



Dignity Debased

Forced Anal Examinations in Homosexuality Prosecutions

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Printed in the United States of America

ISBN: 978-1-6231-33719

Cover design by Rafael Jimenez

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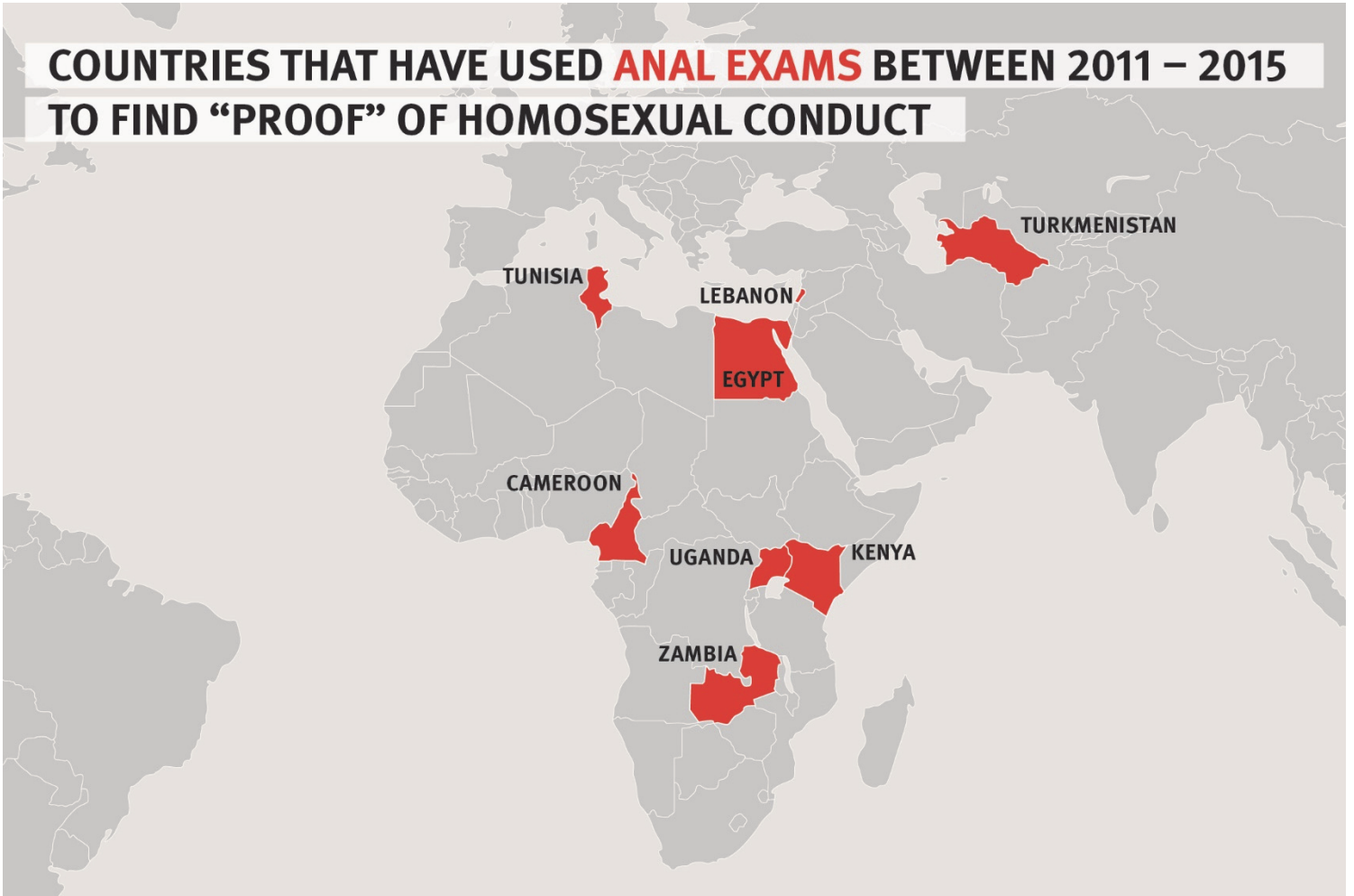
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Map



Summary

In at least eight countries in which consensual same-sex conduct is criminalized, law enforcement officials working in tandem with medical personnel subject men and transgender women who are arrested on homosexuality-related charges to forced anal examinations, with the purported objective of finding “proof” of homosexual conduct.

