



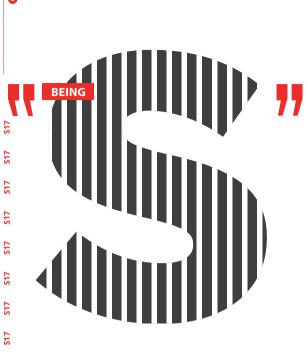
Arbitrary Administrative Control Measures In Tunisia

ENDURING A SENTENCE ISSUED BY NO ONE AND ENFORCED BY EVERYONE

Summary

06	1. Introduction
80	2. Methodology
12	3. Control orders at the heart of a fearsome police control policy
14 14	3.1. Control orders : an opaque targeting procedure 3.1.1. Opacity of the selection criteria for targeted persons
20	3.1.2. The opaque classification of control orders
23	3.2. Control order: a blank cheque justifying police harassment practices
24	3.2.1. Obstacles to freedom of movement within the Tunisian territory
25	3.2.2. Repeated summonses to the police station
27	3.2.3. Home visits
28	3.2.4. Bans on leaving the Tunisian territory
32	3.2.5. Deprivation of official documents
33	3.2.6. Administrative searches
35	3.2.7. House arrests
37	3.2.8. Intrusive and stigmatizing police control methods

40	4. Arbitrary control measures constituting police harassment
42	4.1. Legality principle
42	4.1.1.Legality of restrictions on freedom of movement
43	4.1.2.Legality of custodial measures (arrest and detention)
44	4.1.3.Legality of restrictions on the right to privacy, inviolability of the home and secrecy of correspondence
45	4.1.4.Legality of restrictions on the right to work
45	4.2. Necessity and proportionality principles
46	4.3. The requirement of judicial review
47	4.3.1. The difficult evidence of control orders and measures
48	4.3.2. Assessment of an individual's dangerousness
49	4.3.3. Review of the proportionality of control measures
50	4.3.4. Review of restrictive measure compliance with Tunisian law
51	4.3.5. An emergency dispute not always dealt with as a matter of urgency
52	4.3.6. Failure of the Interior Ministry to implement judicial
	decisions
53	5.Devastating consequences of police harassment
54	5.1. Precarious victims
55	5.2. Psychological issues linked to control orders
61	6. Conclusion
63	7. Recommendations



1.INTRODUCTION

Since the 2011 revolution and the collapse of the former Ben Ali regime, on several occasions, Tunisian authorities have confirmed their commitment to the rule of law and international human rights standards. However, the security threats faced by Tunisia since the, and the authorities' responses to these threats, continue to hamper efforts to curb systematic human rights abuses since 2011.

As from 2013, with the resurgence of terrorist attacks on Tunisian soil and the return of Tunisian nationals who went to fight in Syria and Iraq, the Tunisian Ministry of the Interior tightened its control over society by proceeding with control orders and surveillance of individuals deemed likely to be linked to a terrorist group. In 2015, the National Security Council developed a plan to counter extremism and terrorism' in order to address potential security risks posed by these combatants and to stop the series of attacks. The national plan revolves around four axes, which are prevention, protection, prosecution and, eventually, response. It particularly provides for the strengthening of border control, the monitoring of modern means of communication, the strengthening of specialised units, or even the establishment of regional counterterrorism centres, coordination units and data collection units.

In the framework of the implementation of the National Strategy, police control over individuals suspected of links to terrorist activities has intensified taking the form of liberticidal control measures. Order No 342/1975 of May 30 1975, fixing the powers and duties of the Ministry of the Interior; Act No.2015-26 of August 7, 2015 on combating terrorism and preventing moneylaundering; and Decree No. 78-50 of January 26, 1978 regulating the state of emergency constitute the legal basis for some of these measures. In fact, Tunisia has been under the state of emergency since 2011, a theoretically temporary emergency rule that has continued² almost continuously for almost eight years now.

The World Organization Against Torture (OMCT) is perfectly aware of the security challenges faced by the Tunisian state, particularly since the revolution. The government is responsible for protecting the population against terrorism and has the right and even the duty to take the best suited measures to prevent terrorist attacks and other threats to national security, notably by placing individuals considered dangerous under control and surveillance procedures. However, the State's responsibility to protect and Tunisian citizens' right to security must be exercised in accordance with fundamental rights and freedoms guaranteed by the Tunisian Constitution and the international human rights law.

Thus, restrictions that may be imposed on these rights and freedoms in the context of the necessary prevention of terrorism should be established by law, necessary, proportional and subject to prompt and effective judicial control. These essential, non-derogable conditions intended to ensure the legitimate protection of some, does not entail the arbitrary oppression of others.

In the name of Tunisian state security, today an increasing number of Tunisians are prohibited from leaving the territory and subject to house arrests, repeated summonses to police offices, violent administrative searches, police neighbourhood canvasses, police visits to their homes, and to their workplaces... All these measures are implemented in an opaque manner, without notification, without justification and often without legal basis. These individuals are victims of excesses of the fight against terrorism, which, have taken the form of a real policy of police harassment.

Apparently, thousands of them have their names flagged under control directives and are targeted by restrictive surveillance procedures. According to testimonies collected by OMCT and other human rights NGOs, many victims of such control measures have no idea of the reasons that motivate such treatment. The Is "filing" better? process is obscure and seems to be carried out in an abusive and discriminatory manner. Its material and psychological consequences are so dramatic that some listed persons can be considered as victims of ill-treatment. Stigma, isolation, divorce, psychological trauma and loss of employment. In fact, these persons pay the price of a stringent state security policy.





2.METHODOLOGY

This report is based on the testimonies of 20 individuals - 18 men and two women - supported by the OMCT within the framework of its SANAD programme providing legal, psycho-social and medical assistance to victims of torture and/or ill-treatment in Tunisia.

All interviewees are filed by the Ministry of the Interior for their alleged danger to public order and national security. Consequently, they are subjected to one or more measures restricting their personal freedoms, otherwise designated as administrative control measures. Some have obtained decisions suspension or the lifting of one or more measures after referring to the citizens' relations services of the Ministry of the Interior or filing an appeal to the administrative court. However, they remain victims of a more or less intrusive police surveillance that violates many of their fundamental rights and freedoms.

For this report, the OMCT relied on information provided by four lawyers, two administrative judges, and human rights defenders during interviews concerning administrative litigation related to control measures implemented against filed persons.

For security reasons, the names of the beneficiaries interviewed by the OMCT were replaced by pseudonyms in this report. Only the type of control order for which the persons have been notified is mentioned. However, it is not excluded that the mentioned persons are also targeted by other measures listed in table p.20.

Mohamed, 41 years old, lives in Greater Tunis and is placed under the S17 procedure. He has repeatedly been summoned by phone to report to the police station, subjected to interrogations involving mobile phone checks, arrested following roadside checks and visits to his home and his workplace. Police officers continue to exert pressure on his employer.

Aziz, 30, resides in northwest Tunisia and is placed under the S17 procedure. Aziz was subject to violent administrative searches, police neighbourhood canvasses and arrests at roadside checkpoints.

Taoufiq, 30 years old, resides in Tunis and is placed under the S17 and S1 procedures. Taoufiq is banned from leaving Tunis. He has undergone numerous violent administrative searches. He continues to be subject to home visits, summonses to police stations and arrests at roadside checkpoints.

Amal, 29 years old, resides in Greater Tunis. She is placed under the S17 procedure. Amal was subjected to administrative searches. In recent years, she has been checked several times on the street and at her home and interrogated at length at the police office. She also receives frequent home visits and summonses to report to the police office.

Akram, 39, resides in northwest Tunisia. Akram was subjected to several administrative searches and is regularly arrested or summoned to the police station for questioning following roadside checks.

Skander, 29, resides in Tunis and is subjected to the S17 measure. Skander is banned from leaving the country and has already been prevented from travelling inside Tunisia. He is frequently subject to home visits, police neighbourhood canvasses, and arrests at roadside checkpoints. His family and friends are also victims of police pressure.

Anis, 46, resides in Tunis and is placed under S17, S18, S19 procedures and house arrest. Anis has underwent several administrative searches by police officers who also exert pressure on his employer. He is still frequently summoned to the police station and is subject to police home visits. He is also deprived of his passport.

Nizar, 33, resides in Tunis and is placed under the S17 and S19 procedures, Nizar frequently receives calls from police and is visited by police officers at his home and his various workplaces.

Faouzi, 50 years old, resides in the North-East of Tunisia. He is subjected to the S17 measure. Faouzi has long been under house arrest and is still regularly banned from leaving the country.

Youssef, 28, resides in northwest Tunisia and is placed under the S17 procedure. Youssef is subjected to administrative searches and is regularly visited by police at his home. He receives sporadic summonses to report to the police station where he undergoes interrogations and mobile phone searches. He is frequently arrested following roadside checks and is deprived of a passport.

Nadim, 42, resides in Greater Tunis. Nadim is on the S17 list. He was subjected to a violent home search and is very frequently visited by police at his home.

Mostafa, 34 years old, resides in Greater Tunis. Mostafa has been placed under the S17 procedure and house arrest. Police officers have exerted pressure on his successive employers and his former lessor. He has been subjected to a violent home search and continues to receive police home visits and calls from the police office.

Kais, 30 years old, resides in Greater Tunis. Subject to the S17 measure. Kais is frequently visited by police at his home and is often summoned to report to the police office. To date, he has not been able to obtain an identity card or a criminal record certificate (B3). He is also de facto banned from leaving the territory as he has been implicitly denied his passport.

Sofiane, 21, resides in northwest Tunisia and is placed under the S17 procedure. Sofiane receives weekly home visits.

Sami, 36, resides in southern Tunisia and is subjected to the S17 and S8 measures. Sami has been arrested several times and is regularly summoned to report to the police station where he undergoes humiliating interrogations. He is frequently stopped at roadside checks and is sometimes led to the nearest police office for interrogation. He is deprived of a passport and therefore cannot leave the country.

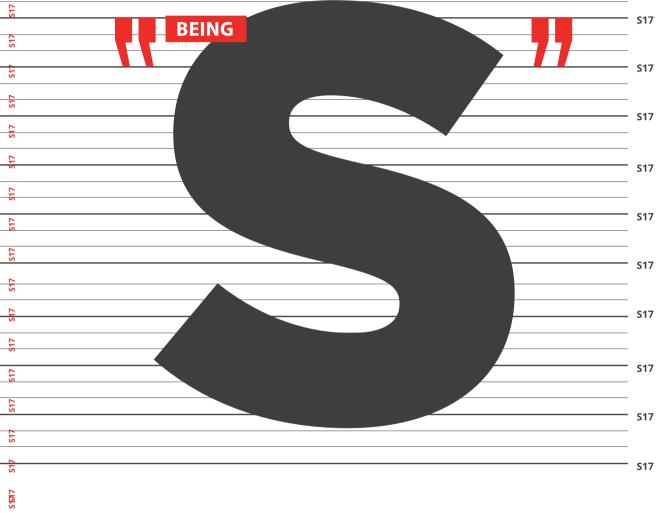
Rafiq, 37, resides in southern Tunisia and is placed under the S17 procedure. Rafiq is banned from leaving the territory. He frequently receives calls from the police and is subject to police visits and administrative searches. He was harassed by agents in his various workplaces and he is often arrested on the street when accompanied with his wife who wears the niqab.

Khaled, 31, resides in eastern Tunisia and is subject to S17. Khaled was banned from leaving the territory and subject to administrative searches. He is still visited by police agents who exert pressures on his lessor to evict him.

Nejib, 49, resides in Greater Tunis. Subjected to S17 measure. Nejib, too, is deprived of his passport and is placed under house arrest. He has been subjected to several violent administrative searches. Police agents have exerted pressure on his successive lessors. He still receives calls from the police office and he is subjected to police home visits.

Ridha, 45, resides in northern Tunisia. Subjected to the S17 measure and under house arrest.

