



For Immediate Release

Tunisia: Three Years for Homosexuality 6 Students Subjected to Anal Examinations

(Tunis, December 16, 2015) – A Tunisian court sentenced six students accused of sodomy to three years in prison on December 10, 2015, 13 human rights organizations said today. The convictions contradict international law and are contrary to the rights to privacy and nondiscrimination under Tunisia’s 2014 constitution.

Tunisian authorities subjected the defendants to anal examinations, to use it as evidence in the case. The court also banned the students from the town of Kairouan, for three years, after their release from prison.

“While Tunisians were celebrating the Nobel Peace Prize for the Tunisian National Dialogue Quartet on Human Rights Day, a Tunisian court was handing down a medieval sentence to six students on the basis of a gross invasion of their private life and bodily integrity,” said Amna Guellali, Tunisia director at Human Rights Watch.

Police in Kairouan, 150 kilometers south of Tunis, arrested the six students, whose names the signatory organizations are withholding for their security, on December 5. The lawyer of one of the students, Bouthaina Kerkeni, told the signatory organizations that the police arrested the six men at the apartment of one of them, at 7 p.m., acting on a complaint by neighbors. They searched the house, seized computers, and took the men to a police station.

The following day, the prosecutor at the First Instance Court of Kairouan charged them with sodomy, under article 230 of the penal code, ordered them detained, and ordered anal exams. The forensic doctor at the Kairouan public hospital performed the exams. The prosecutors introduced into evidence a medical report prepared by the doctor, as evidence for homosexual relations.

On December 10, the judge of the First Instance Court in Kairouan sentenced all six to the maximum penalty under article 230, three years in prison, said Kerkeni, who was present during the hearing and judgment. Article 230 provides that sodomy, if practiced in a non-public location, shall be punished by imprisonment for up to three years.

Tunisia’s Justice Ministry should immediately issue a directive ordering prosecutors to stop sending detainees for anal examinations as part of police investigative procedures to determine individual’s sexual behavior. Tunisia’s health minister should also direct all forensic doctors under the ministry’s authority to cease all anal examinations for these purposes and to respect people’s right to physical dignity and integrity. The signatory organizations reiterate, finally, their call on the Tunisian authorities to abrogate Article 230 and to revise all draconian provisions of the Tunisian Penal Code.

The judge also delivered an additional penalty by banning the defendants from Kairouan for three years, under penal code article 5. One defendant was sentenced to an additional six months under article 226 for “indecent behavior in public,” on the grounds that police found pornographic videos on his computer.

"Even in the days of Ben Ali, the courts have never, as to my knowledge, pronounced judgment of banishment. Each person has the right to dispose of his body and the inviolability of his home, punishment and violates fundamental rights enshrined in the Tunisian constitution and guaranteed by international conventions ratified by Tunisia," said Mokhtar Trifi, President of the Tunis office FIDH.

Only two defendant were represented in court by a lawyer. All six are in the Kairouan prison. They have until December 20 to file an appeal, and one of them has.

Prosecutions for consensual sex in private between adults violate the rights to privacy and non-discrimination 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 made it clear on several occasions that sexual orientation is a status protected against discrimination under these provisions. The UN Working Group on Arbitrary Detention has found that arrests for same-sex conduct between consenting adults are, by definition, arbitrary.

These rights are reflected in Tunisia’s 2014 constitution. Article 24 obligates 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.”

"Nearly two years after the adoption of the constitution, it is regrettable that no serious effort has been made by the authorities to ensure compliance of the Penal Code with the new constitution" said Antonio Manganella, head of the ASF Tunisian Mission, "The government should immediately implement a moratorium on all criminal provisions unconstitutional tainted, which is the case of Article 230," he added.

On September 22, a court in the city of Sousse sentenced a 22-year-old student , known as Marwen to one year in prison on sodomy charges, after he underwent a court-ordered anal exam. He was later released on bail. The Sousse Appeals Court is scheduled to rule on his appeal on December 17.

On September 28, following Marwen’s conviction, the Tunisian Medical Syndicate, issued a statement condemning the use of anal exams in the enforcement of article 230. The then-minister of justice, Mohamed Salah Ben Aissa, declared that article 230 is contrary to the constitution, should not be applied, and should be repealed. However, Ben Aissa, issued no official directive to prosecutors to stop using it.

On October 5, the President Beji Caid Essebsi said on the Egyptian TV station CBC that he would oppose any attempt to repeal the article.

“Instead of defending repressive laws like the one criminalizing homosexuality the president of the Republic should lead efforts to reform the laws that conflict with the rights enshrined in the 2014 constitution,” said Ramy Salhi, REMDH Maghreb Director.

“The current state practice of humiliating and punishing citizens for consensual adult sexual conduct is in stark contrast to the Tunisian constitution and goes against the revolution’s call for a democratic and equal Tunisian society”, stated Gabriele Reiter, country director of OMCT in Tunisia.

Human Rights Watch has documented cases in several countries, in which police or prosecutors subject men to forensic anal examinations as part of their effort to “prove” that they have engaged in anal penetration. Such invasive examinations violate the individual’s rights to dignity, privacy, and physical integrity.

They constitute cruel, inhuman, and degrading treatment and may amount to torture, violating the African Charter on Human and Peoples’ Rights, the Convention Against Torture, and the International Covenant on Civil and Political Rights, all of which Tunisia has ratified. In addition, they have no evidentiary value and their findings should not be regarded as probative in a court of law.

In 2011, the Office of the UN High Commissioner for Human Rights stated:

One issue highlighted by United Nations experts is the “medically worthless” practice of subjecting men suspected of homosexual conduct to non-consensual anal examinations to “prove” their homosexuality. Such examinations have been condemned by the Committee against Torture, the Special Rapporteur on torture and the Working Group on Arbitrary Detention, which has held that the practice contravenes the prohibition of torture and ill-treatment.

Court-ordered anal examinations for the purpose of determining sexual activity are also contrary to medical ethics, according to the World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

List of signatory organizations:

ASF
Association for the promotion of rights and differences
Tunisian Association for the defense of individual liberties
Chouf
CRLDHT
Euromedrights
FIDH
HRW
Initiative Mawjoudin pour l'égalité
OCTT
OMCT
REMDH
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