These examinations often involve doctors or other medical personnel forcibly inserting their fingers, and sometimes other objects, into the anus of the accused. Law enforcement officials and some medical personnel claim that by doing so they can determine the tone of the anal sphincter or the shape of the anus and draw conclusions as to whether or not the accused person has engaged in homosexual conduct. This argument is based on long-discredited 19th century science: the overwhelming weight of medical and scientific opinion holds that it is impossible to use these exams to determine whether a person has regularly engaged in same-sex conduct.

Forced anal examinations are a form of cruel, degrading, and inhuman treatment that can rise to the level of torture. They violate the Convention against Torture, the International Covenant on Civil and Political Rights, and the African Convention on Human and Peoples' Rights. Forced anal exams are invasive, intrusive, and profoundly humiliating. As the UN Committee against Torture has emphasized, they “have no medical justification and cannot be consented to fully.”

Some people subjected to these examinations experience lasting psychological trauma. Several victims told Human Rights Watch that they experienced forced anal examinations as a form of sexual violence. Human Rights Watch believes that they are a form of sexual assault. Medical personnel who conduct forced anal exams do so in violation of international principles of medical ethics, including the prohibition on medical personnel participating in any way in acts of torture or degrading treatment.

This report compiles evidence of the use of forced anal exams in eight countries: Cameroon, Egypt, Kenya, Lebanon, Tunisia, Turkmenistan, Uganda, and Zambia. We have also received reports of the use of forced anal exams by police in Syria, which we have not independently verified. The report is based on interviews with 32 men and transgender

women who underwent forced anal examinations. Human Rights Watch also interviewed doctors and medical personal about the use of anal exams, and sought the opinions of forensic specialists from around the world. The report recommends that all states ban the practice of forced anal examinations, and that international and domestic human rights and health institutions vigorously and vociferously oppose their use.

A medical officer in Uganda who conducts forced anal examinations told Human Rights Watch in February 2016 that he did not see how the anal exams constituted a human rights violation. He tried to justify the exams, stating: “I don’t see it as a human rights violation. I’m also helping them. For instance, I inform them if they have STIs, which allows them to get treatment.”¹ But such claims are belied by the realities described by people subjected to the exams.

Mehdi, a Tunisian student subjected to an anal examination in December 2015, that involved a doctor penetrating his anus with a finger and with a tube told us:

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.²

Muharram, an Egyptian man interviewed for Human Rights Watch’s 2004 report, *In a Time of Torture* (p. 115), likely spoke for many victims of anal exams when he said:

The two worst times in my life were at the forensic doctor's, and after that the verdict, when he said, ‘Two years [in prison].’ When I sleep, every night I remember those two things. I have bad dreams.

Louis, who underwent a forced anal examination in Cameroon in 2007 at age 18, echoed Muharram’s sentiments. Nine years after the forced anal examination, he told us:

¹ Human Rights Watch interview with Michael Oligo, Kampala, February 4, 2016.

² Human Rights Watch interview with Mehdi, Tunis, February 15, 2016.

I still have nightmares about that examination. Sometimes it keeps me up at night when I think about it. I never thought a doctor could do something like that to me.³

Genwa Samhat, director of the lesbian, gay, bisexual, and transgender (LGBT) rights group, Helem, in Lebanon, who has interviewed a number of victims of forced anal exams, said that even when she recently interviewed a victim three years after the fact, he found it difficult to speak about the traumatic experience. She explained, “It’s a form of post-rape trauma. [Forcing someone to undergo an anal exam] has the same effect as raping people.”⁴

The use of anal examinations varies from country to country. In Egypt and Tunisia, forced anal examinations are used regularly in prosecuting homosexual sex. Police take men and transgender women who are arrested on homosexuality-related charges before a forensic medicine specialist, who conducts an anal examination and prepares a report, which is then introduced into court as a form of evidence for the prosecution.

