions. See, www.legislation-securite.tn/fr/node/41245

⁶⁴ Interview with Anwar Mnasri, judge at the Administrative Court in Tunisia, on 10 February 2018.

⁶⁵ Article 39 of Law No. 40 of 1972.

⁶⁶ Article 39 of Law No. 40 of 1972.

temporary suspension of orders should be taken within a few months, but in practice have often taken more than a year in the case of requests involving S17 measures.⁶⁷

In three cases that Amnesty International has documented, the Tunis Administrative Court ordered the Ministry of Interior to suspend plaintiffs' S17 measures pending a final verdict on complaints they had made against the orders. But in none of these cases has the Ministry of Interior provided the individuals with confirmation that they were no longer subjected to S17 measures.

Mohamed Guerfel, who has been subjected to an S17 measure since 2014, filed a petition with the Tunis Administrative Court on 29 December 2016 to lift the restrictions. On 14 February 2018, the court ordered the Ministry of Interior to suspend the implementation of travel restrictions placed on him as a result of his S17 measure.⁶⁸ Though the Court notifies the Ministry of Interior of its decisions as a matter of procedure, Mohamed Guerfel also sent a copy of the decision through a notary to the ministry on 28 March 2018. To date, he has received no indication that the Ministry has complied. Mohamed Guerfel told Amnesty International that a relative who is a police officer regularly ran a check on his ID to verify if the order had been lifted and had so far seen that it was still in place.

One mid-level officer from the Ministry of Interior's Border and Foreigners Agency who works at an airport told Amnesty International that he could not allow travellers with S17 measures to pass, even if they had court orders suspending or lifting travel restrictions:

“Sometimes people bring their lawyers with them to the airport to argue that the measure against them is illegal. Some even had court orders in their favour, but we in the airport still have to consult with the central administration before we let the person through if they have border control measure S17 against them. We cannot make the decision to let a person travel if the authorities that started the S17 against them say that we should not. Whose responsibility would it be if that person then engaged in terrorist activity when they left the country? There must be a reason behind the ban, and we have to respect that.”⁶⁹

Some individuals have appealed directly to the Ministry of Interior to seek the repeal of an S17 measure, but Amnesty International is not aware of any case in which the Ministry has responded. Fourteen of the people Amnesty International interviewed for this report said they had petitioned the Ministry directly to be removed from the list of individuals subjected to S17 measures; all said they had received no reply. For example, “Lotfi” said that he sent three petitions to the Ministry of Interior during 2016 requesting the border control measure against him be lifted, but had not received any response.⁷⁰

Article 24 of the Tunisian Constitution provides that citizens have the right to choose their place of residence, to free movement within the country, and the right to leave the country. Moreover, Article 49 of the Constitution provides that any restrictions imposed on human rights guaranteed in it must be based on law, “must not compromise the essence of those rights” and “must not be imposed except when necessary in a civil and democratic society to protect the rights of others, public order, national defence, public health or public morals”. Further, the Constitution provides that such restrictions “must be proportionate to the intended objective”. However, the fact that the Tunisian authorities have not yet set up a constitutional court means that it is currently impossible to challenge the constitutionality of S17 measures in the courts.⁷¹

Even though Tunisia has not notified the UN Secretary-General of any derogations made from provisions of the ICCPR during the state of emergency,⁷² official statements often refer to the state of emergency to justify restrictions on the enjoyment of human rights such as the right to freedom of movement. The UN

⁶⁷ Lawyers Samir Ben Amor, Wissem Othman, Samir Dilou and Abdaraouf Ayadi, interviewed in Tunis respectively on 13 January 2018, 7 December 2018, 7 December 2017, 5 December 2017.

⁶⁸ Case no. 4101637, decision dated 14 February 2018, on file with Amnesty International.

⁶⁹ Interview at the airport on 5 December 2017.

⁷⁰ Interview with “Lotfi”, Tunis, 12 December 2017.

