



مرصد

الحقوق و الحريات بتونس
Observatoire des Droits et Libertés De Tunisie
Observatory of Rights and Freedoms of Tunisia



Report on

Border Procedures

#Ammar_17

#Let_me_live

شعرات

October 2016

Index:

Preface.....	3
The legal basis for the freedom of movement and its reduction.....	5
Manifestations of violations and breach of legal texts.....	6
The field study concerning cases covered by the Border Procedure.....	14
Recommendations.....	20

Preface

The need for freedom such as the need for life, both are not correct without the freedom of movement. The freedom of movement and the choice of residence are a normal daily behavior and an invaluable obvious profit.

Legislative texts have devoted this right. It is enshrined in article 24 of the Tunisian Constitution for the year 2014, in its second paragraph:” Every citizen has the right to choose their place of residence, to free movement within the country, and the right to leave the country.” This is an appreciation of what was stated in Article 12 of the International Covenant on Civil and Political Rights and in other international and regional conventions.

It should be noted that the Tunisian legislature has established mechanisms and controls for the limitation of this right.

International charters stressed that each exception or limit of the freedom of movement, whatever was its cause, could not affect the essence of the right, within the framework of previous and subsequent judicial control, and that was the approach of the Tunisian Legislature in its domestic laws.

However, the Ministry of Interior has taken, in the recent years, a series of resolutions against many citizens to limit their freedom of movement, which are known as Border Procedures and perhaps the most famous is the S17 which is considered as a limitation and a flagrant violation of this right.

Border Procedures are considered as administrative decisions issued by the Ministry of Interior aimed at limiting the freedom of movement of individuals outside the borders of the country and consulting competent authorities before allowing that person to pass or forcing him to return, as a result of his inclusion in the “automatic system” under the title of S17.

To see the reality of these violations and state them, we will address in the first level to the legal basis governing the freedom of movement and its reduction, and we’ll show in a second level the violations related to this right, and then we’ll finally talk about recommendations.

This Border Procedure known as S17 means consulting the competent authorities in the Ministry of Interior before allowing the passage of any person inside or outside the boundaries of the Tunisian State.

Often, the Ministry of Interior, during its response to some of the petitions submitted by some of the victims of this measure before the Administrative Tribunal, cites its monitoring role assigned to it in accordance with the 1975's order number 342 on the control of the jurisdictions of the Ministry of Interior which gave it the authority to control people's movement throughout the territory of the republic, especially in the territorial and maritime boundaries and direct air police (Article 4- paragraph 3)

And the fact is that the surveillance authority cannot in any way authorize the Ministry of Interior to prevent the citizens of the freedom of movement both within and to the outside of the country.

1- The legal basis organizing the freedom of movement and its reduction:

This right in Tunisia has a national and international legal basis rich with legislative texts and there always was a broad area to permissibility.

As previously mentioned, this right was enshrined in article 24 of the Tunisian Constitution for the year 2014, in line with article 12 of the International Covenant on Civil and Political Rights.

Tunisia has ratified the African Covenant on Human Rights and the Arab Covenant on Human Rights, which devoted in their turn this right.

Generally speaking, all International Charters included a number of restrictions and exceptions to limit this right, so they allowed the States to restrict this right only for the protection of national security or public order or public health or public morals.

Allowing these restrictions must be with an already developed law. Also, the States should, when they adopt the restrictive laws, be guided by the principle of not to obstruct the essence of this right as a result of restrictions with the use of precise criteria to take executive measures. And the state shall not give the responsible for the implementation of those measures unrestricted freedom to act according to their estimates. Also, the executive measures must be consistent with the principle of parity, so that they appropriate with the achievement of their protective function.

The state shall also ensure the speed of achieving any proceedings relating to the exercise or restriction of these rights and the methods of appeal and the request to review the authority concerned, and to ensure the provision of the reasons that justify the application of the Executive Measures.

At the national level, the law number 50 of 1975 concerning travel documents and its revised texts has organized initially the exercise of the right of freedom and means of reducing it.

Chapter 15, as revised by the Basic Law number 77 of 1998, identified areas to withdraw a passport, and the amendment was in the direction to devote the role

of the judiciary in the previous and subsequent control of each of those decisions.