Noura, 32, resides in southern Tunisia. Placed under the S17 procedure. Noura was led to the police station following a road check and is subjected to administrative searches.



- S17

3. CONTROL ORDERS AT THE HEART OF A FEARSOME POLICE CONTROL POLICY

The Ministry of the Interior presents "filing" or "control orders" and all police control measures it entails as necessary and proportionate procedures essential to the prevention of terrorism.

However, the implementation of these measures reveals a reality that is very different from official discourse. The listing process is very opaque with regard to both the criteria used to identify targets and the different types of control order lists. The restrictive measures to which listed persons are subjected are arbitrary and part of police harassment practices that often constitute ill-treatment.

3.1. LISTING: AN OPAQUE TARGETING PROCEDURE

3.1.1. OPACITY OF THE CRITERIA FOR SELECTING TARGETED PERSONS

The application of administrative control measures (listing) is officially justified by the need to prevent terrorism. In June 2019, Minister of the Interior Hichem Fourati stated that listing targets individuals about whom the Ministry acquired "reliable information confirming their connections to terrorist groups", included "individuals released from prison after having been involved in terrorism cases," and "persons under house arrest"³.

He was referring to individuals on the S17 list, the bestknown type control orders to date, which consists, according to its official definition, in checking targeted persons when leaving Tunisian territory. These criteria for selecting targeted persons seem to apply to all other types of control orders established in the context of preventing and combating terrorism.

The first case mentioned by the Minister refers to persons about whom the Ministry acquired "reliable information confirming their connections to terrorist groups". Yet, the process would still be questionable even if these two "reliable information" and "connections to terrorist groups" criteria were actually respected in practice by the officers responsible of listing process.

First, these criteria are defined in vague terms. What is reliable information and who is responsible for assessing its reliability? Can a neighbour's or a colleague's denunciation be considered as reliable information? Is it only information obtained by the intelligence services through wiretapping, interrogations of alleged conspirators and infiltration? How much substantiated. so-called reliable information is required for the suspicion to be considered fully supported?

In fact, the same vagueness surrounds the term "connections" to a terrorist group. Is being related to or in contact with a member of a terrorist group sufficient to characterize a problematic relation as defined by the Ministry of the Interior?

Indeed, the criteria mentioned by the Interior Minister call for another essential remark. Connections to a terrorist group may be criminalized under Tunisian Criminal Code. Persons suspected of such a crime should be prosecuted and not be listed and subjected under police control measures. Consequently, these procedures seem to be substitutes for criminal proceedings. Indeed, despite the fact that they may at first seem favourable to listed people as they are spared conviction, these measures have negative consequences. Listing decisions are opaque and not time-bound. They place the individual at the mercy of the police as will be detailed further on. On the other hand, judicial proceedings impose obligations on the judiciary and the public prosecutor's office, notably in terms of evidence, and provides the accused with the rights of defence, which guarantee - at least in theory - that the person is not convicted without sufficient evidence

Accordingly, these first two criteria mentioned by Hichem Fourati are so vague and allow an abusive circumvention of criminal law. Therefore, the listing process would still be open to criticism even if these criteria were respected.

The second profile of persons on the S17 list according to the Minister corresponds to individuals previously convicted in terrorism cases.

Indeed, interviews with lawyers and human rights defenders indicate that the current list of listed persons seems to partially replicate the list of persons convicted of terrorist offences under the former regime who nevertheless benefited from amnesty after the revolution.



Name: Sami

Age: 36 years old

On the S17 list

This is the case of Sami*, 36 years old, who was sentenced to 9 months' imprisonment in 2007 before benefiting from an amnesty during the revolution.

Two years later, he tried to renew his passport. Every time he went to the district police station to follow up his application, he was told that the passport was not ready. At that time, his neighbourhood had recently become a theatre of eventful protests. The very tense security context at that time was considered as a possible reason for the long time taken to process Sami's application and nearly 80 other people were waiting for the issuance of their passports like him.

But over the months, other applicants eventually obtained their passports. Only Sami and nine other people remained unanswered by the administration. One day, during yet another visit to inquire about the progress of the proceedings, an agent informed him orally that he would not obtain his passport. Sami insisted, returning to the station every other day to request the document. Then, the officers started ill-treating him. They kept him in the police station and interrogated him for hours about his religious practices and his acquaintances. Police harassment intensified and involved repeated summonses to the police station, arrests or transportation to the nearest police station following roadside checks, and exerting pressure on his employer, etc. It was during an arrest on the public road in 2015 that Sami learned that he was on the S17 list and that this was the cause of police harassment. He thinks his control order is due to his criminal record.

The names of individuals implicated, though not convicted, in terrorism cases after 2011 have been added to the list of former pre-revolutionary convicts. Indeed, though discharged and acquitted by the court,

individuals who have been in police custody or even in remand in recent years are now listed and subjected to measures restricting their freedom.





Name : **Mohamed**

Age: 41 years old

On the S17 list

Suspected of terrorism, Mohamed, 41 years old, was arrested in December 2015, presumably because of his appearance showing external signs of religiosity and his attendance at some mosques placed under surveillance by the authorities. He was subjected to ill-treatment during 15 days in police custody before being released due to lack of evidence against him.

Three months later, following a random identity check on the street on his way to work, Mohamed was arrested by police officers and led to the nearest police station where he was retained for several hours. He was interrogated about his occupation, his prayer practice and the activities of his family. He was asked whether his wife was veiled and what he thought of the latest attacks. During the interrogation, the officers informed him that he was on the S17 list and that he was consequently subject to movement restrictions. Police officers could not explain the reasons why his name was flagged under the S17 control directive and advised him to contact the Ministry of the Interior or the local police district to find out more. Mohamed was released the same day. In the years that followed, police harassment increased considerably without Mohamed ever being informed of the reasons for the S 17 measure he is subjected to. It is most likely linked to his arrest in 2015, which is itself probably due to his appearance and alleged religious practices.

As in the example of Mohammed, five other persons followed by the OMCT learned that they are listed after

being held in police custody or in remand linked to suspicion of terrorist activity.



Name : Taoufik

Age: 30 years old

On the S1& S17 list

Name : Sofiane

Age: 21 years old

On the S17 list

Taoufik, 30 years old, lived in Tunis with his wife and his four-year-old daughter when he was arrested in March 2015 following a terrorist attack. He spent 15 days in police custody in Gorjani before being released. This arrest resulted in his dismissal from the company he used to work for. In December 2015, he was summoned to the police station for interrogation, and it was at that moment that he found out that he was on the S17 list. From then onwards, he has been subjected to intensive police harassment that has traumatized his entire family to the point that his wife left him.

Sofiane was only 17 years old when he was arrested in 2015 following a terrorist attack. He was tortured in police custody and held in remand for three years until he was acquitted and set free in April 2019.

Immediately after his release, an anti-terrorist brigade in northwest Tunisia where he resides with his parents, the same brigade where he was tortured in 2015, summoned him. The officers took a DNA sample and informed him that he was on the \$17 list and that he must remain within reach. Since then, he has been subject to house visits.

Other persons with no criminal records are probably listed because of their relationship to persons suspected of terrorist activities.



Name : Nora's brother

Age: 32 years old

On the S17 list

Nora's brother, 32 years old, is serving a 10-year sentence for terrorism. In 2017, Nora was arrested at a roadside checkpoint on her way to visit the prison. She was led to the police station to be searched by a female police officer because she wore a niqab, and at that moment, she found out that she was on the S17 list. She thinks that she is on the S17 list due to her brother's conviction and her wearing a niqab.



Name : **Aziz**

Age: 30 years old

On the S17 list

Aziz, 30, lives at his parents' house in northwest Tunisia with his sister, brother-in-law and their three children. His brother is suspected of having joined a jihadist group in the mountains in 2014. Since then, the whole family has been subjected to intense police harassment materialized by frequent summonses to the district police station, brutal administrative searches and other measures restricting their freedom. It was during the first search in 2017 that Aziz learned that he was subject to the S17 measure. For him, the fact that his name is flagged under the S17 directive is clearly due to the suspicions weighing on his missing brother.

In theory, if we refer to the profiles of listed persons mentioned by Hichem Fourati, these individuals who have never been convicted of a terrorist offence are listed because the Ministry acquired "reliable information confirming their links to terrorist groups".

In practice, it turns out that confidentiality of the information on which listing was based does not make it possible to check whether these criteria are taken into account in the selection of targeted persons. All OMCT interviewees deny any relations with a terrorist group and it is very likely that they would have been prosecuted if such relations were suspected. Since the

administration does not justify listing, targeted persons can only try to guess the reason why they are subjected to such a treatment.

Among the OMCT beneficiaries, several people have no criminal records and no close relatives suspected of terrorist activities. They believe that their listing is due to their religious appearance alone (wearing a beard and/ or religious clothing), thanks to a discriminatory policy that is deeply rooted in the practices of the Ministry of the Interior.



Name : **Amal**

Age: 29 years old

On the S17 list

Divorced and mother of three children, Amal has been wearing the niqab for many years. She says that police harassment against her started before the revolution. Between 2011 and 2017, her house and that of her parents were searched several times. As from 2017, the police changed their surveillance mode. That year, she was arrested outside a hotel in the suburbs of Tunis on her way to the hospital to visit her sick daughter. Seeing a woman wearing a niqab, the hotel management called the police. Two plainclothes officers arrived at the site, asked Amal for her identity card and demanded that she accompanies them to the police station. When she refused and asked why they wanted her to follow them, she was forced into their vehicle.

Once at the police district, three officers questioned her about her prayer practice and her ties to Salafists. She was then brought before the public prosecutor for having allegedly refused to give her identity to the officers who arrested her. According to Amal, the prosecutor told her, "Why were you there? Don't you know there are places you can't go to?"

Amal thinks she was listed following that incident. However, she was only informed of it in June 2018 following an identity check in downtown Tunis where she was with friends. The officers led her and her friends to the district police station where members of what she identified as nine different brigades interrogated her. They asked her about prayer practice, religious holidays, television channels she watches, books she read, friendships, the reasons why she wore the niqab, and when she started wearing it, etc. One of his interrogators told her: "Today, I'm going to do everything I can to get you to take off that niqab! No one ever continued to wear it after being questioned by me." She was finally released upon the arrival of her lawyer at 2am, after nine hours in custody. She has since been arrested again, summoned to the police station and checked in the street because of wearing niqab.



Name : Faouzi

Age: 50 years old

On the S17 list

Faouzi too thinks he is listed and harassed by police due to his appearance. This 50-year-old Tunisian citizen is married to an Italian woman and father of two children, all three of whom reside in Italy. After more than 20 years in Italy, he returned to Tunisia a few years ago to set up an agricultural project in north-eastern Tunisia. In July 2016, while returning home from Tunis by bus, he had an altercation with a passenger who happened to be a plainclothes police officer. The latter has quoted Faouzi because of his wearing of the beard and the qamis. When he got off the bus, Faouzi was met by the anti-terrorist brigade and to the district police station in his locality where officers questioned him about his life in Italy before releasing him. Faouzi believes that this altercation is the cause of his listing and police harassment he has since been subject to, in particular after the house arrest notification he received a few days later.



Name : Rafig

Age: 37 years old

On the S17 list

Rafiq, 37, resides in southern Tunisia with his wife and children. He worked in Libya between 2008 and 2013. In 2014 he found a new job there. When he wanted to cross the Libyan border with colleagues coming to work for the same company as him, the police informed him that he was forbidden to leave the territory. One of the officers told him that his trips to Libya now and then during the previous years might be the reason for the ban and advised him to check with the local police district. A few days later, Rafiq was summoned to report to the police station in his neighbourhood. He was asked about his religious practice (how does he pray? in which mosque?), as well as about any trips his friends might make to Syria or Libya. During this interrogation, he was informed orally that he is on the S17 list.

