

# Tunisia: Privacy Threatened by ‘Homosexuality’ Arrests

Government Using Personal Data, Anal ‘Tests’ for Prosecutions

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## Video: Privacy Threatened by ‘Homosexuality’ Arrests in Tunisia

Tunisian authorities are confiscating and searching the phones of men they suspect of being gay and pressuring them to take anal tests and to confess to homosexual activity.

(Tunis) – [Tunisian](#) authorities are confiscating and searching the phones of men they suspect of being gay and pressuring them to take anal tests and to confess to homosexual activity, Human Rights Watch said today. Prosecutors then use information collected in this fashion to prosecute them for homosexual acts between consenting partners, under the country’s harsh sodomy laws.

“The Tunisian authorities have no business meddling in people’s private sexual practices, brutalizing and humiliating them under the guise of enforcing discriminatory laws,” said [Amna Guellali](#), Tunisia director at Human Rights Watch. “Tunisia should abolish its antiquated anti-sodomy laws and respect everyone’s right to privacy.”



Human Rights Watch spoke with six men prosecuted in 2017 and 2018 under article 230 of the penal code, which [punishes consensual same-sex conduct](#) with up to three years in prison. One person interviewed was only 17 years old the first time he was arrested. Human Rights Watch also reviewed the judicial files in these cases and five others that resulted in prosecutions under either article 230 or article 226, which criminalizes “harming public morals.” In addition to violating privacy rights, these cases included allegations of mistreatment in police custody, forced confessions, and denial of access to legal counsel.

Police arrested some of these men after disputes arose between them or after neighbors reported them. Two had gone to the police to report being raped.

Some of the men spent months in prison. At least three have left Tunisia and applied for asylum in European countries.

K.S., a 32-year-old engineer, entered a police station in Monastir in June 2018 to file a complaint of gang rape, and to get an order for a medical examination of his injuries. Instead of treating him as a victim, he said, the police ordered an anal test to determine whether K.S. was “used to practicing sodomy.” “How they treated me was insane,” K.S. told Human Rights Watch. “How is it their business to intrude into my intimate parts and check whether I am ‘used to sodomy?’”

In another case, a 17-year-old was arrested three times on sodomy charges and was forced to undergo an anal examination, as well as months of conversion therapy at a juvenile detention center. Both harmful practices are discredited.

Tunisian prosecutors have relied extensively in recent years on forced anal examinations to seek “evidence” of sodomy, even though the exams are highly unreliable and constitute cruel, degrading, and inhuman treatment that can [rise to the level of torture](#).

On September 21, 2017, during the Universal Periodic Review at the United Nations Human Rights Council, Tunisia formally accepted a recommendation to [end forced anal exams](#). However, Tunisia’s [delegation stated](#): “Medical examinations will be conducted based on the consent of the person and in the presence of a medical expert.” This stance is not credible because trial courts can presume that [a refusal to undergo the exam signals guilt](#), Human Rights Watch said. Tunisia should abandon anal exams altogether.

Prosecutions for consensual sex in private and between adults violate the rights to privacy and nondiscrimination guaranteed by the International Covenant on Civil and Political Rights, to which Tunisia is a party. The United Nations Human Rights Committee, which monitors compliance with the covenant, has stated that sexual orientation is a status protected against discrimination. The UN Working Group on Arbitrary Detention has found that [arrests for same-sex conduct between consenting adults](#) are, by definition, arbitrary.

Tunisia’s 2014 constitution, in article 24, obliges the government to protect the rights to privacy and the inviolability of the home. Article 21 provides that “All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination.” Article 23 prohibits “mental and physical torture.”

The Code of Criminal Procedure prohibits house searches and seizure of objects that could serve a criminal investigation without a judicial warrant, except in cases of *flagrante delicto*, that is when catching someone in the act.

Article 1 of Law No. 63 on the protection of personal data stipulates that “every person is entitled to the protection of their personal data and privacy of information, viewed as a fundamental right guaranteed by the constitution. This data can only be used with transparency, loyalty and respect for the dignity of the person whose data is subject of treatment.” However, neither Law No. 63 nor any other domestic law regulates the conditions for seizing private data during a police investigation or its use.