⁷¹ *Kapitalis*, “L’attente interminable de Cour Constitutionnelle”, 18 July 2018, www.kapitalis.com/tunisie/2018/07/18/tunisie-lattente-interminable-de-cour-constitutionnelle/

⁷² Article 4(3) of the ICCPR stipulates: “Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated:

“States utilizing counter-terrorism laws that result in states of emergency must maintain robust and independent judicial access and oversight. Judicial oversight is necessary at all phases of the emergency powers practice and the longer the emergency, the more compelling and important the need for judicial review.”⁷³

The Ministry of Interior’s imposition of restrictions effectively amounting to a travel ban and restrictions on domestic travel without the judicial authorization required by Tunisia’s Law on Passports effectively gives police sole power to impose bans on travel. This and the Ministry’s failure to inform individuals that they have been subjected to such restrictions run contrary to Tunisia’s commitments under Article 12 of the International Covenant on Civil and Political Rights. The lack of effective judicial oversight of these measures has further stymied attempts to challenge them.

⁷³ Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights challenge of states of emergency in the context of countering terrorism*, UN Doc. A/HRC/37/52, 27 February 2018, para. 77.

8. CONCLUSIONS AND RECOMMENDATIONS

Amnesty International's research provides strong indications that the Tunisian Ministry of Interior has abused emergency measures adopted to counter security threats by arbitrarily restricting the right to freedom of movement of thousands of individuals. By leaving decisions to impose border control measures solely to the discretion of police without effective judicial oversight, the Ministry of Interior has disregarded international and Tunisian legal limits on the state's power to restrict freedom of movement. Border control measures not based on clear and specific legal provisions outlining their basis constitute unlawful restrictions, and thus violations of the right to freedom of movement that run afoul of Tunisia's international legal obligations and constitutional guarantees that any such restrictions must be based in law, necessary and proportionate.

In the cases Amnesty International has documented, S17 orders have targeted people arbitrarily, on the sole basis of their perceived religious beliefs or practices, physical appearance or previous convictions without providing any evidence linking them to armed group activity.

Amnesty International recommends that, in order to ensure that the human right to freedom of movement is respected and protected, the Tunisian government should take the following steps:

TO THE HEAD OF GOVERNMENT:

- Ensure that all emergency measures taken by the government are prescribed by law and comply with the principles of necessity and proportionality as required under international human rights law;
- Ensure that all restrictions imposed on freedom of movement by the executive must be justified, have a clear legal basis and subject of judicial oversight and appeal;
- Ensure regular review, including by a judicial entity, of all cases in which administrative measures restrict individuals' rights, including to freedom of movement;
- Ensure, including through the allocation of resources, that courts respond promptly to petitions appealing S17 measures.

TO THE MINISTRY OF INTERIOR:

- Stop the use of border control measures to prevent travel abroad and apply the requirements of the amended Passport Law of 1975 in cases of travel bans;
- Publish in full and make easily accessible to the public all administrative measures directly impacting individuals' human rights, including S17 border control measures;
- Clearly define the criteria on the basis of which a person may be subjected to S17 measures;
- Reform S17 measures in order to ensure clear and effective oversight by the judiciary;
- Ensure that all individuals under S17 orders are provided with a justification for their imposition, including the evidence on which the order is based, to allow them to challenge the orders;

- Respect and promptly apply all court orders to lift S17 measures against individuals;
- Provide reparation to individuals who have had their right to free movement arbitrarily restricted and whose livelihoods have been significantly affected as a result.

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'THEY NEVER TELL ME WHY'

ARBITRARY RESTRICTIONS ON MOVEMENT IN TUNISIA

In the context of their “national plan to combat terrorism”, the Tunisian authorities have implemented since 2013 a set of border control measures known as S17 to monitor the movements of individuals it suspects of affiliation with “jihadi groups” and have prevented thousands from travelling abroad.

While the authorities have a legitimate aim in stopping armed attacks against civilians at home and abroad, their implementation of these measures has resulted in arbitrary restrictions on individuals' rights to leave the country and to freedom of movement within it. Amnesty International's research, including the examination of 60 individual cases, demonstrates that the authorities have imposed measures in a discriminatory manner based on appearance, religious practices or previous criminal convictions and without providing a justification or obtaining a court order. The measures have negatively affected individuals' livelihoods or have involved their arbitrary arrest and short-term detention.

The Tunisian government must ensure that the right to freedom of movement is not arbitrarily restricted by the executive or by law enforcement officials. All restrictions imposed should be prescribed by law, be subjected to judicial oversight and comply with the principles of necessity and proportionality as required under the Tunisian Constitution and international human rights law.