Rafiq believes that his being on a security list may indeed be due to his travels in Libya, but also to an altercation he had with two police officers near his home in October 2014. He was going to the market with the father of a friend of his, an elderly man, when the police wanted to check their identity. The old man continued on his way and officers began to insult and shout at him. Rafiq protested, urging them to be more respectful. In response, one of the officers punched, kicked and insulted him. When he fell to the ground, the second officer handcuffed him and dragged him away from the market entrance until a police vehicle arrived.

In the national security district of his city, both officers charged Rafiq with outrageous conduct towards a public officer. He spent a month under arrest before being released in November 2014 after dismissal of charges. It was only shortly after this incident that he was notified that he was subject to a ban from leaving the country. From then onwards, Rafiq has been subject to police harassment in his various workplaces and at home.



The « S » control orders List

- **01** Notification of movements
- 02 Notification of arrival
- 03 Notification of departure
- 04 Summons
- 05 Passport withdrawal summons
- **06** Thorough search
- **07** Arrest and handing over
- 08 Exit ban
- 09 Entry ban
- 10 Arrest search handing over
- 11 Passport withdrawal summons search
- 12 Search summons
- 13 Passport withdrawal seizure
- 14 Photocopy of passport
- 15 Consult the administration before granting permission to enter
- 16 Consult with the administration before granting permission to leave
- 17 Consult with the administration before granting permission to pass
- 18 Concern/problem with passport
- 19 Return from conflict areas
- 20 Lost passport
- 21 Special passport
- 22 Diplomatic passport

3.1.2. THE OPAQUE CLASSIFICATION OF CONTROL ORDERS

S1, S17, S18, S18, S19 are denominations that are heard frequently from listed persons and their lawyers. They often refer to different realities depending on the individual case.

In addition to these most well-known control orders because probably the most widespread, according to the information collected by the OMCT, there are about twenty different types of control orders. Not all of them are applicable to persons suspected of activities threatening public order, such as the S22 list concerning diplomatic passports.

On this list which is normally available to police office, the types of control orders are described very birefly. We need to look into the testimonies of victims to get a better idea on which type of control order list corresponds to which restrictive measures. However, it is very likely that listed persons are not informed of all the measures to which they are subject, so that the various police checks they undergo are not necessarily all due to the only listing of which they are aware.

All SANAD programme beneficiaries interviewed for this report are or have been on the S17 list. They most often became aware of the measure during a police check. According to the list of control order measures communicated to OMCT, S17 implies "consulting the administration before granting authorization to pass".

According to the Ministry of the Interior, the purpose of this measure is to control the crossing of borders by persons suspected of belonging to an armed group.

In practice, a large number of people on the S17 list are not only subjected to control at the border and, to travel bans, for those who want to travel. Indeed, they are also subjected to other control measures within the territory, such as repeated summonses to the local police station

in the neighbourhood, home visits, administrative searches and arrests at roadside checkpoints, etc.

This could mean that they are, without always knowing it, subject to additional measures such as S1, S4, S6 and others. Or, it could be that police officers are interpreting the S17 procedure as involving many other control measures than just consultation at the border.



Name : Skander

Age: 29 years old

On the S17 list

Suspected of being involved in an attack in 2015, Skander was arrested in March of the same year. He was tortured and remanded in custody before being finally acquitted and set free after 15 months in remand. Since then, and despite having been cleared, he has been subjected to police visits to his home and various workplaces, police investigations with his neighbours and other measures contributing to his stigmatization.

In August 2018, he tried to go to Algeria but a border police officer informed him, without further details, that he was not allowed to leave the territory. In February 2019, he left Tunis to go and harvest oranges as a day worker. He was checked at a roadblock. The police officer stopped him for a moment on the side of the road before informing him that he was on the S17 list and that he was not allowed to leave the governorate. He ordered him to return to Tunis.

Skander was arrested several times at roadside checks and, in some cases, led to the nearest police station for questioning. However, except during the February 2019 inspection, he was never prohibited to leave Tunis because he is on the S17 list.

The case of Skander and others reveal the fact that some of the police forces do not master the typology of listing measures and give different interpretations of the directive

In two cases documented by OMCT, people were informed that they were on the S1 list. Here again, the same control measure has led to disparate implementations.



Name : Taoufik
Age : 30 years old
On the S1&S17 list

In February 2016, three months after he was informed that he was subject to the S17 measure when summoned to the police station, Taoufik was notified at a road check in Grombalia that he was also on the S1 list. He was then working as a truck driver for a company and had to transport goods across Tunisia. The officer who informally notified him of the measure told him that he was not supposed to leave Tunis. He had to return to Tunis and lost his job because of this restriction on his freedom of movement.



Name : Omar Age : 37 years old On the S1 list Omar is also on the S1 list, after having obtained the lifting of the S17 measure he was subject to. However, the S1 measure does not cover the same realities for him as for Taoufik. He is stopped on the side of the road for a more or less long period during roadside checkpoints until the police officer receives instructions from his superiors on the action to be taken. Yet, Omar has never been banned from travelling in Tunisia.

In fact, listed people's testimonies collected by OMCT reveal that the same measure can have very different consequences, not only in terms of restrictions on freedom of movement but also, more generally, in terms of police harassment. For some, the main consequences of listing are restrictions on freedom of movement, while

others are subject to a wide range of control measures such as violent administrative searches, incessant police calls, and repeated summonses to the station or house arrest.



3.2.CONTROL ORDER: A BLANK CHEQUE JUSTIFYING POLICE HARASSMENT PRACTICES

All of the listed individuals whose cases have been documented by OMCT have been or, for the most part, are still subjected to the S17 measure. Some were informed that they were also on the S1, S18, S19 lists or under house arrest.

All of them have in common that they are subject to one or more of the police control measures described below, at regular intervals and with varying intensities over time.

None of them have been informed of the reasons justifying the control directive, its extent, duration, the type of restrictive measures it implies, or the appeal systems at their disposal to contest the decision taken against them and subsequent restrictive measures.

Age: 28 years old

On the S17 list

3.2.1. OBSTACLES TO FREEDOM OF MOVEMENT WITHIN THE TUNISIAN **TERRITORY**

Since the 2015 attacks, the country has been filled with checkpoints on roads linking urban areas and close to borders. Police and National Guard officers stop buses. taxis and private vehicles daily to check the identity of passengers. It is often during this type of control that persons targeted by restrictive measures get to know that they are listed.

In February 2019, Mohamed Ali Khaldi, Director General of Human Rights at the Ministry of the Interior, insisted that police officers had been instructed to apply the control measures on movements provided for in the

S17 list only at Tunisian borders⁵. However, according to testimonies collected by OMCT, some people are indeed frequently checked when travelling within Tunisia because of the order S17, unless they are the subject of other measures without knowing it.

Regardless of the type of measures (S17, S1, S19 or others) to which they are subjected, a roadside check is often synonymous with a nightmare for listed individuals. The officer conducting the identity check does not know the reasons for the procedure a given person is subject to. He only knows that the order implies that he must stop her or him until one of his superiors authorizes him to let him/her go.

Listed Individuals may thus be required to remain on the side of the road for a long time until authorization to leave is granted.



Name: Aziz

Age: 30 years old

On the S17 list

Name: Youssef

Aziz is included on the S17 list and frequently crosses road checkpoints. Each time, the police officer who checks the identity of the passengers orders him to leave the taxi, which continues its course. Aziz remains on the side of the road for about 30 minutes, until he is allowed to leave.

Like Aziz, Youssef is probably included on a control order list due to his brother's involvement in terrorist activity. He learned that he was on the S17 list during an interrogation at a police station in northwest Tunisia to which he was led in February 2016 following a road check on the Tunis road.

Police harassment as part of control measures led him to abandon his studies. During the 2017-2018 academic year, he was a student at the engineering school 20km from home. He used to travel with friends by car and every time they passed through road checkpoints, Youssef had to get out of the car and remain on the side of the road. His friends had to leave without him and he eventually gave up his studies and looked for a day job.

In many cases, controlled persons are led to the nearest police station for interrogation, sometimes for hours.



Name: Sami

Age: 36 years old

On the S17 list

Sami was informed that he was on the S17 list during his arrest on the public road in 2015. He travels a lot between Tunis, where his in-laws live, Kairouan, his hometown and southern Tunisia, where he resides. As a result, he is often subject to roadside checks. Sometimes he is forced to accompany officers to the police station after identity check. In July 2019, on his way to OMCT, Sami was arrested on the road and led to a police station in Tunis. Sami protested, saying that he had heard the Minister of the Interior affirm that people on the S17 list should no longer be arrested. After making a few phone calls, the chief of police told him that he was also on the S8 list and therefore had to provide some information. After an hour of waiting, Sami was questioned about the reason for his trip to Tunis, before being allowed to leave.

No legal justification is ever provided to justify such arrests of a few hours. Consequently, these temporary arrests must be considered arbitrary. Moreover, a person who is subject to this type of arrest may experience traumatic fear enhanced by fear of exposure to torture or detention. This fear is all the more intense if the listed person has already been victim of torture during a previous arrest.

As mentioned above, people were forced to return home after a roadside check, in at least two cases, though they

were not under house arrest but only subjected to an S17 order or placed under both S17 and S1 procedures.

3.2.2. REPEATED SUMMONSES TO THE POLICE STATION

At least nine of the persons assisted by SANAD programme complain that they have been or are still regularly summoned to local police stations for questioning.



Name: Anis

Age: 46 years old

On the S17, S18 and S19 lists Some time ago while in bereavement following his father's death, he had begun to associate with members of a religious movement in his neighbourhood who were accustomed to travelling a lot. In 2013, he travelled with them to Malaysia and started wearing a beard and a qamis when he returned home. He was arrested for the first time after an identity check in Jendouba in early 2014, along with other members of the movement. Tetanized by fear, he left the movement shortly after this arrest. That did not prevent him from being arrested a second time with friends in the suburbs of Tunis in April 2014. The officers detained him until 5 a.m., questioning him about his clothing, his wearing of a beard, the mosque he frequents and other issues related to his religious practice.



A few days later, officers of the National Guard summoned Anis to another police station in Greater Tunis. They asked him the same type of questions and informed him that he was on the S19 list - probably because of his trip to Malaysia - and that he had to notify authorities if he wanted to travel. Anis deduced that he might also be on the S17 list.

Then, police harassment intensified and varied from arrests at roadside checkpoints, searches, pressure on his employer and neighbourhood canvasses.

At the end of 2015, after the attack on a presidential security bus, an officer from the local police district called him and ordered him to stay at home. Anis stayed at home for two weeks. Then he went to the police station to inform them that he had to leave his home to work and support his family. Police allowed him to go out only to work and under the condition that he shows up daily at the police station.

In 2016, he shaved his beard and removed his qamis. He married in August of the same year and went on honeymoon to Sousse. There, he received a phone call from the local police office in his neighbourhood. Police asked him where he was and told him to come to the police station when he is back. When he went there, the police told him that he was under house arrest and that he should stay at home.

Police officers in his neighbourhood regularly call him to summon him to the police station and question him about his activities and acquaintances. They also visit him occasionally at home. It was during these home visits that they confirmed that he was on the S17, S18 and S19 lists.

No legal basis is ever invoked by police to justify these repeated summonses. Lawyers interviewed by OMCT explained that they accompanied their summoned clients in order to dissuade police officers from arbitrarily summoning them. Police officers refuse the presence of lawyers and justify their exclusion by claiming that their

clients are not subject to interrogation and that they still want to ask them a few questions for information.

In several cases reported by lawyers, police gave up the interrogation in response to lawyers' insistence to remain with their clients.



3.2.3. HOME VISITS

Another control measure that many listed people undergo consists in more or less frequent police visits to inform people that they are under surveillance and to collect information from them about their activities, acquaintances or movements. Home visits are therefore always the occasion for informal police interrogation, which is often very stressful for both concerned persons and relatives living with them.

