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Human Rights Watch Submission to the United Nations Committee against Torture on Tunisia

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Introduction

This memorandum, submitted to the United Nations Committee Against Torture (“the Committee”) ahead of its upcoming review of Tunisia, highlights areas of concern Human Rights Watch hopes will inform the Committee’s consideration of the Tunisian government’s (“the government’s”) compliance with the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). The memorandum proposes specific recommendations that we hope to see the Committee formulate for the government of Tunisia.

While Human Rights Watch has documented cases of torture affecting individuals from various sectors of society in Tunisia, this memorandum, based on research conducted by Human Rights Watch in February 2016, specifically focuses on the use of forced anal examinations. Forensic doctors, at the request of law enforcement officials, conduct these degrading, humiliating examinations on men accused of sodomy under article 230 of the Penal Code, in a purported attempt to find evidence of homosexual conduct. Human Rights Watch research demonstrates that beyond forced anal examinations, the law criminalizing consensual adult same-sex conduct invites abuse by the police of gay men and men perceived to be homosexual and renders this population vulnerable to abuse for which there is little to no accountability.

Human Rights Watch has closely monitored the human rights situation in Tunisia for decades. While Tunisia has achieved progress in strengthening some human rights protections following the adoption of a new constitution in 2014, progress in addressing torture and ill-treatment has lagged behind.

According to credible reports from national and international NGOs working on the issue, torture and ill-treatment are commonplace especially during arrest and the first days of detention.¹

Members of marginalized groups, including men suspected of homosexual conduct, are particularly vulnerable to torture, and may face additional barriers to seeking redress.

Forced Anal Examinations as a Form of Torture

Forced anal examinations are a form of cruel, inhuman and degrading treatment that can rise to the level of torture. Victims have reported to Human Rights Watch that they experienced anal examinations as a form of unwanted penetration, a grave violation which, in the words of one victim in Tunisia, made him feel “like an animal.”

The Special Rapporteur on Torture has described anal examinations as “intrusive and degrading.”² In a January 2016 report, he stated that:

Humiliating and invasive body searches may constitute torture or ill-treatment... In States where homosexuality is criminalized, men suspected of same-sex conduct are subject to non-consensual anal examinations intended to obtain physical evidence of homosexuality, a practice that is medically worthless and amounts to torture or ill-treatment³

The Special Rapporteur has specifically raised concern about anal examinations as a form of torture and other cruel, inhuman or degrading treatment or punishment in communications with the government of Cameroon in 2011,⁴ and with the government of

¹ Action by Christians for the Abolition of Torture and Freedoms without Borders, Report “Tunisie: Justice année zero,” January 2015, https://www.acatfrance.fr/public/rapport_tunisie_justice_annee_zero_acat.pdf ; L’Organisation Mondiale contre la Torture: L’interdiction De La Torture et des Mauvais Traitements en Tunisie: État des Lieux et Recommandations, June 2014, <http://www.omct-tunisie.org/wp-content/uploads/2014/06/Interdiction-de-la-torture-et-des-mauvais-traitement-2.pdf>

² UN General Assembly, Question of torture and other cruel, inhuman or degrading treatment or punishment, “Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment,” A/56/156, July 3, 2001, <http://www.un.org/documents/ga/docs/56/a56156.pdf>.

³ UN Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” A/HRC/31/57, January 5, 2016.

⁴ http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.Add.1_EFOnly.pdf (add full cite)

the United Arab Emirates in 2007.⁵ The UN Committee on Torture expressed concern about the practice of conducting forced anal examinations with regard to Egypt, in 2002.⁶

According to the UN Working Group on Arbitrary Detention, “forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether... they are employed with a purpose to punish, to coerce a confession, or to further discrimination.”⁷ A 2015 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) called for banning forced genital and anal examinations.⁸ Forced anal examinations were also condemned in an unprecedented statement by 12 UN agencies on anti-LGBT violence in September 2015.⁹

Individual Cases

“Marwen,” Sousse

Marwen (not his real name) is a 22-year-old student who was supporting himself during his studies by working in a clothing shop in Sousse, located 120 kilometers south of Tunis. On September 6, 2015, police from Hammam Sousse, a neighboring town, summoned him for questioning as a witness after they found his telephone number on the phone of a man murdered a week earlier. Police then began questioning him about his supposed sexual relationship with the murder victim. Marwen reported to Human Rights Watch,

⁵ UN Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Addendum,” March 20, 2007, A/HRC/4/33/Add.1 at para. 317, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/120/41/PDF/G0712041.pdf?OpenElement>.