Notably, paragraphs H and Y of the chapter mentioned give the possibility of withdrawing the passport at the request of the Public Prosecutor, if it was issued against the owner of the passport a provision for a felony or a provision for a misdemeanor sentenced to imprisonment for not less than one year either inside or outside the country, or if the travel of the concerned person will compromise the public system and security, provided that the administration obtains a judicial permission by the Public Prosecutor issued by the President of the Court of First Instance in purpose.

Moreover, the Code of Criminal Procedure stated in section 6 on provisional release, specifically in chapter 88, that the investigative judge can, while taking the decision of temporary release, take some precautionary measures including mainly not to leave territorial boundaries determined by the judge under certain conditions (paragraph 2) or to prevent that person from appearing in certain places (paragraph 3) or to oblige him to inform the investigative judge about his movements to certain places (paragraph 4).

Since the foregoing confirms the main role of the judiciary in the taking of decisions concerning restrictions on the freedom of movement, which extends to subsequent control represented in administrative litigation to appeal against administrative decisions violating the law, the legal texts which we dealt with in the previous paragraphs didn't prevent the administration from exceeding its powers and arbitrariness in the limitation of such freedom in various ways and reasons.

2- Manifestations of violations and breach of legal texts:

According to what the Observatory of Rights and Freedoms of Tunis examined, more than 500 cases of harassment as a consequence of their status under the Border Procedure S17 by the Ministry of Interior have been documented, where they are every time subject to arrest, search, inspection and even raiding houses regardless of the presence of judicial traces against the person concerned or not.

A- Examples of the violations inflicted on individuals:

1. Sadeq Dhawadi:

Occupation: temporary worker

Age: 30 years old.

A person with physical disability, no criminal record, in August 2014 and during a verification of identity, he was informed that he is subject to the Border Procedure S17. Because of this Procedure, he was stopped 9 times on the occasion of verification of identity in several security centers such as the National Security Center of Beb Souika, the National Security Center of Charle de Gaule, the National Security Center of Bardo and the National Security Center of Al kasba, and he was maintained every time for a period ranging between 5 and 6 hours during which they fill up an Information card for him. That caused him the loss of his job that requires permanent mobility and he became unable to support his wife and son, which pushed his wife to ask for divorce.

2. Ihsen Ammar:

Occupation: temporary worker

Age: 23 years old

In January 2014, he was stopped in the National Security Center of Sousse, where they filled up an information card for him and informed him that he is subject to the Border Procedure S17. That was repeated 16 times and he was every time stopped by agents of security for a period ranging between 3 and 5 hours causing the loss of his work in addition to the psychological and physical pressures.

3. Abderrahim. M :

Occupation: engineer in a private company.

Age: 27 years old.

No criminal record. In January 2015, he was stopped during a verification of identity and was taken to the National Security Center of Kairouan, where they filled up an information card for him and informed him that he is subject to the Border Procedure S17. That was repeated 10 times and in several security

centers where they stop him every time for a period ranging between 6 and 8 hours causing him psychological pressures in addition to the risk of losing his job.

On January 19, 2015, he submitted a petition to the Ministry of Interior and did not get any response so far.

4. Nouredine Ayari:

Occupation: employee of a private company.

Age: 29 years old.

No criminal record. In February 2016, he was stopped during a verification of identity and was taken to the National Security Center of Mourouj 6, where they filled up an information card for him and informed him that he is subject to the Border Procedure S17.

He submitted a petition to the Ministry of Interior in February 2016.

Because of this procedure he risks to lose his job.

5. Ali Naffeti:

Occupation: Temporary worker

Age: 29 years old.

In October 2013, he was stopped during a verification of identity and was taken to the National Security Center of Sidi Ali Hattab, where they filled up an information card for him and informed him that he is subject to the Border Procedure S17. That was repeated 20 times and in several security centers in Beja and Tunis where they stop him every time for a period ranging between 6 and 7 hours causing him psychological pressures in addition to the risk of losing his job.

6. Rima. Ch:

Occupation: artist in a hostel.

Age: 35 years old.

No criminal record. In 2014 and on the occasion of verification of identity, she was stopped in the National Security Center of Hammamet where she was

investigated for about 3 hours and was told that she is subject to the Border Procedure S17. That was repeated 15 times and in several security centers such as the National Security Center of Jerba, the National Security Center of Kharrouba, the National Security Center of Hammamet. Once, she was in her way to visit her sister in the hospital and she had some food and medicines with her but they stopped the bus and asked her to get out of it.