During home visits, as well as in the case of summonses to the police station, police officers often require the monitored person to give them access to their mobile phone so that they can check SMS messages and calls made and received. They also ask for passwords to access accounts on social networks.



Name: Nizar

Age: 33 years old

On the S17 &S19 lists

Nizar is subjected to S17 and S19 measures due to his trips to Algeria, Libya and Turkey where he married a Syrian woman. He lives with his parents, his second wife and their children. Since 2016, he has been subjected to frequent police home visits. When the visits began, his wife had no papers allowing her to reside in Tunisia. The officers summoned her several times threatening to expel her and separate her from her son (born in 2015) if she did not leave her husband. In 2018, when she gave birth to their second child, she could no longer stand home visits. She left her eldest son with Nizar and went to live three months in a shelter with her new-born child.

Police officers still visit the family house very frequently. Morevoer, Nizar regularly receives phone calls from police and visits to his various workplaces to the point that he gave up working for an employer.



Name: Rafiq

Age: 37 years old On the S17 list In 2014, Rafiq was informed that he was on the S17 list. Since then, he has been subject to intensive police harassment. He lives with his wife and children aged 5 and 2. All of them are traumatized by the home visits that began in 2015. He frequently receives calls from the police. When he fails to answer the phone, police officers come to his house during the day, and often knock violently on the door and yell. When Rafiq protests against the way they behave, explaining that it terrifies his children and stigmatizes him among his neighbours, police officers argue that they have the right to check if he is present at home when he does not answer their calls.

Once, the police came to his home to check whether he was there. Rafiq protested and officers arrested him in front of his neighbours and led him to the police station. He spent two hours there between waiting and interrogation before he could go home. The family was eventually evicted from their home due to police visits. The inhabitants of the neighbourhood avoided contacting his family and his wife was no longer invited to eat with other women in the neighbourhood as before. Rafiq is concerned about rumours circulating in the neighbourhood café labelling him a terrorist.



3.2.4. BANS ON LEAVING THE TUNISIAN TERRITORY

For many of the of persons supported by the OMCT, the S17 measure imposes a ban from leaving the country⁷. This restrictive measure is not systematically applied to all those placed under to the S17 procedure. As defined

⁷ See the statement of Interior Minister Hichem Fourati before the Armed Forces Committee concerning the 2019 budget on November 15th 2018: "S17 is an exceptional preventive measure; it is neither a ban on movement nor a ban on entering and leaving Tunisian territory. It consists in consulting the administration before allowing passage and in most cases authorization is granted." http://arp.tn/site/main/AR/activites/fiche_act.jsp?cn=104178&type=null (last accessed November 11, 2019)

by the Ministry of the Interior, the S17 measure involves only a thorough check of the concerned person when he or she wants to cross the border, not a ban on leaving the country . However, several people reported that they had been prohibited from crossing the border because they are on the S17 list.



Name: Rafiq
On the S17 list

This was the case for Rafiq mentioned above. He worked in Libya for five years and found another job there in 2014. However, when he wanted to go there, border police officers informed him that he is subject to a ban from leaving the territory. He realized a few days later when summoned to report to the local police station that the ban was due to the S17 measure.



Name: Faouzi

On the S17 list

On July 23rd, 2016, Faouzi had an altercation with a police officer on a bus on his way back from Tunis to north-eastern Tunisia, where he resides. He thinks he was listed because of that incident. Three days later, he received a phone call from the local police station notifying him that he was under house arrest and that he could no longer leave the territory or travel inside Tunisia without informing the police station.

Shortly afterwards, Faouzi concluded a contract with a foreign importer to export fruit and vegetables. He wanted to go to Luxembourg to sign the contract and went to the airport without informing the police. There, border police officers told him he was on the S17 list. They did not notify him of a ban on leaving the territory, but as they immobilized him for several hours, Faouzi eventually missed his flight and had to return home. When he went to the police station in his neighbourhood, officers confirmed that he was S17 and under a travel ban.

He obtained an administrative court order suspending the travel ban and was able to travel to Italy to see his family. He returned to Tunisia and when he wanted to go to Italy again, the police retained him at the airport until he missed his flight, despite the decision of the administrative court. He still suffers today from an uncertain and insecure situation aggravated by the fear that he should no longer be able to see his family.

When asked about the legal basis for such travel bans, the Ministry of the Interior provided several alternative justifications. In a television interview in December 2014⁸, Lotfi Ben Jeddou, then Minister of the Interior, declared that the authorities were applying Act No. 75-40 of 14 May 1975 on passports and travel documents to prevent young people from travelling to conflict areas. This legal basis was put forward by the Ministry in several statements of defence submitted to the administrative court regarding complaints initiated by victims petitioning to have travel bans imposed on them suspended or lifted.

The 1975 Act, amended in 2017, provides for several cases of travel bans. The investigating judge may impose a travel ban for a maximum period of 14 months if the person concerned is charged in a case, (articles. 15a and 15b).

Article 15b adds that "in cases of flagrante delicto or urgency, the public prosecutor's office may by reasoned decision provisionally prohibit travel for a maximum period of fifteen days. This decision must state that the ban is systematically lifted at the end of this period."

According to article 15(c), if an individual is not prosecuted, a travel ban may be imposed only if the concerned person is considered likely be prejudicial to public safety. In this case, a travel ban decision may be issued only by the President of the Court of First Instance of the district in which the passport holder resides, after duly summoning the concerned person. The concerned person must be notified of the prohibition within three days and shall apply for a period not exceeding three months.

According to these articles of the 1975 Act, a travel ban may under no circumstances be imposed by an administrative authority but must be decided by a judicial authority, whether it is an investigating judge, a prosecutor or the president of the District Court. It is therefore a flawed legal basis put forward by the Ministry of the Interior to justify arbitrary restrictions on freedom of movement.

On other occasions⁹, the Ministry of the Interior has based travel bans on Article 4.3 of Ordinance No. 342/1975 of 30 May 1975 fixing the powers and duties of the Ministry of the Interior. This article gives the police the possibility "to control the movement of persons throughout the territory of the Republic and in particular all land and maritime borders, and to ensure air policing."

This is undoubtedly too vague a provision to be interpreted as allowing the Ministry of the Interior to restrict the freedom of movement of individuals indefinitely and without justification. The administrative courts have confirmed that this order only allows the Ministry of the Interior to control passengers and not to prevent them from travelling.

On several occasions, successive Interior Ministers have presented bans on leaving the territory as being part of the S17 directive itself. They explained that under the S17 border police officers are required to consult the administration before authorizing the concerned person to travel, and that in some cases the administration's response could be negative¹⁰.

- 8 | Interview with Lotfi Ben Jeddou broadcast by Akhbar Al'ân, 24 December 2014, https://www.akhbaralaan.net/news/arab-world/2014/12/24/tunisia-interior-minister-talks-about-travel-ban-isis-members (last accessed on November 4th 2019)
- 9 See in particular the Tunisian government's response published as an appendix to Amnesty International's report, "We no longer want to be afraid", Tunisia, violation of human rights under the state of emergency, 2017, pp. 49-50. In the OMCT's note, entitled "Abusive Restrictions on Freedom of Movement (Administrative Procedure S17)" states that art. 4.3 "has been used since 2015 as a legal basis to arbitrarily restrict the freedom of movement of hundreds of Tunisians in the name of the imperative of national security."
- 10 See Hichem Fourati's statement before Armed Forces Committee concerning the 2019 budget on November 15th 2018, http://arp.tn/site/main/AR/activites/fiche_act.jsp?cn=104178&type=null (last accessed November 11, 2019) See also the statements made by Hédi Majdoub before Parliament on April 20th 2017,

Here again, the legal basis for the ban on leaving the territory put forward by the Ministry of the Interior is highly doubtful. As will be detailed below, listing, an opaque procedure par excellence, cannot be used as a legal basis to justify restrictions on freedom.

Sometimes, individuals whose names are flagged under the S17 list are not formally prohibited from leaving the territory. Upon arrival at the airport, they are subject to interrogation and are made to wait for such a long period of time that they end up missing their flight.



Name: Khaled

Age: 31 years old

on the S17 list

This was the case for Khaled, who has been banned from leaving the country since his return to Tunisia after being deported from Germany, where his wife still resides. In November 2018, he obtained an administrative court order lifting the travel ban imposed on him. Since then, he has travelled to Turkey, Morocco and Algeria. When he goes to the airport, during the interrogation required under the S17 directive, Khaled streams live videos of himself to denounce the abuses he is subjected to, and films airport agents knowingly wasting his time to make him miss his flight. This strategy has so far always paid off, but Khaled still runs the risk of being prevented from travelling, as in the case of Faouzi, mentioned above, who missed several flights to Luxembourg where he wanted to go on business, but also to Italy where his family lives.

According to the Ministry of the Interior, 29,450 people were barred from leaving the territory between 2013 and January 2018. It is unknown whether this figure includes cases of persons de facto prevented from leaving the territory after being arrested for several hours until plane's departure or whether it only refers to persons who have been orally notified they were under a travel ban. It is also unknown whether this figure takes into account persons under a court-order travel ban.

In other words, there is no evidence that all persons prohibited from leaving the territory are on the S17 list. As from 2015, border police have been implementing

an unofficial policy requiring that persons under 35 years of age who want to travel to Turkey, Libya and other countries considered as risk areas present a parental travel consent at the border. According to a lawyer interviewed by the OMCT, this control measure, which has no legal basis, is only enforced against young people with suspicious appearance who are not necessarily listed under a directive. In some cases, persons who presented paternal travel consent were nonetheless prohibited from leaving the country.





3.2.5. DEPRIVATION OF **OFFICIAL DOCUMENTS**

Several persons listed among those supported by the SANAD programme testify to difficulties in obtaining official documents such as passports, identity cards or even the B3 record (criminal record extract), which may be necessary to obtain employment, particularly in the public administration.

Listed persons and their lawyers have reported that these obstacles may be due to the S18 measure. Others were unable to obtain the required official documents though they were only on the S17 list, at least to their knowledge, Given the opacity of the typology of control orders, it is difficult to know with certainty which directive(s) raise(s) obstacles to the issuance of official documents



Name: Kais

Age: 30 years old

On the S17 list

Kais, 30 years old, is a fitness coach who lives in Greater Tunis. He has been under police surveillance since his brother travelled to Syria to engage in jihad in 2014. In September 2016, he applied to renew his identity card. The police officer who registered his application mistakenly gave him a document stating that he was subject to the S17 measure. Two months later, he wanted to obtain his passport, as well as his B3 record to apply for job offers, but he never received a reply.

In early 2018, Kais received a job offer to work as a fitness coach in a Gulf country. His lawyer accompanied him to the Directorate of Borders and Foreigners to check the status of the passport application. An officer informed them that the application was being processed and Kais had to decline the job offer. More recently, he had a new professional opportunity to work in France but was obliged to give it up again in the absence of a passport. In August 2019, his lawyer filed an appeal against the refusal to issue a passport and a B3 record.

Four other people supported by the SANAD programme have also been waiting for their passports, some for several years.

According to article 13 of Law No. 75-40 of 1975 on passports and travel documents, "every Tunisian national has the right to obtain or renew a passport" at the Ministry of the Interior. However, there are a few exceptions to this principle. A Tunisian citizen may be refused the issue or renewal of his or her passport, in particular "on grounds of public order and security, or for reasons likely to affect Tunisia's good reputation". Accordingly, the Ministry of the Interior can refuse to issue a passport without reference to judicial authorities.

On the other hand, according to Article 15, decisions to revoke a passport - in particular when a person is charged - must be taken by a judicial authority.

A refusal to issue a passport is effectively equivalent to a travel ban.