In Cameroon and Zambia, although use of forced anal exams is less frequent than in Egypt and Tunisia, prosecutors have introduced medical reports based on anal exams into court, contributing to convictions of individuals charged with consensual homosexual conduct.

In Uganda, in the last three years, police in Kampala have frequently subjected men and transgender women accused of consensual homosexual conduct to anal exams. All of those cases have been dismissed before reaching trial. Occasional cases have been reported outside Kampala, which have also been dismissed before trial.

In Kenya, Human Rights Watch and its Kenyan partner organizations are only aware of one instance of forced anal examinations, conducted in February 2015, on two men arrested for “unnatural offenses.” In September 2015, with the support of Kenya’s National Gay and Lesbian Human Rights Commission, the men filed a petition with the High Court of Kenya in Mombasa, challenging the constitutionality of forced anal examinations, and HIV and

³ Human Rights Watch telephone interview with Louis (pseudonym), June 17, 2016.

⁴ Human Rights Watch interviews with Genwa Samhat, director of Helem, Beirut, March 29, 2016.

hepatitis tests. On June 16, 2016, the court ruled against them, claiming that the petitioners had consented to the exams, although the men said they had signed consent forms under duress.

In Turkmenistan, which has one of the most closed and repressive governments in the world, Human Rights Watch was not able to conduct research, but we were able to interview one individual now living in exile who says he was subjected to a forced anal examination in Turkmenistan in 2013. We also spoke with an exiled civil society activist who confirmed that such examinations are used to obtain “evidence” in sodomy cases. The man subjected to the examination reported that he was convicted in a mass trial with some 20 other men, most or all of whom were also subjected to anal exams, the results of which were used in securing convictions in court. He alleged that this was a common practice, and further investigation is warranted.

In Lebanon, authorities often used forced anal examinations against men arrested on homosexuality-related charges until 2012, when Lebanese activists mounted a campaign labeling the exams “Tests of Shame.” They successfully mobilized media and public opinion in opposition to the exams, leading the Lebanese Order of Physicians and then the Ministry of Justice to issue guidelines prohibiting the use of forced anal exams. Activists’ historic victory in enlisting government institutions in opposition to anal exams, and the rights-respecting actions taken by the Order of Physicians and the Ministry of Justice, should serve as a model for other states in which forced anal exams are currently practiced. However, the victory is only partial: Human Rights Watch found that some investigative judges in Lebanon are still asking doctors to conduct anal examinations and that some doctors are still doing so. Police also persist in using other forms of torture and ill-treatment against men accused of homosexuality in Lebanon.

No matter the circumstances or rationale, forced anal examinations in cases of consensual same-sex conduct are a human rights violation. They do not serve legitimate government interests, and they lack evidentiary value. As such, law enforcement officials should never order the examinations; doctors and medical personnel should not conduct them; and courts should not admit them into evidence.

Human Rights Watch also believes that all states should decriminalize consensual sex between adults of the same sex. The criminalization of consensual same-sex conduct

violates the right to privacy and the right to non-discrimination, guaranteed under the International Covenant on Civil and Political Rights, and under many states' constitutions. Until such laws are overturned, all states should improve respect for the rights of persons accused of homosexual conduct by banning forced anal testing. It is time for states to restore basic rights and dignity to men and transgender women accused of homosexual conduct, and to recognize that the prohibition on torture and cruel, inhuman, and degrading treatment extends to everyone, regardless of their sexual orientation or gender identity.