⁶ Committee against Torture, “Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and recommendations of the Committee against Torture, Egypt,” CAT/C/CR/29/4, December 23, 2002, <http://www.refworld.org/docid/4f213bf92.html>

⁷ UN Working Group on Arbitrary Detention, and A/HRC/16/47/Add.1, opinion no. 25/2009 (Egypt), paras. 24, 28-29, November 24, 2009, http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.1_AEV.pdf.

⁸ UN High Commissioner for Human Rights, “Discrimination and violence against individuals based on their sexual orientation and gender identity,” May 4, 2015, A/HRC/29/23.

⁹ ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UNWOMEN, WFP, WHO, and UNAIDS, “Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People,” September 2015, http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

They started slapping me in the face, several of them. They said, “If you don’t talk we’ll use other methods. We’ll make you sit on a glass bottle of Fanta.” They threatened, “We will abuse you, we will rape you.”

Under the threat of torture, Marwen told Human Rights Watch, he “invented a story about a relationship with that man.” The police then placed him in pre-charge detention. Two days after the first interrogation, police took him to the Farhat Hached Hospital in Sousse and brought him to the examination room, where a doctor told him that he was going to check him for “sperm from the man who was killed.” Marwen told Human Rights Watch that the test was “very difficult for me”:

The doctor told me to strip completely and get on the examination table. The doctor told me to bend over. The police were not in the room. There were two female trainees. The doctor put his finger inside me. He moved the finger around. The two women were watching.

The doctor did not inform Marwen of the “results” of the test, nor did he inform him that the test was not, in fact, to look for the murder victim’s sperm, but that it would be used in court as general evidence of homosexual conduct.

Human Rights Watch reviewed the forensic report, in which the doctor states that, after examining the person, he found “a non-tonic anal sphincter and absence of visible signs of traumatic anal penetration.” He concludes that the “anatomic injuries are compatible with a habit of anal penetration.” The judge also relied on the forensic report as well as Marwen’s coerced confession as evidence to sentence Marwen to one year in prison on September 22. On December 17, the appeals court in Sousse reduced the sentence to two months, which Marwen had already spent in detention, and a 300 dinar fine (US\$145).

The Kairouan Six

In December 2015, police arrested six students in the university town of Kairouan, on suspicion of homosexual conduct. Police interrogated them, detained them in the Kairouan police detention center, and took them to Ibn Jazzar hospital in Kairouan the following morning for forced anal examinations. Human Rights Watch interviewed four of the students about their experiences.

All four students interviewed by Human Rights Watch provided similar details with regard to the anal test. They said that the doctor asked them to bend on the examination table, in the Muslim prayer position. They said that he inserted one finger in their anuses. They said that he also put in a long, thin transparent tube, about the size of a pen, apparently to take some kind of sample.

One of the students, “Amar” (not his real name), said that the police beat him after he refused to take the anal test:

I was the first to enter to the room where the doctor was. I asked the doctor “What is the test?” He said “A test like a woman” – meaning a virginity test.

I said “No, I will not do that test.” The policeman screamed at me, “Respect the doctor!” I said “I am respecting the doctor, but I refuse the test.” The policeman told me to write that I refuse the test, so I wrote it.

Then the policeman took me outside to a small garden. He hit me. He slapped me on the face and punched me on the shoulder and said, “You will do the test.” The doctor was not watching, but he knew I was being beaten. The policeman pushed me back into the room and said to the doctor, “He will do the test.” The doctor saw him push me.

The policeman told me to write on another paper that I will do the test.

The doctor told me to go on an examination table and said, “Stay like you’re praying” [in the typical Muslim prayer position]. I took my pants off and had to get on the table.

He entered one finger inside my anus, with cream on it. He put his finger in and was looking. While putting his finger in, he asked “Are you ok now?” I said “No, I’m not okay.” It was painful.

Then he put in a tube. It was to see if there was sperm. He pushed the tube far inside. It was about the length of a finger. It felt painful. I felt like I was an animal, because I felt like I didn’t have any respect. I felt like they were violating me. I feel that up to now. It’s very hard for me.