On June 12, the Commission on Individual Freedoms and Equality, appointed by President Beji Caid Essebsi, proposed, among other actions, to decriminalize homosexuality and to end anal testing in criminal investigations into homosexuality. It also proposed criminalizing the unlawful “interception, opening, recording, spreading, saving and deleting” of an electronic message.

On October 11, 13 members of the Tunisian Parliament introduced draft legislation for a [code on individual freedoms](#). It incorporated several proposals from the presidential commission including abolition of article 230.

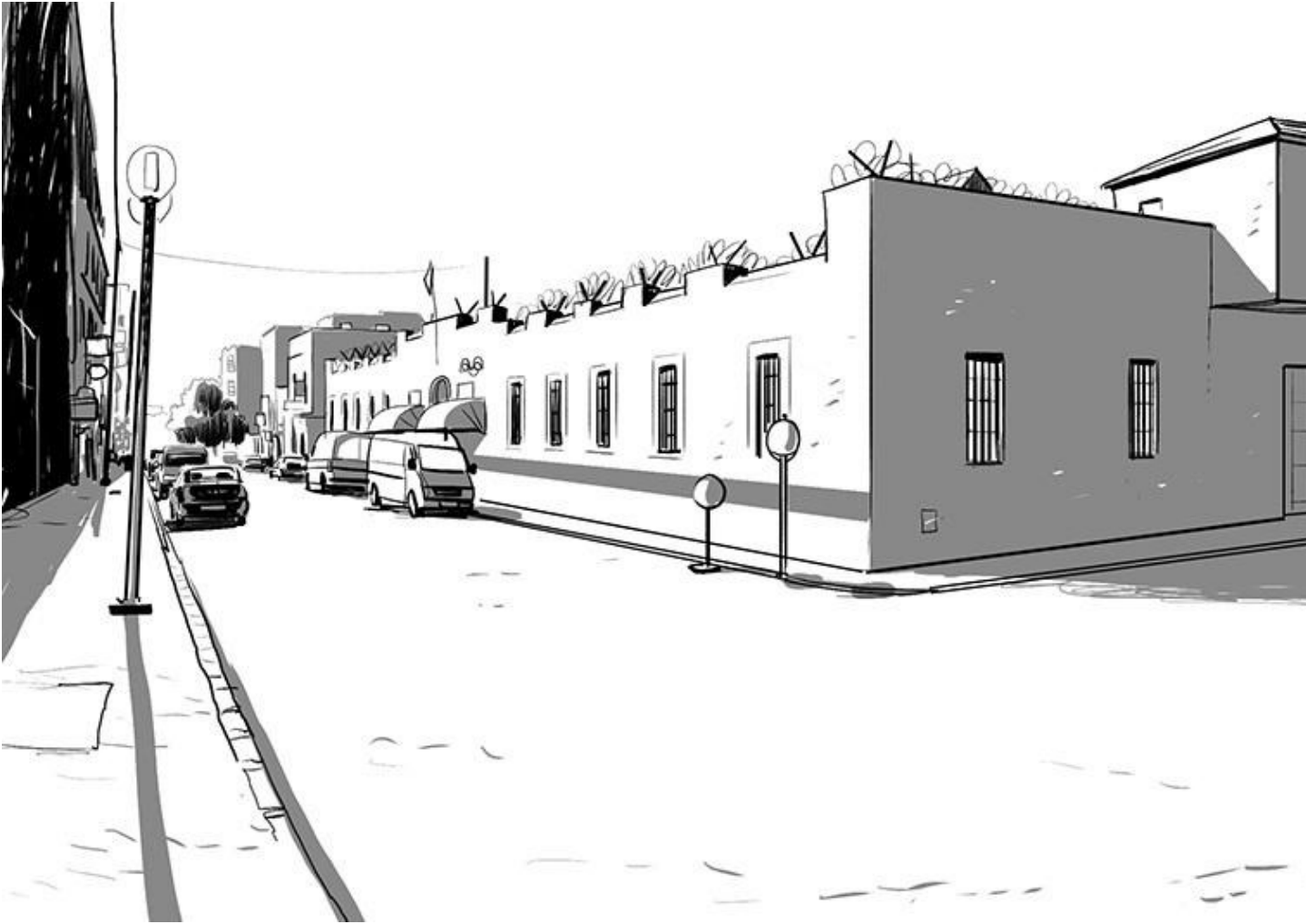
Parliament should move quickly on this draft legislation and abolish article 230, Human Rights Watch said. It should enact a law that effectively protects people’s privacy, through regulating the seizure and use of private data during criminal investigations, with consequences if such a law is violated.