Key Recommendations

To all governments, notably the governments of Cameroon, Egypt, Kenya, Lebanon, Tunisia, Turkmenistan, Uganda, and Zambia:

- Ban the use of anal examinations on men and transgender women accused of consensual same-sex conduct. Action should be taken at several levels to ensure that the practice is eliminated:
- Heads of State should take steps that are legally within their powers to end forced anal examinations. Depending on the constitutional powers of the head of state, this may involve: issuing executive orders prohibiting the use of anal examinations in prosecutions for consensual same-sex conduct; introducing and advancing legislation banning forced anal examinations; or instructing relevant ministries, including those whose responsibilities include justice, security, and health, to take steps to ban forced anal exams.
- To the extent allowed under domestic law, ministries of justice should prohibit judges and magistrates from admitting the results of anal examinations into evidence in cases involving charges of consensual same-sex conduct or other private sexual behavior between adults.
- Law enforcement agencies, including public prosecutors' offices, police departments, and gendarmerie forces, should prohibit law enforcement officials from ordering anal examinations on persons charged with consensual same-sex conduct. They should ensure that medical personnel who refuse to conduct the exams do not face any legal consequences.
- Ministries of health and national medical councils or similar regulatory bodies should prohibit medical personnel from conducting anal examinations on persons accused of consensual same-sex conduct.
- National human rights institutions should conduct investigations into the use of forced anal examinations and should call on relevant authorities to put a stop to the practice.

Methodology

This report is based primarily on field research conducted between May 2015 and June 2016 in Egypt, Kenya, Lebanon, Tunisia, Uganda, Zambia, and a location, withheld for reasons of security, in which we interviewed exiles from Turkmenistan. It also draws upon research conducted in Cameroon in October 2012 and November 2013, Uganda in November 2013, and Lebanon in February 2014. The countries selected were the only countries in which Human Rights Watch had received concrete information regarding the use of forced anal exams against men and transgender people accused of engaging in consensual same-sex in the five years leading up to the report's publication. During the course of research, Human Rights Watch also received reports of the recent use of forced anal exams in Syria, but we were unable to conduct field research to confirm those reports.

Human Rights Watch interviewed 32 victims of anal examinations, as well as lawyers, activists, government officials, and doctors, including doctors in four countries who had personally conducted anal exams on men accused of homosexuality. In five countries, we were able to review medical reports and court files from cases in which forced anal examinations had been used. We also spoke with nationally and internationally recognized forensic medicine specialists. Human Rights Watch also consulted secondary sources, including UN reports, reports by other non-governmental organizations, legal and medical texts, and media reports.

National civil society organizations and lawyers helped us identify interview subjects. Interviews were conducted in English, French, Arabic, or Russian, by interviewers fluent in those languages, or in English with the assistance of translators. All persons interviewed for this report provided verbal informed consent to participate and were assured that they could end the interview at any time or decline to answer any questions. Most victims have been given pseudonyms in this report, as indicated in relevant citations, and in some cases, other identifying information has been withheld to protect their privacy and safety. No one was compensated for his or her participation.

All documents cited in this report are either publicly available or on file with Human Rights Watch.

In Their Own Words

In the course of conducting research for this report, it became apparent that many people, including some government officials and medical experts in countries in which forced anal examinations are practiced, had very little awareness of these exams, and were shocked and repulsed to learn what the exams entail. Therefore, we wish to begin by allowing several victims of forced anal exams to describe their ordeal in their own words.

Tunisia: Wassim's Story

Wassim, a 19-year-old Tunisian student, told Human Rights Watch that he was arrested by police on charges of consensual sodomy and subjected to a forced anal exam by a forensic doctor in the southern town of Kairouan in December 2015. As he described his experience:

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. ... 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.... When the

doctor finished the test, I was crying.... [T]he 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 policemen and a doctor who took off my pants, and I was feeling horrible. I couldn't do anything. I felt helpless. ... I felt there was nothing I could do to defend myself.⁵

Uganda: Chloe's Story

Chloe, a 19-year-old transgender woman, was arrested in Kampala in May 2015, together with her partner, Eric, age 25, after a mob attacked them on suspicion that they were homosexual and turned them in to the police. Chloe told Human Rights Watch that police interrogated her, beat her, and took her and Eric to Muyenga Dispensary for forced anal examinations. Chloe said the male doctor used an object, which appeared to be made of glass, to examine her in the presence of three police officers:

I was too embarrassed, I felt too bad. I was standing up and [the doctor] told me to take off my clothes and to bend over. It was very painful when he put that thing inside me but I had no choice ... I was crying, I was deep in tears, but I had no choice, the police were saying 'Why are you crying, you have no choice! You deserve death!'