The Ministry of the Interior may refuse to issue a passport according to article 13 of the 1975 Law, which thus allows an administrative authority to restrict an individual's freedom of movement on grounds that are not clearly defined. Indeed, "on grounds of public order and security, or for reasons likely to affect Tunisia's good reputation" is a too vague wording to be used as a basis for limiting a fundamental freedom. In addition, Article 13 does not require the Ministry of the Interior to notify the concerned person of refusal reasons, thus making it all the more difficult to challenge the measure before an administrative court. Finally, unlike travel bans provided for in articles 15(a) to 15(c), which have a maximum duration provided for by law, decisions to refuse issue of passports are not time-bound.



3.2.6. ADMINISTRATIVE SEARCHES

Some of the individuals supported by the OMCT report being victims of very traumatic¹² administrative searches¹³. The scenario is often the same. Dozens of agents burst into the home of the listed person, often in the evening or at night, sometimes by breaking down the door. They insult and threaten those present, ransack the house, make, if necessary, a few seizures

and leave without giving any explanation or providing the minutes of seizure or a warrant to seize. The head of the family is very often violently led by police in front of his children to the police station where he is subjected to a routine questioning before being released within minutes or hours.

- 12 | By administrative searches, we mean searches carried out outside any criminal procedure and without the control of a judicial authority.
- 13 | These searches were also denounced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report following his visit to Tunisia, 12 December 2018, p. 10



Name: **Aziz**

Age: 30 years old

On the S17 list

Aziz and his family are victims of intense police harassment since Aziz's brother was suspected of joining a jihadist group in the mountains in 2014. They have been subjected to numerous administrative searches in recent years. Each time, police officers burst in the home yelling and insulting the residents. They broke down the door three times before the family gave up replacing it. Officers search the entire house with which they are so familiar that they notice the presence of a new piece of furniture and ask Aziz and his family where they bought it and with what money.

In the winter of 2017, after being forced to put their heads in the mud by police officers during yet another brutal search, two of the children tried to commit suicide by swallowing medication to publicly denounce the police harassment they were subjected to and the stigma it caused.



Name : **Mostafa**

Age: 34 years old

On the S17 list

Mostafa and his family, too, have been seriously affected by violent police administrative searches of their homes. This 34-year-old sports coach is married and father of one child. He has been harassed by the police since 2014, presumably due to a three-year prison sentence in 2007 on account of sympathizing with islamists. In 2014, he was arrested in possession of several mobile phones that he planned to repair and resell. He was led to a police station on the outskirts of Tunis, where he was questioned about his acquaintances and religious practices. Mostafa was forced to sign a record charging him with terrorism, without reading it before being released. However, the next day, police officers came on board of eight vehicles and broke into his home to conduct a brutal search. He and his pregnant wife were led to the Gorjani national guard post. His wife was threatened with rape in front of him before being released. Mostafa was tortured and spent ten days in police custody. From then onwards, police harassment has intensified and involved house arrest, repeated police visits to his home and various workplaces, pressure on the lessor, road checks and even listing his wife.

Home Searches continued and in November 2018, Mustafa's wife, five months pregnant with twins, miscarried after a very aggressive police raid on the family home. Their three-year-old son is traumatized.

Such searches seem to be based on Decree No. 78-50 of January 26, 1978 regulating the state of emergency. Indeed, article 8 provides that "in areas subject to the application of the state of emergency, the authorities referred to in the previous article may order daytime and night-time home searches. The vague decree does neither set out the precise circumstances that could justify searches, nor the applicable procedure. The judicial authority seems to be completely excluded from the process of authorizing and supervising home searches.

In a letter to Amnesty International in response to an inquiry, the government confirmed that the legal basis for these searches was Decree 50 of 1978. The Ministry stated that "searches are conducted within the framework of warrants issued by the public prosecutor's office in accordance with the procedures provided for by applicable legislation, notably the Code of Criminal Procedure and Act No 26 of 2015 dated 7 August 7, 2015) on combating money laundering and terrorism," and that they "are also subject to judicial supervision."

However, none of the listed persons was ever informed that searches were part of a legal procedure.



3.2.7. HOUSE ARRESTS

Five persons among individuals supported by the OMCT have been or are still under house arrest. This control measure, which is very prejudicial to freedom of movement, is also based on a summary article of Decree No. 78-50 of January 26, 1978 regulating the state of emergency. Article 5 provides that "the Interior Minister may impose house arrest in a territorial district or a specific locality on any person residing in one of the areas provided for in Article 2 whose activity is dangerous to public safety and order in the mentioned zones.

The administrative authority must take all necessary measures to ensure the subsistence of these persons and their families."

All persons under house arrest were notified of the measure taken against them orally, sometimes following an identity check, without ever being given any written warrant. The scope of the assignment is not clearly defined, nor are the constraints to which this measure gives rise.

Some people have been prohibited from leaving their homes, whereas Decree No. 78-50 refers to house arrest in a territorial district or a specific locality





Name: **Anis**

On the S17 list

Anis found out that he was under house arrest when he returned from his honeymoon in 2016. The officers at the local police office told him that the measure taken against him meant he had to stay in his home.

He spent several months without leaving his house, which created strong tensions in his relationship to the point that his wife divorced him.

He is still under house arrest today, but he goes out from time to time to visit the OMCT or friends. In that case, police call him to ask him to come by the police office on his return.

In November 2018, he was arrested outside his house arrest area and interrogated for three hours before being released. He was not prosecuted for breach of house arrest conditions.



Name: **Faouzi**

On the S17 list

Three days after having had an altercation with a plainclothes police officer on a bus, Faouzi received a call from the police station in his city on 26 July 2016 informing him of his house arrest. The police officer told him that he could no longer leave the country or travel inside Tunisia without notifying the police station. He gave him the number of the house arrest decision and Faouzi requested a copy from the Ministry of the Interior. The house arrest order states that he is required to remain at home until the end of the state of emergency and not leave his place of residence without the authorization of the brigade concerned, under penalty of criminal prosecution. The order does not specify the reasons for the measure taken against him.

In October 2016, Faouzi notified the police station of his intention to travel to Italy to visit his wife and children but received no reply. By the end of October, he was able to fly to Italy. He returned to Tunisia two weeks later and, to his great surprise, was prosecuted for violating his house arrest terms.

In February 2017, the relevant District Court dismissed the case on the grounds that Faouzi had been verbally authorized by police station chief to leave the territory, an authorization confirmed by border police, which did not prevent him from travelling.

Three months later, the Administrative Court, hearing an application for interim measures, suspended Faouzi's house arrest on the grounds that the Ministry of the Interior did not provide any specific information on the applicant's activities that were supposed to pose a threat to the country's security. In December 2018, the Ministry of the Interior finally informed Faouzi that his house arrest order had been lifted.



3.2.8.INTRUSIVE AND STIGMATIZING POLICE CONTROL METHODS

Several victims reported that police surveillance to which they are subjected has taken the form of a real stigmatization campaign aimed probably at isolating and desocializing them.

Several have been visited on one or more occasions by police officers at their workplace allegedly to check their presence, but more likely with the aim of getting them dismissed.



Name : **Mostafa**

On the S17 list

Mostafa lives with his wife and son. They were subjected to home visits and home searches that traumatized the family. They were finally evicted from their homes because of police pressure on the lessor.

Mostafa was also harassed in his various workplaces. In 2015, he was recruited as a coach in a hotel gym. The police came to visit him in the gym and led him to the police station where they ill-treated him. Mostafa's complaint against his attacker was dismissed despite the fact that he lost his job because of this incident.

He was recruited by another gym but lost his job again because of a police visit.

A young man living in the suburbs of Tunis then recruited him as a personal trainer. At the end of 2018, during a training session, police officers came and carted off Mostafa and the young man on board. Police pressured the young man's father to fire Mostafa. He is now unemployed and has given up working as a coach.





Name : Rafiq

On the S17 list

Rafiq had a similar experience. At the end of 2017, he found a job in a company in southern Tunisia. He was dismissed because of police pressure on his employer. In 2019, he began selling smuggled goods to feed his family. On several occasions, the police confiscated his merchandise.

The following year, to protect his wife and two young children from traumatic home visits and the stigma it creates in their neighbourhood, Rafiq went to work near Tunis, for the company in which his brother works and did not inform the police station in his city of residence. After a few weeks, the police came to his workplace. That day, Rafiq was at the OMCT. His brother called him to inform him of the police presence. Despite the fear, Rafiq returned to work the next day. His badge was deactivated. He asked to see the management and they demanded that the discussion take place at the police station. He was eventually dismissed without cause and he had to refer the matter to the employment appeals court. Rafiq is currently unemployed and he was evicted with his family from their house due to home visits and searches.

Like Rafiq and Mostafa, other people supported by the OMCT had to move several times at the request of the lessors because of police pressure.



Name : **Néjib**

On the S17 list

After 20 years abroad, Nejib returned to Tunisia in 2012 with his Algerian wife and two children. He was placed under house arrest as soon as he arrived on Tunisian soil. Since then, the family has been subject to several violent home searches and visits, usually after a terrorist attack. The family had to move 8 times between 2013 and 2018 because of police raids and pressure on lessors.

Police officers also often conduct investigations with neighbours to inquire about the activities, acquaintances and movements of listed people on file,

which further stigmatizes them and their families in the neighbourhood.



2 Kids **Aziz's nephews**

Age : 14 & 12 years old

Exposure to stigma prompted Aziz's nephews, aged 14 and 12 today, to attempt suicide after yet another home search during which agents humiliated them. The children wanted to show their despair not only at police violence but also at the continuous police harassment that has totally marginalized them to the point that the other children in the neighbourhood avoid playing with them. Despite this call for help, the police keeps up the pressure and continues to summon Aziz and his parents to question them about their son who is supposed to have joined a jihadist group in the mountains in 2014 and about whom they have not heard for years. Police officers still conduct home searches and neighbourhood canvasses during which they ask the grocer about the family's consumption, the number of loaves of bread they every day, etc.



4. ARBITRARY CONTROL MEASURES CONSTITUTING POLICE HARASSMENT

All control measures mentioned above violate several fundamental rights and freedoms guaranteed by the Tunisian Constitution and the international human rights law, such as freedom of movement, the right not to be subjected to arbitrary detention, the right to privacy and inviolability of the home, and other rights and freedoms, which will be detailed hereunder.

Indeed, these measures are not legal because both the Tunisian Constitution and the International Covenant on Civil and Political Rights (ICCPR) provide for the possibility for the Tunisian authorities to restrict certain rights and freedoms. The ICCPR distinguishes between derogations and restrictions to rights and freedoms. Restrictions are the limits that may be placed on certain rights guaranteed by the Covenant in ordinary times, in order to protect national security, public order, public health or morals, or the rights and freedoms of others. Derogations are the limitations of rights and freedoms authorized by Article 4 of the ICCPR in the event of exceptional danger to the nation.

According to Article 4.2 of the ICCPR, no derogation - let alone restriction - can be made to certain rights such as the right to life or the right not to be subjected to torture or ill-treatment. Apart from the rights and freedoms listed in this article, others may in principle be subject to derogations or restrictions, provided that all restrictive measures adopted are fully compliant with three essential conditions; legality, proportionality/necessity and subjugation to judicial review¹⁴.

Any limitation of rights and freedoms that does not respect these conditions will be arbitrary.

4.1.LEGALITY PRINCIPLE

Article 49 of the Constitution states that a law must be enacted that provides for limitations on rights and freedoms: "limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence." Article 65 specifies that such a law is deemed an organic law.

The requirement of legality is also mentioned several times in the ICCPR to preserve fundamental freedoms from arbitrary restrictions.

4.1.1. LEGALITY OF RESTRICTIONS ON FREEDOM OF MOVEMENT

Article 24 of the Tunisian Constitution provides that "every citizen has the right to choose their place of residence, to free movement within the country, and the right to leave the country."

Article 12 of the ICCPR, which guarantees freedom of movement, states that:

- **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, 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."