The Justice Ministry should meanwhile direct public prosecutors to abandon prosecutions under article 230. The Interior Ministry should investigate reports of the ill-treatment of people arrested based on their gender identity or sexual orientation.

Human Rights Watch conducted face to face interviews with men in Tunisia and phone interviews with men who fled to European countries. Pseudonyms have been used to protect their privacy.

Shams and Damj, local LGBT rights groups, provided assistance.

## **Accounts by Men Prosecuted**



**K.S., 32, engineer**

K.S. used to work for an international company in Tunis. He said that on June 8, he went to spend the weekend in at a friend's house in Monastir, a coastal city. He had earlier chatted with a man from Monastir on Grindr, a social network application for gays. They made a date and they met that day in a café. The man invited K.S. to his house, but once there, the man became aggressive and showed K.S. a police badge. Two other men arrived, and they started insulting him, calling him "sick." "One said, 'You people of *Loth* [a demeaning term derived from the Biblical and Quranic story of Lot], you deserve to be killed, you are like microbes.'"

They punched and slapped him on the face, he said. Then the man who had invited him said, "We will show you what sodomy is like." The men then forced him to take off his clothes and bend over. Two of them held K.S. by the arms while the third inserted a baton in his anus. "It was unbearable, I felt that I will faint," K.S. said. They finally let him leave.

I was shivering and bleeding [when I reached my friend's house]. The next day, I went to Fattouma Bourguiba hospital in Monastir. I just wanted to get medical treatment and to check that I did not have internal hemorrhaging.

But, he said, the doctor refused to examine him without a police order:

I went to the Skanes district police station in Monastir, to try to get the requisition order. I did not want to tell the police the full story, so I just said that three men had raped me. The policeman who was typing my statement left the room at some point, and that's when I saw on the screen that he was instructing the doctor at Fatouma Bourguiba hospital to examine whether I am 'used to practicing sodomy.' I felt the blood freeze in my body.

Human Rights Watch reviewed the June 9 police requisition order, in which the chief instructs the doctor to examine whether K.S. was "used to practicing sodomy" and whether he was victim of anal rape.

K.S. said that, when the policeman returned to the office, K.S. asked if he could leave. The policeman replied: "And go where? You can't leave before we check what kind of stuff you do." The policeman called for a patrol car to drive K.S. to the hospital.

The doctor told me that he has a requisition order to perform an anal test. "We want to check whether this is a habit," he said. I was terrified. I told him that I didn't want to do the test. But he insisted that he had to perform it. He told me to remove my pants and assume a prayer position [on hand and knees] on top of the medical bed. He put on gloves and started to examine me with his fingers. As soon as he did, I felt sick and told him I wanted to go to the toilet. I wanted to stop this humiliation. He let me go. I managed to avoid the policemen who were waiting for me in the corridor and left the hospital. Once in the parking lot, I started running until I felt safe, and then went to my friend's house.

K.S. said he took a flight on June 13 to Belgium, where he has filed a request for asylum.

#### **K. B., 41, documentary filmmaker**

K.B. spent 13 months in pretrial detention on accusation of sodomy and unlawful detention. He is married and the father of an 8-year-old girl. He told Human Rights Watch that on March 3, 2017, at

around 9 p.m., he went to downtown Tunis for drinks. While he was sitting in a bar, S.Z., a young man, approached him. They chatted for a while, then K.B. invited him to his place. He said that, after having sex, he went to the kitchen to prepare some food. When he came back to the living room, he caught the man stealing money from his wallet. K.B. tried to force him out of his apartment, but the man locked himself in a bedroom, went to the balcony, and screamed for help. Policemen arrived, arrested them, and took them to the Aouina district police station.

Police treated me with contempt. The first question the interrogator asked was whether I had sex with S.Z. I denied it categorically and told him we only had drinks together. But he said that S.Z. had confessed. The interrogator asked me: “Aren’t you ashamed of yourself?”