[The doctor] didn't tell me the results when he finished. I only found out later. My results said 'negative.'

After they tested me, they took me out of the room and then did the same exam to Eric in the room. They did not check my penis, just the anus, but for Eric, he told me they checked the penis. Because the police said he was my husband so he had been fucking me.⁶

⁵ Human Rights Watch interview with Wassim (pseudonym), Tunis, February 15, 2016.

⁶ Human Rights Watch interview with Chloe (pseudonym), Kampala, February 5, 2016.

Turkmenistan: Nyazik's story

Police arrested Nyazik in January 2013 after an acquaintance reported him for homosexuality. He was 18 at the time. He told Human Rights Watch:

The anal test was performed at the building [where] forensic medical examinations [are carried out]. We were escorted by the [police] investigator. I entered the room, there was a gynecological chair. The door was open the whole time. One lady was typing, one male doctor and one female doctor and a few nurses. The female doctor [ordered]: 'Get undressed and take off your underwear. Now get up on the gynecological chair on all fours. Open your butt and now hog just like when you give [anal sex] to someone. How do you do it? Show us.' And she began to beat my butt and back with the ruler.

While she is conducting the exam, she uses a flashlight to look inside and makes comments: 'Wow, what a tunnel! What an anal fissure! The fissure is just like the abyss!' That moment I wanted to cry. Then she says: 'And, do you like it? Are you getting sexually excited? You probably had [sex] with the entire [city]. You should be burned. ... Dregs of society.'

It was all in Turkmen language and she only referred to us as to females. She performed the test with her finger in a disposable glove. She constantly made comments about what she sees and feels inside to her colleagues. When she did a test to one other guy [which Nyazik observed from the hallway, through an open door], she commented: 'Oh, oh, oh, look, 13 anal fissures. She must be their mama.'

The investigator is in the room all the time, the door is open and others can see.⁷

⁷ Human Rights Watch interview with Nyazik (pseudonym), location withheld, July 24, 2015.

I. Background

Since 2013, the Egyptian Initiative for Personal Rights (EIPR), a human rights organization based in Cairo, has documented an increase in arrests on the grounds of sexual orientation and gender identity, and an “intentional targeting of LGBT people” by the public morals police. The new wave of arrests, many of which have been accompanied by the use of forced anal examinations, harkens back to a period of intense harassment of gay men over a decade ago, which activists had thought was long gone.⁸

In May 2001, police in Cairo raided a disco on an anchored cruise ship on the Nile, the “Queen Boat,” and arrested dozens of men whom they suspected of being gay. Along with other men rounded up on Cairo’s streets in the days before the raid, a total of 52 men and one boy were prosecuted for the “habitual practice of debauchery” (*fujū*), criminalized under Law 10/1961 on the Combating of Prostitution. All 53 were taken to the Forensic Medicine Authority, a branch of the Ministry of Justice, and subjected to forced anal examinations.⁹

Scott Long, who has conducted extensive research on the use of forced anal testing in Egypt, described the nature of these anal examinations:

Prosecutors routinely refer arrested men to state forensic doctors for a forced anal examination. The naked, humiliated subject is made to bend, while multiple doctors pursuing ‘marks’ of ‘sodomy’ dilate, peer into, and in some cases insert objects into his anal cavity.¹⁰

⁸ EIPR, informal briefing paper, May 2014, on file with Human Rights Watch. Most of the cases in the briefing paper are described in Scott Long, “Brutal gender crackdown in Egypt: The tomorrows that never came,” A Paper Bird (blog), May 18, 2014, <https://paper-bird.net/2014/05/18/brutal-gender-crackdown-in-egypt-the-tomorrows-that-never-came/> (accessed June 20, 2016).

