



HRW.org

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

April 2016

### 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.<sup>1</sup>

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.”<sup>2</sup> 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-treatment<sup>3</sup>

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,<sup>4</sup> and with the government of

---

<sup>1</sup> 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](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>

<sup>2</sup> 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>.

<sup>3</sup> 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.

<sup>4</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.Add.1\\_EFOnly.pdf](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.<sup>5</sup> The UN Committee on Torture expressed concern about the practice of conducting forced anal examinations with regard to Egypt, in 2002.<sup>6</sup>

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.”<sup>7</sup> A 2015 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) called for banning forced genital and anal examinations.<sup>8</sup> Forced anal examinations were also condemned in an unprecedented statement by 12 UN agencies on anti-LGBT violence in September 2015.<sup>9</sup>

## 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,

---

<sup>5</sup> 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>.

<sup>6</sup> 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>

<sup>7</sup> 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](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.47.Add.1_AEV.pdf).

<sup>8</sup> 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.

<sup>9</sup> 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](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.