K.B. said the police at the station confiscated his phone and looked at his social media history and his photo archives. They switched the phone off and did not allow him to call his family or a lawyer. They presented him with a statement to sign, but he refused. At 4 a.m., they transferred both men to Bouchoucha detention center. Later that morning, the police took the men to the Tunis first instance court, where a prosecutor ordered them to undergo an anal test. The police took them to Charles Nicole hospital, K.B. said, where he refused the test. “The idea of them intruding into my intimacy and into my body was so humiliating to me.”

He was returned to detention and after a few weeks decided to undergo the test in the hope that negative results would prove his innocence. He said he informed the investigative judge during a hearing and the judge issued a requisition. Police officers took him again to Charles Nicole Hospital.

It was the worst thing that ever happened to me. The doctor asked me to strip and get on the examination table. He asked me to bend over. There was one policeman in the room and one medical assistant, watching. The doctor put one finger into my anus and moved it around. I was so ashamed. It was very dehumanizing.



K.B. said that even though the test result was negative, the investigative judge indicted him for sodomy. The order referring the case to trial said that the time elapsed between the alleged act and the test prevented the court from ruling out that K.B. was “used to the practice of sodomy.” In May 2018, 13 months after the court placed K.B. in pretrial detention, it acquitted and freed him.

In the indictment, the investigative judge wrote that S.Z. had confessed to the police to “committing the crime of sodomy in exchange for money” and that he admitted that he “approached and dated men he met via Facebook.” The judge quotes the police report, which describes in crude terms the sexual intercourse between K.B. and S.Z. The judge also states that K.B. has denied the accusation of sodomy, and instead stated that he and S.Z. were only having drinks at his place and did not have sex.

The investigative judge notes that S.Z. later retracted his confession and says that he gave instructions for the forensic doctor in the Charles Nicole Hospital to administer an anal test to determine whether

K.B “bore signs of the practice of homosexual activity” recently or whether he “practices sodomy in a habitual way.”



The judge’s indictment of K. B. was based on S.Z.’s confession to the police, later repudiated, from “the circumstances of the case, which show that the two men had no other reason to go to K. B.’s house” and K. B.’s refusal to take the anal test. The judge wrote: “given that the test was performed 20 days after the reported incident, the forensic doctor was not able to find signs of anal penetration because those signs disappear five days after the act.”

**“Free” (nickname), 32, hairdresser**

Free said that on the night of April 5, 2018, he went with a female friend from Sousse to Monastir for drinks and to meet his boyfriend. When they arrived at around 9 p.m., he said, a police patrol stopped them and asked for their papers, then told the woman to accompany them to the station for further identity checks. Free waited outside the station.

While waiting, Free received an angry message from his boyfriend asking him why he was late. Free explained where he was and snapped a photo of the station as proof. A police officer saw him and confiscated Free's telephone, saying he had endangered state security. The officer took him to an interrogation room, where another officer handcuffed him to a chair. An officer searched the phone and finding nude photos of Free, then searched his social media activity and read the conversations he had with men on gay dating apps and his chats with his boyfriend on Facebook Messenger, some of them sexually explicit.

Free said that the police officer turned to him and said, "I hate you, you sodomites. You will have to pay for your depravity." Other police officers in the room insulted Free, he said. The officer interrogated him about his sexual activity, wrote a report, and told him to sign it. When Free refused, a policeman slapped him in the face and said, "Ah, now you are trying to be a man. Just sign here, you scum." Free signed the report without reading it.

At no point during the interrogation did the police advise Free of his right to speak to a lawyer. At around midnight, they moved him into a cell, where he spent the night. The following day, he was taken before a prosecutor, who charged him with sodomy but decided to release him provisionally pending trial. On June 6, he appeared before the first instance court in Monastir. The presiding judge closed the courtroom to the public.

The first question he asked me was whether I am used to the practice of sodomy. I told him I was not. He asked the question again, then asked, "Then why did you confess?" I answered, "Because the police forced me to." The judge asked, "But if you are not a sodomite, why do you dress like this, why do you look like one of them?"

He said the judge adjourned the trial to June 14, when he convicted Free and sentenced him to a four-months sentence with probation, based on his phone conversations and his forced confession. Free has appealed.

### **M. R., 26, paramedic**

M.R. worked in a hospital in Tebourba, a city 40 kilometers west of Tunis. He fled to France and applied for asylum after being charged under article 230 and granted pretrial release.