Because of this procedure, she faced many problems in her relationship with her husband that ended by divorce.

7. Abdelmajid Touati:

Occupation: employee of a shipping and drainage company

Age: 42 years old.

No criminal record. In December 2014, the head of the Security center of the port of La Goulette asked him to give him the badge that enables him to get in the port. Although a year and a half are passed now, he's still not able to get it back or to renew it.

In November 2015, when he wanted to travel to Spain for tourism, he was informed in Carthage airport that he is subject to the Border Procedure S17.

Because of this procedure, he lost his job which enables him to support his wife and children.

8. H. A:

Occupation: student.

Age: 20 years old

No Criminal record. In December 2015, the Security Center of Ariana called him. There, they filled up an information card for him and informed him that he is subject to the Border Procedure S17. Because of this procedure, he was stopped 5 times, and he was asked every time to leave the public transport vehicle, then they take him to the Security Center of Mjez Lbeb where he stays for a period ranging between 2 and 4 hours causing him psychological pressures that affected his studies.

9. Adel Hefyane:

Occupation: worker abroad

Age : 33 years old.

No criminal record. In May 2016 and on the occasion of verification of identity, she was stopped in the National Security Center of Souk Lahad where they put the handcuffs for him, hit him and took him to the national security center of Sousse. There, he was investigated for about 6 hours and was informed that he is subject to the Border Procedure S17.

That was repeated 10 time and in several security centers in Mahdia, Eljam and Tunis causing him financial and psychological pressures.

10. Mohamed Guerfala:

Occupation: temporary worker

Age: 36 years old

No criminal record. On February 9, and when he was leaving the clinic to which he takes his daughter constantly for medical treatment, he was arrested by some security agents after the verification of identity. They took him to the security center of Zarzis where he was investigated for 3 hours, then they released him after asking him to not come back to Zarzis anymore although he informed them that his daughter receives a medical treatment in a clinic there.

That was repeated 7 times which caused him financial and psychological pressures. He also became unable to take his daughter to see her doctor.

11. Chedli Ben Yahya:

Occupation: worker abroad

Age: 54 years old.

In March 2016, in his way back home from Sahloul's hospital, some security agents asked to see his Identity card, then they asked him to go with them to the security center there although his 4 years old daughter was with him. He was investigated for 4 hours because he was subject to the Border Procedure S17.

Because of this procedure he was prevented from traveling to Denmark despite his dual nationalities, he also lost his job.

B- Examples of the violations inflicted on families:

First Family:

1. The woman: L. W:

Occupation: teacher

Age: 44 years old

No criminal record. In December 2015, she was arrested after a false slander from the part of her brother because of a quarrel about inheritance. Her brother went to the National Security center of Tabarka and said that his sister, her daughter and his brother are “Takfirists”. And after her appearance before the Investigative Judge, all charges were preserved.

In March 2016, and on the occasion of verification of Identity, she was informed that she is subject to the border procedure S17.

Now, because of this procedure, she is afraid of losing her job because of this classification, as she’s still suspected as a “terrorist” or an “extremist” despite her innocence issued by the Judiciary.

2. The girl: S A

Occupation: student

Age 19 years old

No criminal record. In December 2015, she was arrested after a false slander from the part of her uncle because of a quarrel about inheritance. And after her appearance before the Investigative Judge, all charges were preserved. But she’s still subject to the Border Procedure S17 which threatens her university studies as she became afraid of going to the University so they don’t stop her because of this procedure. She also stopped visiting her father who lives in another city because she’s afraid of the possibility of stopping her while she is in the public transport vehicle and taking her to the security center where she spends hours before being released .

3. The man: M.W:

Occupation: temporary worker

Age: 36 years old.

No criminal record. In December 2015, he was arrested after a false slander from the part of his brother because of a quarrel about inheritance. And after his appearance before the Investigative Judge, all charges were preserved. But he's still subject to the Border Procedure S17 because of which he was prevented from travelling to Algeria for a family visit in March 2016, as he was stopped in the Border crossing of Sidi Youssef for 12 hours where they stripped off all his clothes and assaulted him with physical and verbal violence.