According to “Wassim,” another young man subjected to an anal exam:

When I entered the examination room the doctor asked me to go on the examination bed and take off my trousers.... I said no, so the doctor went to talk to the policemen and apparently they convinced him that he needs to force me. So the policeman came and took me by the neck and said “Fucking go on the examination bed, now are you trying to be a man?” The doctor was watching. The police took me by the neck and also slapped me on the face. I then went on the examination bed and then the doctor came and told me, “Now you take that position as if you were praying.”

The doctor pulled down my pants. First the doctor touched me with his fingers and then he inserted a tube. The doctor was wearing gloves and was touching me on the outside and then on the inside of the anus. He was feeling around. And then he put in a long, thin transparent tube, apparently to take some sample. It was a plastic tube. It was about the size of a pen. I asked why he was doing that and he said, “I’m trying to see if you have sperm in your anus to find out whether you had sex yesterday.”

I was feeling very bad, I was very tense. I felt pain when the guy was doing things inside my anus. It took about 10 minutes altogether. It felt physically painful... When the doctor finished the test, I was crying. I went out and he called for the following one and the doctor was saying in Arabic a religious saying “There is no higher power than God” and laughing. I was crying because I didn’t accept it, it was really strange that I was in a room with two policeman and a doctor who took off my pants, and I was feeling horrible. I couldn’t do anything. I felt helpless.

A third student, “Mehdi,” described the psychological impact of the anal examination:

I felt like I was an animal. I felt I wasn’t human.... When I got dressed they put handcuffs on me and I went out, feeling completely in shock. I couldn’t absorb what was going on. The two police were standing and watching what the doctor was doing. I felt violated. I didn’t want to be naked in front of people – not just one person, but three people.... It was the first time anything like this had happened to me and I couldn’t absorb anything.

According to the fourth student, “Kais,” police physically held him down during the anal examination:

When they took me inside, I said, “I don’t want to get the test,” and one of the policemen forced me onto the examination table. He grabbed me by the hips and pushed me onto the examination table, and then pushed me into a kneeling position and pulled down my trousers. I tried to pull them back up, and the other policeman grabbed and held onto my arms. ... One policeman was holding my arms throughout the examination. The doctor first used his fingers. He was opening the anus and inserting his finger.... Then the doctor took a tube and started inserting it and pulling it out, several times.

It was very emotionally painful. Physical pain goes away, but the psychological and emotional pain does not go away.

A forensic medical specialist, familiar with the details of the Kairouan case, insisted to Human Rights Watch that the students all signed papers indicating their “consent” for the examinations to take place. However, all four told Human Rights Watch they only did so as a result of violence or the threat of violence from police.

Human Rights Watch reviewed the requisition order issued by the head of the judicial police in the Kairouan police station, on December 5, 2015. It stated that he requests the forensic doctor of the Ibn Jazzar hospital in Kairouan to determine whether each of the students was “used to anal sexual intercourse. In the case the answer is positive, the date of the last anal sexual intercourse.”

Human Rights Watch also reviewed the report of the forensic doctor of the Ibn Jazzar hospital. The report concludes that “there are no signs of violence on the body of the said person. There are signs of habitual passive homosexuality with anal penetration. There are signs indicating that the person has recently, in the last days, had an anal penetration with a solid object such as male penis in erection.” In court on December 10, the judge, relying exclusively on the medical reports, convicted the six young men and sentenced them to three years in prison. On March 3, 2016, the Sousse appeals court reduced the prison sentence to one month, which they had already served, and a 400 dinar (US\$195) fine and quashed the banishment sentence.

Recommendations

Human Rights Watch encourages the Committee to use the upcoming review to:

- Urge the Tunisian authorities to immediately ban the use of anal examinations on men accused of consensual same-sex conduct. “Consent,” which cannot be authentically given when one is in police custody and under threat of violence, should not be used as justification by doctors for carrying out such exams.
- Urge the Tunisian judicial authorities to prohibit the use of medical reports from anal examinations as “evidence” in criminal cases involving allegations of consensual same-sex conduct.
- Urge the Tunisian Medical Syndicate to prohibit doctors from carrying out forced anal examinations, which violate medical ethics as well as fundamental human rights.
- Urge the Tunisian authorities to take the necessary measures to decriminalize consensual same-sex conduct in line with international human rights law, and to investigate and hold to account law enforcement officials who commit abuses against individuals based on their actual or perceived sexual orientation or identity.