Many of the control measures implemented by the Tunisian police against listed persons constitute an infringement of freedom of movement. This applies to:

- **1.** House arrest at home or in a locality or governorate.
- 2. Prohibition to leave the territory notified to the listed individual who wants to leave Tunisia by land, sea or air.
- **3.** Retention for several hours at the airport before allowing them to travel once they miss their flights.
- **4.** Retention of listed persons following roadside checks and hindering their movements.

The question then arises as to whether these obstacles to freedom of movement are based on a law, as required by the Constitution and the ICCPR.

Measures such as retention at airports or roadside checkpoints pending authorization to pass may be based on Decree No 75-342 of 30 May 1975, fixing the powers of the Ministry of the Interior. Indeed, Article 4.3 provides that the Ministry of the Interior is responsible for "controlling the movement of persons throughout the territory of the Republic, in particular all land and maritime borders, and ensuring policing". However, this provision is provided for in a regulatory text and not a law.

Similarly, house arrest, a measure restricting freedom par excellence, is based on a regulatory text, Decree No. 78-50 of 26 January 1978, regulating the state of emergency. It therefore has no legal basis.

Likewise, orally notified exit bans are based on different legal grounds invoked by the administration, notably in the context of administrative litigation concerning these prohibitions. By invoking Decree No. 75-342 of 30 May 1975 fixing the powers of the Ministry of the Interior or Decree No. 78-50 of 26 January 1978 regulating the state of emergency, the administration bases the prohibition to leave the territory on an administrative text and not on a law, as it should. The administration sometimes invokes Act No. 75-40 of 14 May 1975 on passports and travel documents. However, as detailed above, this law does not authorize the administration to issue prohibitions on leaving the territory.

Thus, the measures restricting freedom of movement are arbitrary as they have no legal basis. They are therefore unconstitutional and contrary to Tunisia's international commitments.

The only exception noted was the travel ban resulting de facto from the administration's refusal to issue a passport to the listed person. The measure in question is based on Article 13 of the1975 Act on passports and travel documents, which allows the Ministry of the Interior to refuse to issue a passport "on grounds of public policy and security, or for reasons likely to affect Tunisia's good reputation". The question arises as to whether the law is clear and precise enough not to lead to unjustified infringements of freedom of movement.

Not all refusals to issue passports would be legal even if the requirements of legality were met, because restrictive measures must respect the other two principles governing restrictions on rights and freedoms, as will be seen below

4.1.2. LEGALITY OF CUSTODIAL MEASURES (ARREST AND DETENTION)

If a law is required to regulate the limits placed on freedom of movement, the same is even truer for custodial measures such as arrest and detention. Deprivation of liberty must be provided for by law or will be considered arbitrary.

Article 9 of the ICCPR provides that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Along the same line, Article 29 of the Constitution states that "No person may be arrested or detained unless apprehended during the commission of a crime or on the basis of a judicial order. The detained person must be immediately informed of their rights and the charges under which they are being held. The detainee has the right to be represented by a lawyer. The periods of arrest and detention are to be defined by law."

Several measures restricting freedom against listed persons may violate the fundamental right not to be arbitrarily detained.

First of all, this is the case of arrests of listed persons on public roads after an identity check, a road check or at their home following home searches or visits. Forcing these persons to go to the police station for interrogation for information purposes may be considered equivalent to an arrest even if it's a short one.

517

These arrests are simply arbitrary since they have no legal basis, at least none invoked by police officers to justify taking a person to the police station.

The same is true for repeated summonses to police station, which are binding as the person risks retaliation if he or she fails to comply.

House arrest, a restrictive measure, may also be qualified as a measure involving deprivation of liberty if its scope is restricted to the concerned person's home. The arbitrariness of this detention lies in particular in the fact that it is based only on a regulatory text -Decree No. 78-50 of 26 January 1978, regulating the state of emergency - and not on a law as required by ICCPR and Tunisian Constitution.

One of the corollaries of the prohibition of arbitrary detention is the principle of legality in criminal matters guaranteed by Article 15 of the ICCPR, according to which an individual may only be sentenced for an offence and to a penalty prescribed by law at the time of the alleged offences. The principle of legality is nonderogable, even in a state of emergency according to Article 4.2 of the ICCPR. It is also enshrined in Article 65 of the Tunisian Constitution, which states that "laws" relating to (...) definition of crimes and offenses and the penalties applicable, in addition to violations resulting in a penalty involving deprivation of freedom are deemed ordinary laws." Article 28 specifies that "punishments are individual and are not to be imposed unless by virtue of a legal provision issued prior to the occurrence of the punishable act, except in the case of a provision more favourable to the defendant."

In breach of the principle of the legality of offences and penalties, Article 9 of the 1978 Decree regulating the state of emergency provides that "offences against the provisions of this Decree shall be punishable by a prison term of six months to two years and a fine of 60 to 2,500 dinars or only by one of these penalties". It is

on this basis that persons accused of violation of house arrest terms are prosecuted. These prosecutions, as well as Article 9 of the decree on which they are based, constitute a clear violation of the ICCPR and the Constitution insofar as the offence and penalty incurred are determined by a decree and not by a law.

4.1.3. LEGALITY OF RESTRICTIONS ON THE RIGHT TO PRIVACY, INVIOLABILITY OF THE **HOME AND SECRECY** OF CORRESPONDENCE

Article 24 of the Constitution provides that "The state protects the right to privacy and the inviolability of the home, and the confidentiality of correspondence, communications, and personal information."

Along the same line, article 17 of the ICCPR notes that "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

This right may only be restricted by law in accordance with Article 17, as well as in accordance with the aforementioned Articles 49 and 65 of Constitution¹⁵.

Police home searches, mobile phone checks, police visits to the home of the listed person and his family as well as to workplaces, police neighbourhood canvasses, pressure on employers, lessors, relatives, etc. are all control measures that seriously violate the right to privacy, inviolability of the home and confidentiality of correspondence.

They also affect the concerned persons honour and reputation by stigmatizing them among neighbours, colleagues and sometimes even families.

Of all these measures, only police home searches are based on a legal text. Yet, once again, the 1978 Decree regulating the state of emergency is a regulatory text, not a law. To our knowledge, the other measures have no legal basis. Accordingly, all these restrictions on the right to privacy, inviolability of the home and secrecy of correspondence constitute arbitrary and unlawful interference within the meaning of Article 17 of the ICCPR, and are also unconstitutional.

4.1.4. LEGALITY OF **RESTRICTIONS ON THE RIGHT TO WORK**

Finally, certain control measures such as police visits to workplaces, threats to the employer and the refusal to issue administrative documents such as the B3 record, necessary to finding an employment, constitute violations of Articles 40 of the Constitution and 6 of the ICCPR, which establish the right to work.

4.2. NECESSITY AND **PROPORTIONALITY PRINCIPLES**

The Tunisian Constitution and international law require that restrictions and derogations to rights and freedoms, particularly in a state of emergency, comply with the necessity and proportionality principles.

Article 49 of the Constitution provides that "The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought. Judicial authorities ensure that rights and freedoms are protected from all violations."

The Human Rights Committee has also endorsed these conditions of necessity and proportionality in its General Comments on Article 4 of the ICCPR, and points out that "any measures derogating from a State party's obligations under the Covenant must be limited "to the extent strictly required by the exigencies of the situation". This condition requires that State parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation¹⁶.

S17

The requirements of necessity and proportionality are common to the derogations decided in the event of a threat to the nation and to the restrictions on rights and freedoms normally imposed: "the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers".

Review of necessity and proportionality does not only concern the general measures of laws and decrees limiting rights and freedoms. It has to be ensured on a case-by-case basis, whenever these laws and decrees are applied to individual situations. The Human Rights Committee thus affirms that "the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. 1741

Consequently, for instance, the fact that the derogations provided for in the 1978 Decree on the State of Emergency are necessary and proportional to the threat to the nation is therefore not sufficient. Indeed. each individual measure taken pursuant to this decree must also meet these requirements.

However, control directives and surveillance measures imposed on listed persons are not time-bound. In the best case, the person placed under house arrest is informed orally that the measure will apply as long as the state of emergency is maintained.

In most cases, however, there is no time limit set by the administration, which is sufficient to consider these measures as disproportionate.

Moreover, the administration does not provide listed persons - or even the administrative court when seized of an appeal - with the detailed and full reasons justifying listing and the restrictive measures of freedom it implies.

Consequently, in the absence of a time limit and justification, these measures prove to be neither necessary nor proportional and are therefore contrary to the Constitution and the ICCPR

4.3. THE REQUIREMENT OF **JUDICIAL REVIEW**

Article 49 of the Tunisian Constitution provides an additional safeguard to prevent arbitrary restrictions on rights and freedoms by stating that "judicial authorities ensure that rights and freedoms are protected from all violations "

Article 14 of the ICCPR provides that "in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The above provisions highlight the fact that, although provided for by law and proportional, limitations on rights and freedoms are illegal and arbitrary if they are not subject to supervision by judicial authorities. Such judicial review must not only exist in law, but must also be, in practice, be serious, fair, effective and prompt.

It is clear from Tunisian law and case law that judicial

review may a priori be exercised over all restrictive measures imposed on listed persons. According to Hichem Fourati, until May 2019, 951 cases were submitted to the administrative court¹⁸ which ruled in favour of the Ministry of the Interior in 203 cases and in favour of the applicant in 62 cases. In February 2019, Mohamed Ali Khaldi, Director of Human Rights at the Interior Ministry, reported 800 appeals, 48 of which were decided in favour of the Ministry and 51 in favour of the applicants¹⁹.

In practice, it has to be conceded that judicial supervision has been largely hampered by the administration.

4.3.1. THE DIFFICULT EVIDENCE OF LISTING AND CONTROL MEASURES

The first obstacle is the lack of a written notification of the listing procedure and the control measures to listed persons. In all cases documented by the OMCT, persons were only orally notified of the listing measure and of the fact that they were subsequently subject to a ban on leaving the country, a house arrest, or deprivation from identity documents." Similarly, no written information was provided to them to justify repeated summonses to the police station, administrative searches, police visits to their homes and workplaces, neighbourhood canvasses, among other numerous control measures.

The absence of a written document complicates recourse to judicial remedy before the administrative court because the applicant must then definitely find some ways to provide the court with proof that he is actually listed and/or subject to a restrictive measure.

This is why Khaled films himself live every time he passes through customs at the airport. In addition to putting pressure on the border police to allow him to travel, filming also makes it possible to document the incident in the event of a ban on leaving the country. Others choose to go to the airport with a bailiff or lawyer.

Regarding proof of house arrest, one of the SANAD programme beneficiaries obtained a copy of the house arrest order by requesting it from the Ministry of the Interior. Most persons placed under house arrest are not as lucky and must find other ways to prove house arrests imposed on them. One of the lawyers interviewed by the OMCT advises his clients to violate their house arrest terms in order to be prosecuted²⁰. The Ministry of the Interior is then required to provide the house arrest order as part of the procedure. According to the lawyer, this strategy has far more advantages than disadvantages for his clients because they really only incur a very small fine, or even very often a dismissal, since their summons has never been officially notified to them.

It is not a priori difficult to establish evidence of refusal to issue documents such as passports, identity cards or B3 records, as long as one can show that an application has been made.

On the other hand, it is much more difficult to provide evidence of all other no less detrimental measures such as repeated summonses to the police station, home visits, administrative searches, investigations with neighbours, exerting pressure on employers and property owners, roadside arrests following an identity check, etc.

Such proof is not impossible, though difficult when it comes to providing testimony because witnesses risk retaliation. This may explain the limited number of administrative appeals against such measures²¹.

- 18 | Answer of the Minister of the Interior, Hichem Fourati, to the question of Deputy Maher Medhioub concerning the S17 measure, op. cit.
- 19 Tunis Afrique Presse (TAP), 800 court cases related to S17 travel ban procedure, op. cit.
- 20 Interview with a lawyer, September 30th, 2019.
- 21 Interview with a magistrate of the Administrative Court of Appeal, on October 8th 2019.