He lost many jobs because of the constant stopping at each verification of identity by security agents who always tell him that he is subject to the Border Procedure S17, take him to the nearest security center and fill up an Information Card for him.

Second Family:

1. The Husband: Mohsen Kefi:

Occupation: employee of a private company

Age: 60 years old

No criminal record. In January 2015, he wanted to go to Libya to look for his daughter there but the stopped him in the Border Crossing of Ras Jdir and informed him that he is subject to the Border Procedure S17.

Because of this procedure, he was topped 25 times on the occasion of verification of identity and was taken to several security centers (Sidi Hsin Sijoumi, Bizerte, Ariana..) for an overage of 2 hours at every time just to fill u an Information card for him.

Because of this procedure, he risks to lose his job that enables him to support his family and which requires permanent mobility.

2. The wife: Zina Jbeli:

Age: 59 years old.

No criminal record. In August 2015, she was investigated by the anti-terrorist squad of Gorjeni due to the presence of her daughter, suspected of joining terrorist groups, in Libya. After that, she was included in the list of Border Procedure S17.

3. The Daughter: Molka Kefi:

Age: 33 years old.

No criminal record. In April 2016, on the occasion of verification of identity, she was stopped for 2 hours with her husband and 4 years old daughter because of the Border Procedure S17.

This procedure caused her psychological pressures and security harassment as she is almost continuously called to the National Security Center of Daouar Hicher.

4. The Daughter's Husband: Ahmed Hammemi

Occupation: Sales executive in a private company

Age: 33 years old.

No criminal record. . In April 2016, on the occasion of verification of identity, he was stopped in the National Security Center of Mnihla and he was informed that he is subject to the Border Procedure S17.

Because of this procedure, he risks to lose his job which requires permanent mobility.

3- The field study concerning cases covered by the Border Procedure S17:

The observatory conducted a field study concerning cases covered by the Border Procedure S17. The study included 524 cases distributed to all regions of the Republic, and the following are the most important results obtained:

- 96% of cases are male, mainly compared to 4% of female.
- 93% belong to the age group between 20 and 40 years old.
- 58% of cases are married.
- The region of “Big Tunis” and the states of the Coast topped the first place in terms of the number of cases of Border Procedure with 22% for each region compared to 56% for the rest of the regions.

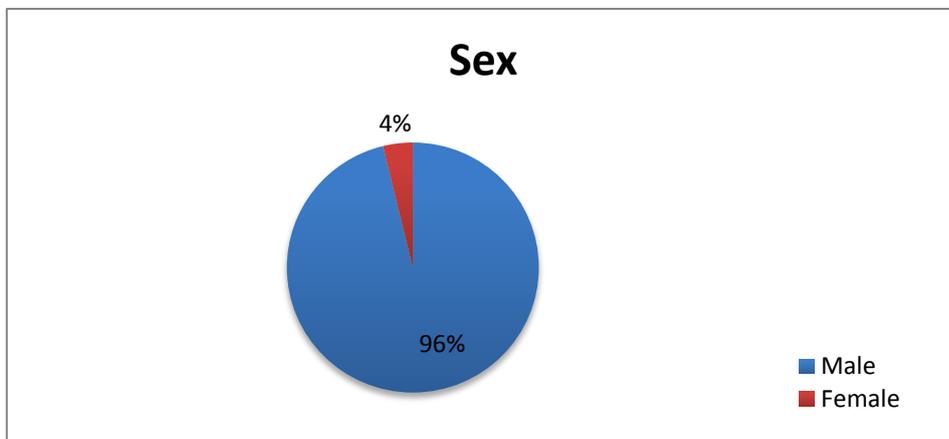


Chart number 1: the proportions of the cases covered by the study by sex.