M.R. said he had always hidden his sexual orientation because of severe social stigma. In November 2017, he chatted with a man on Facebook. The man, called A.F., sent him photos, and they decided to

meet. When they did, M.R. realized that the photos were fake and told A.F. that he would not have sex with him. A few days later, on November 28, A.F. banged on his door at around 4 a.m. Fearing scandal, M.R. opened the door to find A.F. drunk and wielding a knife. A.F. slapped him on the face, ordered him to remove his clothes, and raped him, he said, threatening to cut his throat. After a few hours, A.F. told M.R. to buy A.F. cigarettes. M.R. went to the Tebourba police station and filed a rape complaint.

When I told the police officers about the rape, they asked me how I knew the man and how we met. I dodged the questions, but they insisted. I told them that I am gay, and their behavior changed instantly. The station chief said: “Ah, so you were the one who initiated this, you are an accomplice to the crime, there is no rape here – you deserve this.” Then, he handed me a requisition order and told me to go get an anal test the following day at Charles Nicole Hospital.

The police interrogated M.R., then accompanied him to his apartment, where they arrested A.F. The police told M.R. to undergo the anal examination, then report to the First Instance Court in Manouba. M.R. consulted the nongovernmental association Shams, which defends sexual minorities, and decided to skip the anal test. When he reported to the court, the investigative judge treated him as a criminal, not a victim. M.R. said:

He asked questions about my sex life and when I started practicing sodomy with other men. He said that I deserved everything that had happened to me and that I should be ashamed of myself.

M.R. said that the judge charged him with sodomy and granted him pretrial release. A.F. was kept in custody and charged with sodomy and rape.

The indictment of M.R., prepared by the investigative judge and dated December 13, 2017, provides purported details from M.R.’s intimate life, including confessions that he is gay. The indictment also relies on the confession from A.F. and cites a condom seized at M. R.’s house as evidence.

M.R. said that, three days after the encounter with A.F., he reported to work at the hospital. The director handed him a dismissal notice on the grounds that he was facing trial.

I had to go back to my family’s place, as I had no salary anymore. It was like living in a prison. My father and older brother beat me many times, my father even burned me with a cigarette. They did not allow me to go out, they said they were ashamed of me.

Having lost everything, he left Tunisia for France.

I had no other choice, I felt rejected by everyone, my family, society, my colleagues. And I was afraid of going to prison.

Mounir Baatour, M.R.'s lawyer, told Human Rights Watch that the case is stalled in the first instance court in Manouba, and has yet to go to trial. On May 15, 2018, indictment chamber sent the indictment to the cassation court for a legal review, which is pending.

**R. F., 42, day laborer, and M.J. 22, unemployed**

On June 12, 2018, police in Sidi Bouzaiane arrested R.F. and M.J. after R.F. went to the police to say that M.J. had refused to leave R.F.'s house.



M.J. said that the police came to his house and took both men to the police station at around midnight. They interrogated them in the same room, asking them how they met. A police officer took R.F.'s phone and watched videos stored on it, then said to R.F., "So you are a *miboun* [a degrading term for gay]. M.J. said:

One of the four officers present during interrogation slapped R.F. on the face. Then he turned toward me and asked, "So what were you both doing in the house? I'm sure you were having sex, so you too must be a *miboun*. You are staining this country," he said.

M.J. said that policemen beat him on his face, head, and back. When the police finished the interrogation at 3 a.m., they presented a written report and told M.J. to sign it. He said he asked to have a lawyer first, but they refused to let him call one and insulted him. He signed the report.



The police report, reviewed by Human Rights Watch, states that neither man requested a lawyer. R.F.'s purported statement, as the police recorded it, describes in graphic terms how he habitually practices

sodomy and has sex with men. The police report states that officers searched R.F.'s smartphone and found videos of R.F. having sex with men. The police confiscated his phone, the report says, as "evidence of the crime."

Two days after the arrest, M.J. said, he and R.F. appeared before a prosecutor, who asked them: "Aren't you afraid of God's judgment?" He ordered pretrial detention, and they were sent to the Sidi Bouzid prison. M.J. said that one of the prison guards harassed him and asked him vulgar questions such as: "How you do this? Are you getting fucked for money? Why are you fucking men? Aren't there enough women to fuck in this country?"