The Administrative Court's case-law shows that judges have so far been very flexible on the question of proof of the existence of a control measure

4.3.2. ASSESSMENT OF AN INDIVIDUAL'S **DANGEROUSNESS**

Once the appeal has been lodged with the administrative court, the applicant is confronted with the Ministry of the Interior's refusal to provide her or him with precise information justifying the listing, under cover of confidentiality. This is a serious and prejudicial breach of the principle of equality of arms, which is the essential guarantee of a fair judicial remedy.

In several judicial decisions consulted by the OMCT, it is stated that the Ministry of the Interior justified listing and restrictive measures taken against the applicant by the fact that he is a "member of Ansar al-Sharia" and is therefore a "terrorist"²²

Other cases show that the Ministry has provided more details that are too vague for the applicant to effectively refute allegations.



Mostafa

on the S17 list

Mostafa was accused of belonging to the "takfiri" group and of being dangerous to national security. Proof of this supposed dangerousness is his three-year prison sentence for terrorism in 2007. In addition, he was allegedly involved in the radicalization of several young people after the revolution, without anyone knowing who, when and in what way. He is now reported to be a member of Ansar al-Sharia and to be in contact with its leaders. The Ministry goes so far as to say that he was involved in the 2012 embassy attack though Mostafa was never prosecuted, let alone convicted in this case.

Allegations made by the administration against people with criminal records are most often so serious as to constitute criminal offences. The question then arises as to why the Ministry of the Interior does not prosecute them rather than having their names flagged under a control order directive. The answer certainly lies in the burden of proof, which differs in administrative litigation and criminal litigation. Criminal proceedings require the prosecutor to prove the facts alleged against the accused and to investigate on behalf of the prosecution and the defence. If prosecuted criminally instead of subjected to restrictive measures, a listed individual because of his or her alleged links with a terrorist enterprise would certainly be sentenced to imprisonment, but he or she would also benefit from the presumption of innocence, the right not to be convicted without evidence, among other rights of defence. On the other hand, administrative litigation may operate in practice as a kind of reversal of the burden of proof. Ultimately, it is up to the victim to prove that he or she did not commit the acts for which he or she is accused. without knowing the allegations made against him, and without having the means of the public prosecutor or an investigating judge to collect exonerating evidence.

Among individuals supported by the SANAD programme, several were arrested after the revolution for their alleged involvement in terrorist activity and were dismissed or acquitted in the absence of sufficient evidence against them. This did not prevent the Ministry of the Interior from maintaining these refuted allegations in criminal court in order to flag the names of concerned persons under a control directive and imposing surveillance measures on them²³.

The administration of evidence is less regulated in administrative litigation than in criminal litigation, but, here again, it seems that, until now, the administrative judge has been quite demanding with regard to the administration by requiring it to prove the dangerousness of the individual beyond vague allegations of belonging to Ansar al-Sharia²⁴. Several persons supported by the OMCT have had their ban on leaving the country or their house arrest suspended or lifted on the grounds, inter alia, that the Ministry of the Interior did not mention the details and nature of the activity alleged to constitute a danger to the country's security.

It should be noted, however, that nothing prevents the administrative judge from being satisfied with the administration's claims justifying listing and control measures. This risk is particularly heightened after attacks because judges may then be afraid to allow the appeal of a claimant who will then become involved in a terrorism case

4.3.3. REVIEW OF THE PROPORTIONALITY OF CONTROL MEASURES

The dangerousness of a listed individual is not the only aspect examined by the administrative judge in the context of administrative litigation when ruling over the legality of control measures. The judge also reviews the proportionality of the restriction on the applicant's freedom with regard to the maintenance of public order.

To our knowledge, restrictive measures imposed on listed persons have hardly been subject to review by the administrative judge because the applicants have always favoured other means of illegality in their appeals.

S17

4.3.4. REVIEW OF RESTRICTIVE MEASURE **COMPLIANCE WITH TUNISIAN LAW**

Finally, the judge examines compliance with the constitutional, legislative and regulatory framework.

Following the review of the constitutionality of measure, on several occasions, the administrative court decided to suspend or lift a house arrest order that was based on the 1978 Decree regulating the state of emergency, or a ban on leaving the territory that was based on the 1975 Decree fixing the powers of the Ministry of the Interior, on the grounds that only a law can provide for the cases in which freedom may be restricted, according to Constitution...

Review of a control measure's legality led the judge to overturn prohibitions on leaving the country, based on the 1975 Passports and Travel Documents Act, which provides that only a judicial authority may impose such a prohibition.

As regards control measures compliance with a regulatory text, the administrative judge suspended or lifted house arrest decisions on several occasions on the grounds that the person was under house arrest, whereas the 1978 Decree regulating the state of emergency provides that house arrest may be imposed in a locality or a city.

According to magistrates interviewed by the OMCT, apart from some of the control measures imposed on listed persons, mainly prohibitions to leave the territory, house arrest and refusals to issue official documents, the administrative court has never, to date, suspended or lifted a decision to include an individual on a control order list (S17 or other).

There is therefore a clear discrepancy between administrative case law and the reality of harassment experienced by people with criminal records. Indeed the present report reflects that, in addition to the restrictive measures mentioned above, listed individuals are subject to a myriad of other very detrimental measures such as repeated summonses to the police station, home visits, administrative searches, retention or even interrogations at roadside checkpoints, neighbourhood canvasses and pressures on employers, lessors and friends, etc.

These measures -some of which like exerting pressure on employers, lessors and friends, for instance- are clearly illegal and should all be subject to appeal in excess of power, provided that evidence of their existence is shown. In addition to contesting control measures, it would be appropriate to request the lifting of the decision or decisions to include an individual on a control order list. Indeed, listed individuals who are banned from leaving the country are often also subjected to long-term arrests following roadside checks, repeated summonses to report to police offices and to other measures. Contesting the said decisions would make it possible to question all subsequent measures.

4.3.5. AN EMERGENCY DISPUTE NOT ALWAYS DEALT WITH AS A MATTER OF URGENCY

As mentioned previously, any measure restricting freedom must be subject to serious, fair, effective but also prompt judicial review. This requirement of promptness is far from being met.

Listing/control orders and control measures are subject to several types of appeals:

URGENT APPEALS:

- 1.Referral is indicated to obtain an urgent measure. However, the law does not set time limits for review by administrative court. In practice, the procedure takes time because the court communicates with the administration several times and give it a reasonable time to respond.
- Suspension of operation is introduced to suspend a measure, the implementation of which could be detrimental to the person, such as bans on leaving the territory. It shall be examined within a maximum period of one month.

MERITS APPEALS:

1. An action for misuse of power to overrule (and not only to suspend (as in the case of urgent appeals) of a measure deemed unlawful. This procedure usually takes several years

In the vast majority of cases documented by the OMCT or mentioned by interviewed lawyers, the applicants submitted requests for interim measures in addition to their actions for annulment/overuse of the power to obtain a temporary emergency decision.

Lawyers have reported that, in rare cases, referrals have been examined within 48 hours. In most cases, however, submitted applications for interim measures wait for decisions for at least three months and appeals for annulment are not examined two or even three years after referrals to the court.

Three months is an inordinately long time to consider, for example, a request for urgent suspension of a house arrest order. Indeed, house arrest has generally the effect of causing the targeted person to lose his/her job, not to mention the other damage that it causes to his/her personal life, especially when it restricts the perimeter of freedom of movement to the his/her house alone. Such a measure could even be considered a form of detention. A judicial review should be carried out in 24-48 hours to be considered sufficiently prompt.

4.3.6. INTERIOR MINISTRY'S FAILURE OF THE TO **IMPLEMENT JUDICIAL DECISIONS**

The last problem related to administrative litigation is the Interior Ministry's recurrent failure to implement decisions. According to the judges and lawyers interviewed, though not systematic, this failure to do so is frequent enough to make it a major problem.

In 2017, Faouzi submitted an application for interim measures and an appeal for excess of power before the administrative court against the decision to place him under control order list and the travel ban imposed on him. The appeal for excess of power has still not been examined. On the other hand, in July 2017, the administrative court ruled on the application for interim measures, ordering the suspension of the exit ban. Faouzi was able to go to Italy to visit his family. However, he was again retained for several hours until he missed his flight when he tried to return some time later. He was entitled to the new summary judgment he sought.

On the other hand, control measures had been lifted by the Ministry of the Interior even before the end of the judicial remedy in other cases.

Faced with the cost and duration of administrative disputes, listed persons usually begin with filing an internal appeal to the administration to obtain the lifting of surveillance measures and the decision including him on a control order list. Lawyers interviewed by the OMCT testified that they had obtained the lifting of several travel bans and the issuance of passports, by referring the matter to the Interior Ministry's office for relations with citizens²⁵. In many other cases, the administration has never responded to their request.



5. DEVASTATING CONSEQUENCES OF POLICE HARASSMENT

The issue of control orders and measures adopted against concerned persons goes far beyond the simple question of legality. These measures are arbitrary and constitute police harassment. Above all, they have very serious consequences. They cause material and psychological damage for which none of the victims has, to date, obtained compensation.

5.1. PRECARIOUS VICTIMS

Youssef had to abandon his engineering studies because of the repeated roadchecks he had to undergo on his way to university. Kais and Rafiq had found jobs abroad but had to give them up as they were subject to exit bans. Rafiq, Mostafa, Anis, Skander and Nizar have lost several jobs following police raids on their workplaces and due to pressures exerted on their employers.

These examples are far from anecdotal as they reflect the abuse of power behind the official policy of control orders/listing policy established to protect public order and security of the Tunisian State. While certain restrictions on fundamental freedoms can be allowed, provided that the requirements of legality,

proportionality and judicial review are respected, there is no justification for harassing an individual in workplaces to the point of losing his or her job. These actions reflect a desire to stigmatize, punish, marginalize and exclude more than surveillance.

Apart from listed persons, wives, children and parents suffer the full brunt of both traumatic situations and financial costs of police control. The economic consequences of a job loss on the survival of the household are often dramatic and in turn cause psychosocial damage that can be destructive. Pressures experienced may often leads to divorce and/or separation of children from their listed father.

5.2.PSYCHOLOGICAL ISSUES LINKED TO LISTING



Listed persons targeted by control measures arbitrarily restricting their freedom to a defined space are considered persons deprived of their freedom. With the exception of persons under strict house arrests at their homes, control measures do not amount to a

deprivation of liberty form a legal point of view. They are rather considered as restrictions of liberty. Yet, from a psychological perspective, the arbitrary nature of these measures makes them more damaging than deprivation of liberty when it comes to emotional experience.

"Home confinement may seem more comfortable than confinement in jail but it is not the case "

Restrictions on freedom imposed by control orders cannot be compared with isolation in a prison environment. It is true that prisoners are deprived of their families and environment, and this is not without considerable emotional impact. Yet often, the prison cell becomes from the very first moment a new socialization environment that requires adaptation and another form of socialization takes over. However, listing causes a real breach of social ties from the moment people are arrested for the first time. Indeed, listing is notified at any time to the affected person while walking with friends, family or co-workers, or going to the market at the cinema or coffee shop with friends. From that moment on, police methods of treatment make the close family and friends aware that the affected person is dangerous and that frequenting them means taking risks. Then

arrests multiply and create a climate of insecurity such that affected persons are forced to change their life. As time goes on, they will no longer frequent people who are not aware of their isolation. At any moment of their daily life, the reminder shots telling them that they must remain on the margins of society are there. These arrests are demeaning to human dignity in the sense that they give way to the feeling of not being an ordinary citizen, of being a sub-human... an OTHER. An imprisoned person is not that other, he or she is a detainee among others and feels like a social being forced to adapt like others to the inhuman conditions of places of detention. The punishment consists in being forced to endure and live in the group for a specified period of time.