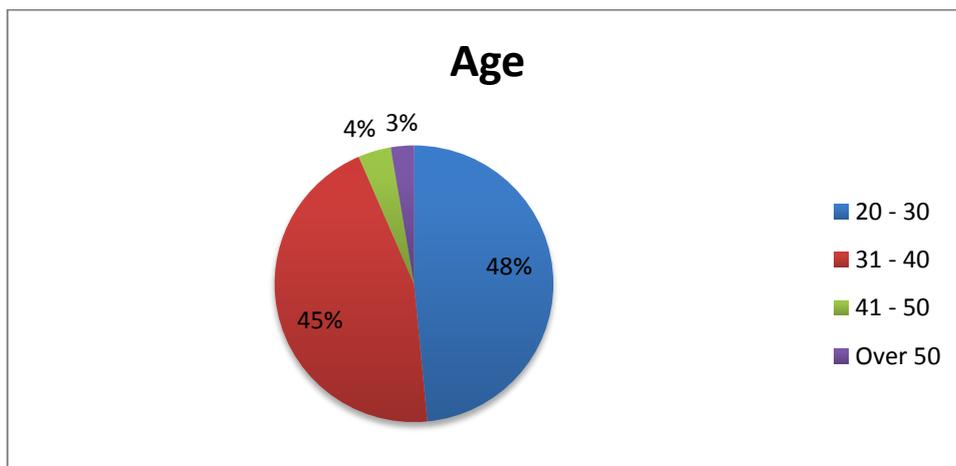


Chart number 2: the proportions of the cases covered by the study by age.

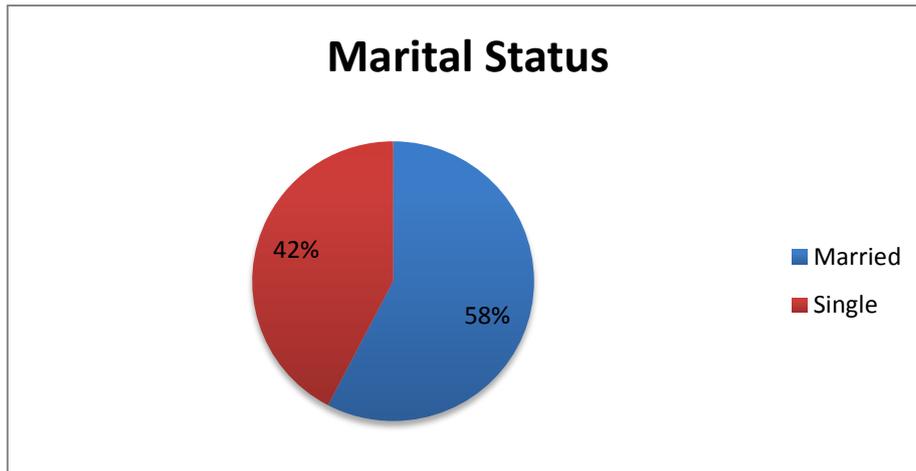


Chart number 3: the distribution of the cases covered by the study according to the Marital status.

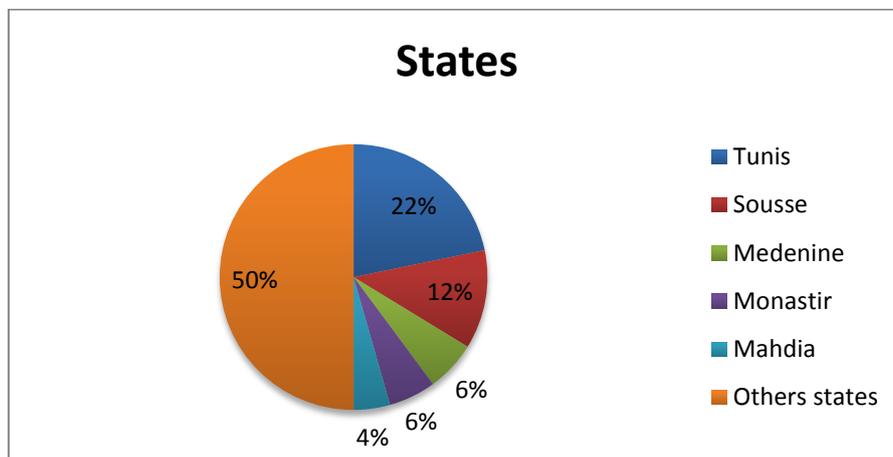


Chart number 4: the geographical distribution of cases.