He said he was put in a cell with 100 other men, who seemed to have been informed about his "crime." Over the following days, his cellmates insulted, beat, and sexually harassed him. He said that one night, he refused to have sex with the cell "strongman", so the man and two others beat him. He said they held his arms, while the strongman slapped him on the face and punched him on the chin.



After a week in detention, he appeared before an investigative judge, who asked him about his sexual behavior. M.J. said he admitted that he is gay. He said he had done nothing wrong, but the judge replied, “You are harming society.”

The first instance court in Sidi Bouzid sentenced the two men on June 12 to three months in prison for sodomy. The appeals court upheld the sentence.

### **S.C., 24 and A.B., 22**

Police arrested S.C. and A.B. in Sousse on December 8, 2016, when they were allegedly caught committing sodomy in public. They were sentenced, on March 10, 2017, to eight months in prison under article 230 of the penal code and not on charges related to public indecency. The police report describes their sexual intercourse in detail and concludes that S.C. “committed active sodomy,” while A.B. was a “passive sodomite.”

The judgment from the first instance court in Sousse, which Human Rights Watch reviewed, states that both denied committing sodomy or being homosexuals. It states that they were both subjected to anal examinations on December 9, 2016, that turned out “negative.” The judge concluded that: “the results of the anal tests cannot exonerate the accused of the crime, especially given that the [tests] were performed sometime after the facts.” The court based the guilty verdict only on the declarations by police officers and wrote that: “it is appropriate to sentence them to eight months as an adequate and dissuasive sentence proportional to the offense that they have committed.”

### **A.C., 18, student**

A.C. was arrested three times for sodomy. The first time was in August 2017, when he was 17. Police forces arrested him at his house after his two sisters denounced him as gay and took him to the Kasba police station in Tunis. He said that they interrogated him extensively about his sexual orientation and took his smart phone and searched his personal data. The next day, they took him to a forensic doctor in the Charles Nicole hospital for an anal examination. He said he did not have a lawyer and that the police did not inform him of his right to have one.

I did not understand what was going on. The police told me that the test is mandatory. The doctor told me to go on an examination bed and to bend, and then he inserted his fingers in my insides. The doctor did not explain what the test is about.



A.C. said he was released without charge after spending two days in the Kasba police station.

On May 15, 2018, he went to the police station in Sijoumi, in Tunis, in response to a summons. He said police officers told him his family had filed a complaint and questioned him for almost four hours. A.C. confessed to being gay. The police took him to Bouchoucha detention center in Tunis, where he spent the night. The next day, May 16, he appeared before the Tunis first instance court in Sidi Hassine, where an investigative judge interviewed him. The judge asked him: “Why are you like this? Don’t you know that what you’re doing is haram [forbidden under Islam]?”

I told the judge that I didn’t break any laws, that what I do is my personal business. I did not hurt anyone. This is my private life and should not be the concern of anyone else.

He said the judge ordered his detention for two months in a juvenile rehabilitation center, as he was still a child, and forced him to undergo “[conversion therapy](#),” a thoroughly discredited method to change someone’s sexual orientation or gender identity. At the center, a psychiatrist visited him twice,

telling him that “he should work on changing himself and his mind.” He appeared before another investigative judge, on June 25, who released him.

A.C. said that on September 2, he was running some errands with his boyfriend when the police stopped them and asked for their identity cards. The police told A.C. that his family had filed a complaint against him. They took him to Hay Hlel police station in Tunis, where they questioned him about his sexual life, confiscated his phone, and looked at his photos and personal conversations. A prosecutor issued a warrant to detain him, and he spent eight days in the Bouchoucha detention center. On September 20, he appeared before a judge, who released him without charge.

**F.B, 28; N.A, 21 and B.K., 27, day laborers**

In Sousse, a coastal city, the police arrested three men in January 2017, after neighbors complained that they suspected the men were gay. In the indictment, which Human Rights Watch reviewed, the investigative judge states that the police went to the house where the men were staying, seized their phones, on which they found “evidence that they were sodomites,” as well as “women’s clothing,” and took the men to the police station.

The investigative judge ruled that the men harmed public morals based on the content of the seized phones and “because they dressed up like women, used lipstick, and talked in a languid way.” The police report and the indictment, which usually would include information about a judicial warrant, did not indicate that the police had one. The three men were sentenced to two months in prison for the charge of harming public morals and served their terms.