Listing is therefore experienced and perceived as a measure that undermines the sense of belonging and creates great vulnerability.

While many people describe their daily lives as compartmentalized and restricted to a given

environment authorized by the police, others experience the situation differently:

"Going out on a daily basis has become for me an act of bravery, a militant act enabling me to face society and to exist as a citizen".

Reing in prison is being with people who have committed a crime and who potentially can be dangerous to others. Why don't they put me behind the bars if I have committed a crime? And why am I not in jail or in a psychiatric hospital if I am dangerous to others?

Being deprived of liberty in prison has a meaning, that of serving the sentence for which the person has been sentenced. To be subject to these preventive measures is to suffer a sentence without ever having been tried or more precisely, without ever knowing the crime committed, without being able to be heard and have a defence, and especially without knowing the sentence expiry date. When a person commits a crime or an offense, the victim files a complaint and the accused is given the right to be heard and to have a defence. The framework that law is supposed to provide both as a social regulator and also on the psychological level is completely violated by the same officers who are supposed to be the guarantors of the law. Consequently, on the psychological level, these

people lose reference. To give meaning to this measure, it is often the state of emergency that is invoked, namely the dangers facing the nation. In this way, police make them feel that they are a danger to the country and that the complainant is the entire nation. The violent attacks in the neighbourhood, on their families, in front of their children cause such stigmatization that they now perceive themselves as a threat to society as a whole. They become threatening to their lifelong neighbours, threatening to their friends and even family. By avoiding them, people around them become accomplices of the system, plaintiffs not for an act committed by them but out of the fear of seeing them commit an act. This stigmatization is perceived as unfounded and unfair.

Listing is therefore perceived as an unfair measure leading to a loss of psychological and social reference points. These persons who feel persecuted all the time are permeated with anger and the desire to take justice into their own hands.

"The feeling is that of suffering a sentence enforced by no one and executed by almost everyone..."

"I want to be tried so that the judge can determine the length of the sentence to be imposed"

Deprivation of liberty in prison has a beginning and an end. This period of detention makes it possible to project a future in which released persons will review their behaviour to avoid return to prison. The same is not true for preventive measures that feel like lifetime sentences. How can people dream, evolve and have a life project when they risk being arrested at any time in your life? "Being S17" becomes a status, the status

of a person for whom no projection into the future is possible, a person who is just incapable of dreaming anymore. How can you take the risk of having a partner or even getting married when you are not free to move, how can you find work when your employer is molested, how can you go for a walk with your children when they are afraid of meeting a policeman while in your company. The only possible life becomes clandestine underground life, a risk-taking nightlife

Listing is therefore percieved as a measure involving risk-taking. Taking risks begins with socialising with people who can understand these measures and who are often themselves listed. Risk taking consists of the consumption of illicit substances to forget and sleep. Like an antidepressant, illicit drugs become essential to their daily lives, and are often consumed openly and in plain view of people monitoring them.

"It would be so much simpler to commit an act and be incarcerated than to go through hell on a daily basis."

I don't understand why my family has to suffer the same fate.

Being deprived of liberty outside the prison environment places the whole family under daily and permanent observation of the police. The listed person is no longer the only one affected as all those around him/her too become confused by what is going on. The whole family dynamic will be disrupted and two consequences are often observed. The first consists in overprotection (often by parents) and search for meaning. How did their child come to this point? Along with overprotection, there is misunderstanding and gradually hatred towards the system that has put their child at risk and

broken their developing future. Moreover, we see family systems grow together developing a lot of resentment. The second consequence is often family breakdown. We have several cases of couples who do not resist both economic (head of household without income) and psychological (head of household humiliated and losing self-esteem) pressure. Fear, disrupted family dynamics, divorce, domestic violence, school failures are all prejudices that will have an impact on the family as a whole.

Listing will have a transgenerational impact.

"I hope truth will be out someday, I don't want my children to think their father was a dangerous person"

I'm going crazy

Listing generates such psychological disorganization that people often have many psychiatric disorders. The most common issue is depression with often suicidal ideations, but we also often encounter bipolar disorders. The frequency of bipolar disorders leads us to reflect upon the link between this disorder and "being S17" among other listings. Indeed, persecution and harassment place the individual in a state of fragility

that may lead to emotional collapse. We may also wonder in some cases whether the targeted person might have suffered such disorders before being listed and whether this could explain the behaviour that the police considered as deviant. Violent arrests also have a traumatic impact on families that some children found only suicide as a means of expression to show how much they suffered from stigma in their neighbourhood.

The listing procedure has a serious impact on people's psychological health.

"I am bringing my 8-year-old kid back to you today for consultation, because I am afraid that he will grow up with this trauma, with hatred in his heart, and become potentially dangerous tomorrow."

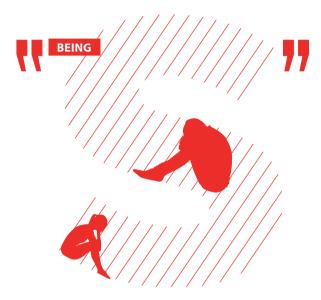
Psychological support for listed persons is a challenge because it involves dealing with all the issues described and providing specific care to overcome each difficulty. Indeed, we have provided individual psychological support for some primary and secondary victims of listing procedures. Moreover, couple or family therapies are available for other cases in which listing led to family dynamics dysfunctions. We have also set up a therapy group to work on social links and mutual strengthening of people in similar situations.

The most important challenge with regard to such interventions is that we work every day with the risk of having all efforts spoiled. Indeed, an arrest or assault can restore the person to the initial state of vulnerability at any time. Provided care on self-distancing which helps the person not to react impulsively and to find resources to manage anger during control procedures.

Working with victims is all the more difficult because efforts made to make them focus on future projections and life projects are very quickly compromised by the harassment they may experience.

Counselling remains vital and helps many people to put words to their emotions and try to comprehend the incomprehensible.

All victims claim recognition of the harm inflicted upon them and expect the State to consider forms of redress. Reparation can take different forms such as recognition, health care provision for persons suffering psychiatric disorders, employment assistance programmes for individuals and families who experience precarious situations.



6. CONCLUSION

Testimonies collected from listed persons supported by the OMCT indicate that the implications of listing and the arbitrary implementation of administrative control measures can have dire consequences on their lives. These police measures can be qualified as psychological violence when carried out with such recurrence or intensity that they inflict clear psychological harm on listed persons and their relatives.

Consequently, disproportionate police harassment of listed persons can amount to ill-treatment in the absence of a legal basis and prompt and effective judicial review. Indeed, police officers executing control measures and the Ministry of the Interior that issues orders perpetrate violations of the International Covenant on Civil and Political Rights mentioned above, and Article 16 of the Convention against Torture, which prohibits cruel, inhuman or degrading treatment or punishment.

A draft organic law regulating the state of emergency is pending examination in the Assembly of Representatives of People since early 2019. The merit of this law would be to provide a legal and no longer only regulatory basis for the restrictions on freedoms currently provided for by Decree 50 of 1978 regulating the state of emergency. However, as currently drafted, the bill is unsatisfactory since some of its terms and provisions are not sufficiently clear and precise. It also does not provide

enough guarantees of compliance with the principles of necessity and proportionality.

Moreover, even if amended, the draft law regulating the state of emergency may not be enough to stop systematic human rights violations committed against listed persons. Indeed, these violations are not only based on the current decree regulating the state of emergency but also on other legal texts which apply during and outside of periods of the state of emergency, such as the 1975 law on passports and other travel documents and Ordinance No 342/1975 of 30 May 1975, fixing the powers of the Ministry of the Interior.

Finally, some of the practices amounting to police harassment practices do not seem to have any legal basis. In fact, only a firm policy to combat impunity for law enforcement personnel and specialized training of security services officials would prevent such abuses.



7. RECOMMENDATIONS

All the restrictive control measures mentioned in this report are tainted by arbitrariness since they fail to comply with the requirements of legality, necessity/ proportionality and serious, prompt, fair and effective judicial review provided for in the Tunisian Constitution and in international law.

In order to bring police surveillance practices in the fight against terrorism in line with Tunisia's international commitments, the OMCT calls upon the government to:

- **1.** Ensure that any restriction on a freedom is provided for by law;
- 2. Repeal the 1978 decree regulating the state of emergency to remove provisions authorizing the adoption of restrictive measures that have no basis in Tunisian law such as administrative searches, house arrests and prosecution in the event of breaching a house arrest order;
- **3.**Ensure that the administrative justice system has adequate human and financial resources to exercise a serious, prompt and effective review of the restrictions imposed by the administration on the freedom of people with criminal records or individuals suspected to be a threat to public order or national security;
- **4.** Provide redress to all the victims of arbitrary restrictions of their rights and freedoms.

The OMCT calls on the Ministry of the Interior to urgently revoke all restrictive measures that are not founded on a clear and precise legal text and to carry out the following steps in order to:

- 1. Inform the listed persons of all control orders, which they are being subjected to, of all related control measures associated with each control order, and of all available remedies in order to challenge these measures;
- **2.** Grant listed persons' access to allegations and evidence that justify the listing, in accordance with the Organic Law No. 2016-22 of 24 March 2016 on the right of access to information adopted pursuant to Article 13 of the Constitution;
- **3.** With regard to bans on leaving the territory, request authorization from a competent judicial authority in accordance with the Act 1975 on Passports and Other Travel Documents;
- 4. With regard to refusals to issuing passports authorized by Article 13 of the 1975 Act, provide written notification mentioning precise and detailed factual elements justifying the decision within a reasonable time following the request;

65

- **5.** Lift all house arrests based on the 1978 Decree regulating the state of emergency immediately;
- **6.** Put an end to the practices of home visits and administrative searches based on the Decree 1978 regulating the state of emergency and using such measures in the context of judicial proceedings in accordance with the Code of Criminal Procedure:
- **7.** Prohibit police officers from summoning listed persons to police stations or arresting and interrogating persons outside the framework of judicial proceedings in accordance with the Code of Criminal Procedure:
- **8.** Prohibit police officers from adopting any control measures, even for information purposes, that would have the effect of exerting pressure on the entourage (families, friends, neighbours, employers, lessors, etc.) of the targeted persons and/or stigmatizing them;
- **9.** With regard to identify checks carried out on the street, ensure that controlled persons are not detained longer than the time necessary to verify their identities so that such detention does not constitute a restriction on their freedom of movement;

- 10. Implement without delay any decision taken by the administrative court concerning the listing of persons and related control measures of persons or individuals suspected of being a threat to public policy or national security;
- **11.** Train officers, who are responsible for executing control measures, on national and international human rights law in order to prevent the frequent use of abusive practices or even ill-treatment;
- **12.** Sanction any officer who is guilty of the abuse of power and/or ill-treatment of a listed person or his/her relatives, and who implements an arbitrary control measure, especially if the said measure has been suspended or lifted by the administrative court.

The OMCT wishes to express its thanks to the donors of the SANAD programme, particularly the Swiss Confederation, the European Union, the Open Society Foundation and the United Nations Voluntary Fund for Victims of Torture.









The content of the report is the sole responsibility of the OMCT and must in no case be interpreted as reflecting the opinion of the institutions supporting it.

OMCT thanks Hélène Legeay for drafting the report, Rim Ben Ismail for the psychological support and her contribution to the report, Najla Talbi and all of

the SANAD team for the research and the direct assistance provided to our beneficiaries, in particular Zied Abidi, Sara Attafi, Sabrine Gatri, Loubeba Chalbi and Inès Lamloum. Thanks also to all those, who contributed to the finalization of the report with their advice.

The OMCT authorizes the free reproduction of extracts from this publication under the condition that credit be given to the OMCT and a copy of the publication with the extract be shared with the OMCT office.

Design by LMDK Agency