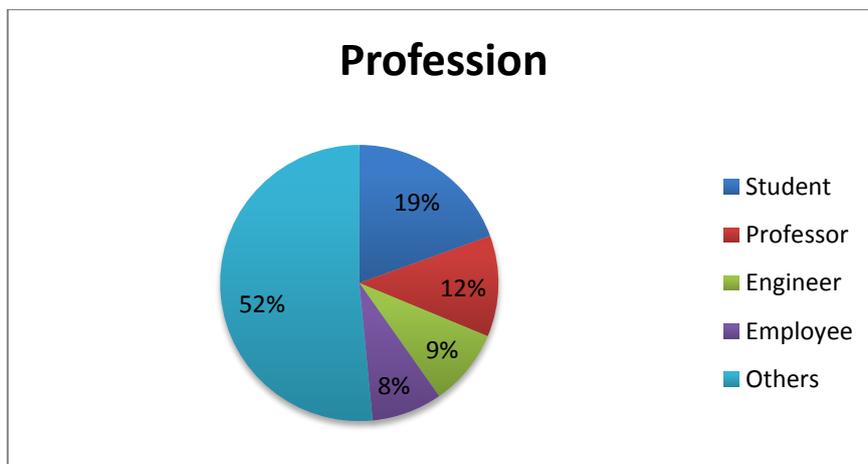


Chart number 5: the distribution of the cases by profession.

Chart number 5 shows that the greatest share of the cases included students in the first degree with 34% followed by professors with 21, then engineers with 16% and finally 29% distributed between employees and other professions.

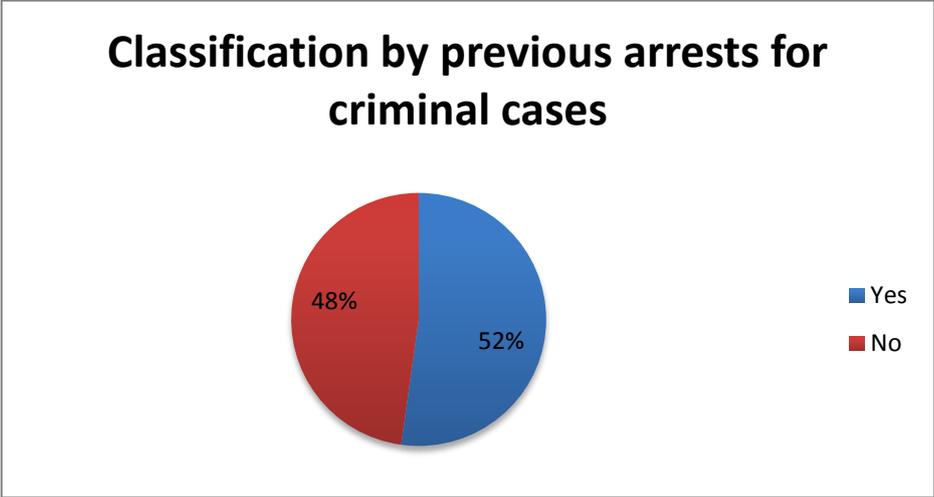


Chart number 6: classification by previous arrests for criminal cases.

52% of the cases are people who have been arrested for terrorist or criminal cases while 48% have never arrested.

30% of people who are affected by this procedure are from the people who have been arrested and released during the previous regime while 70% of them were arrested after the revolution.

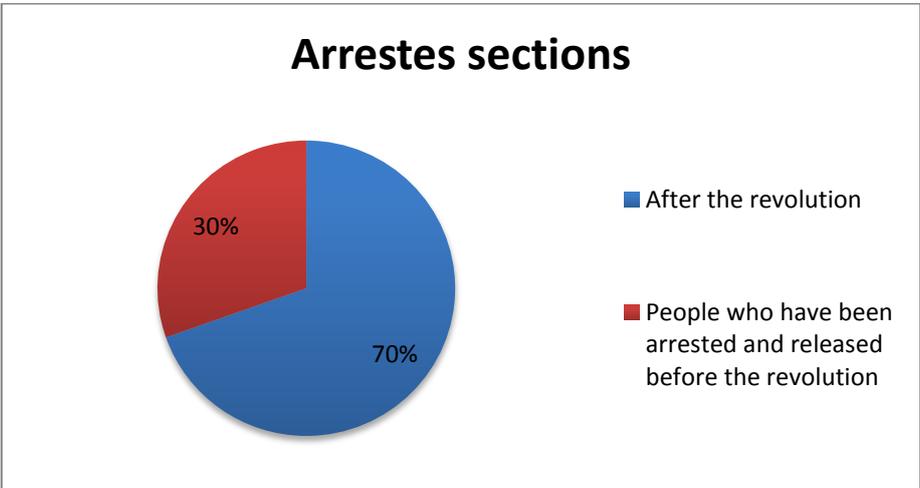


Chart number 7: Arrests Sections.

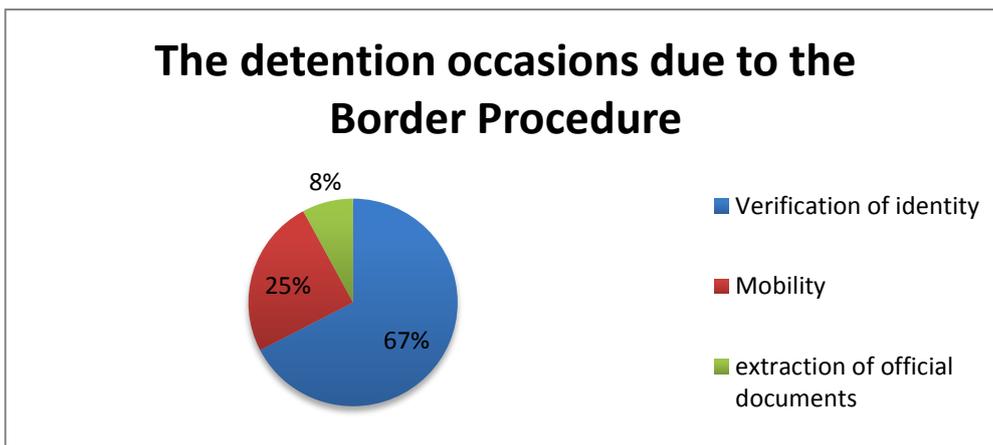


Chart number 8: The detention occasions due to the Border Procedure.

67% of cases were arrested during the procedures of the verification of identity, 25% while moving and 8% during the extraction of official documents

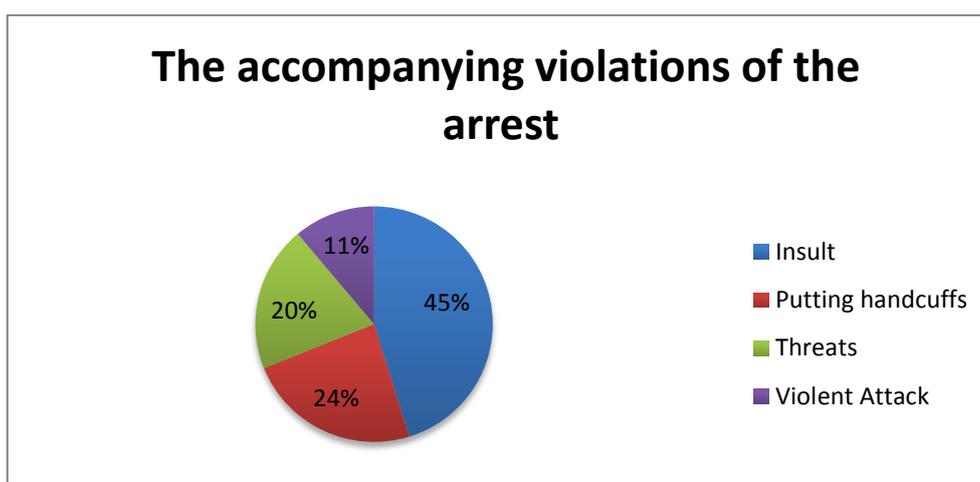


Chart number 9: The accompanying violations of the arrest.

45% were humiliated, 24% with handcuffs put to them, 20% of them were threatened and 11% case of violent attack.

The inviolability of personal data was violated in 96% of the cases.

In 87% of the cases, security authorities didn't inform the families about their detention and in 98% they didn't inform the lawyers.

A total disregard of the Ministry of Interior of petitions submitted by the victims, it also rejected the empowerment of any case of a document that explains reasons for the procedure or authenticates its legality.

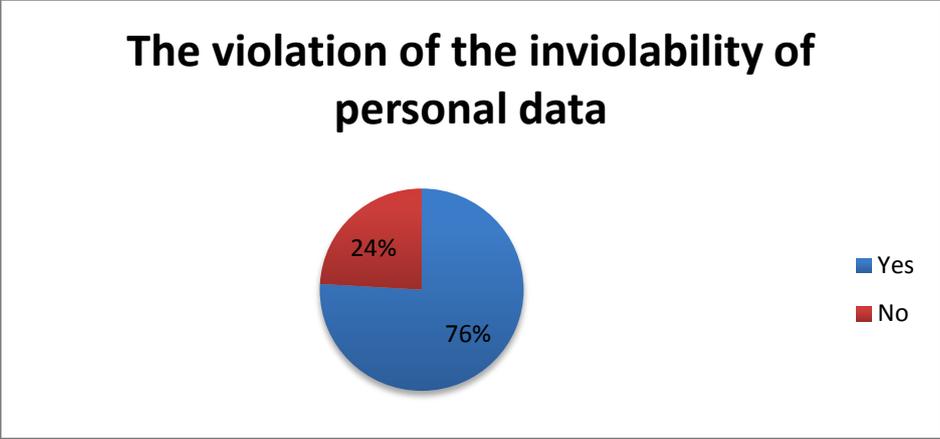


Chart number 10: The violation of the inviolability of personal data (mobile phone, Facebook, e-mail..)

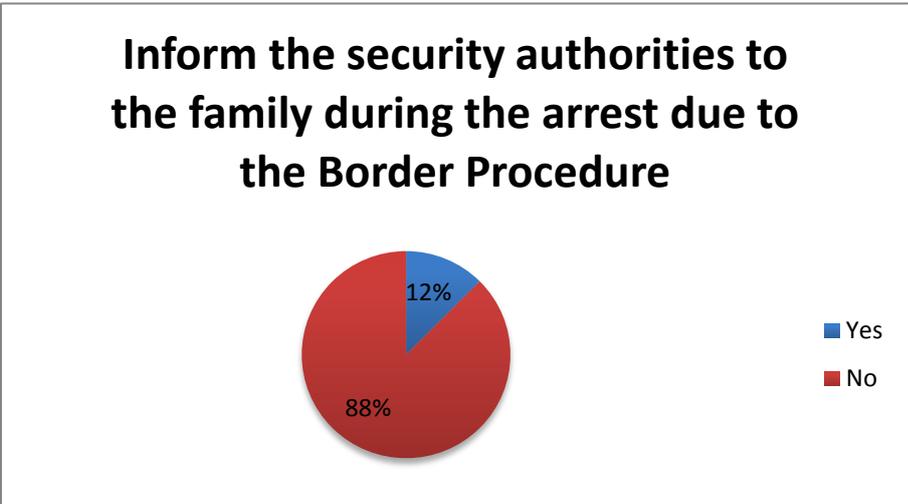


Chart number 11: Inform the security authorities to the family during the arrest due to the Border Procedure.

Inform the security authorities to the lawyer during the arrest due to the Border Procedure



Chart number 12: Inform the security authorities to the lawyer during the arrest due to the Border Procedure.

The reponse of the Ministry of Interior to petitions by the affected by border procedure



The empowerment of the people affected by the border procedure of the documents



The most important decisions:

- It is noted that the most important segment targeted at the social level are married and at the functional level are graduate certificates owners and students. It is known that the tightening on the victims of the Border Procedure S17 has reflected negatively on their family, school and professional life.
- Negative repercussions on the social peace, due to the highness of poverty rate and the dropout, which would devote the high rate of crime in the community.
- Negative repercussions on the psychological health of individuals: the feeling of oppression and humiliation, despair, separation of families, psychological disorders.

4- Recommendations:

1. Inviting the victims to contact human rights organizations as a first step to monitor and detect violations.
2. Inviting the victims to direct letters to the Supervisory authority informing it of the breach and violation and to demand their lifting.
3. Exercising the right to litigation and encouraging citizens on it.
4. Inviting the different mass media to highlight the various violations and to guide people to the remedies and litigation.
5. Calling the administration to respond to the petition of any citizen in the legal deadlines.
6. Proposal to establish a judicial district in the Administrative Tribunal competent in the consideration of the cases of abuse of authority of which the Ministry of Interior in a part.
7. The allocation of regional offices for relation with citizens within the various centers of security and National Guard to receive petitions and complaints and to guide citizens.
8. Inviting the Parliament to the revision of the various relevant laws optimizing them with the requirement of the Tunisian Constitution and the International Treaties.