⁹ Human Rights Watch, *In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct*, February 29, 2004, <https://www.hrw.org/report/2004/02/29/time-torture/assault-justice-egypts-crackdown-homosexual-conduct>.

¹⁰ Scott Long, “When Doctors Torture: The Anus and the State in Egypt and Beyond,” *Health and Human Rights: An International Journal*, vol. 7, No. 2 (2004), pp. 114-40.

Twenty-three of the men were convicted by the State Security Court.¹¹ The presiding judge later stated that the forensic medical examination reports had been an “important” element of proof: it “found that several people were habitually used,” he said.¹²

A 2004 Human Rights Watch report found that in conducting the examinations, Egypt's Forensic Medicine Authority was relying on theories popularized by an 1857 French medical text by Auguste Ambroise Tardieu, who argued that a “habitual pederast” who was sexually “passive” (receptive, or a “bottom”) could be identified by six signs:

The excessive development of the buttocks; the funnel-shaped deformation of the anus; the relaxation of the sphincter; the effacement of the folds, the crests, and the wattles at the circumference of the anus; the extreme dilation of the anal orifice; and ulcerations, hemorrhoids, fistules.¹³

Tardieu focused largely on the “funnel-shaped” anus, which he said was the one “unequivocal” sign of “habitual” receptive anal sex. He further theorized that a “habitual pederast” who was “active” (insertive, or a “top”) would have deformations of the penis that would correspond to the funnel-shaped anus: either a slim, attenuated member, or a glans tapered like “the snout of certain animals.”¹⁴ These theories made their way into Egyptian medical textbooks by 1876. The author of one such textbook received financial support from Tardieu, which may explain in part why these theories seem to have found their most enduring, receptive audience in Egypt: the language in contemporary Egyptian medical reports on forced anal exams reflects, sometimes word-for-word, Tardieu’s six characteristic signs.¹⁵

Egypt continues to rely on these antiquated ideas, despite an overwhelming consensus among forensic medicine experts that Tardieu’s theories, and anal examinations in general, have no scientific basis. In 2015, an Egyptian forensic medicine doctor told the

¹¹ The teenage boy was also convicted, in a separate process before the Cairo Juveniles Court. In *a Time of Torture*, p. 42, footnote 142.

¹² *In a Time of Torture*, p. 44.

¹³ August Ambroise Tardieu, *Étude Médico-Légale sur les Attentats aux Moeurs*, 3rd ed. (Paris: J. B. Bailliere, 1859), pp. 142-143, cited in *In a Time of Torture*, p. 108.

¹⁴ *Ibid.*, pp. 108-109, n. 397.

¹⁵ *In a Time of Torture*, pp. 109-110, notes 400, 402.

news outlet *Buzzfeed* that a homosexual can be identified because his anus “will look like the female vagina.”¹⁶

Egypt is not alone. Human Rights Watch has interviewed men and transgender women from eight countries who said they had undergone forced anal exams between 2011 and 2016. Those eight countries are Cameroon, Egypt, Kenya, Lebanon, Tunisia, Turkmenistan, Uganda, and Zambia.

Some doctors who conduct the tests, when interviewed by Human Rights Watch, said they were entirely unconvinced of their medical value, but felt they could not say no to law enforcement officials who either ordered or asked them to perform the tests. Others appeared to buy in to theories similar to Tardieu’s. In Uganda, a medical officer told Human Rights Watch:

If someone has had [receptive] anal intercourse for two years or more, depending on the regularity, you find funneling. This is a loss of subcutaneous fat around the peri-anal areas. It becomes the shape of a funnel. ... We also look at the elasticity of the external anal sphincter. There’s a tendency after time to lose control of their bowels. I have seen cases where people have to wear diapers.¹⁷

I also put my fingers inside them to check anal tone. That’s the strength of the anal sphincter – its ability to contract back to its original position. If they’ve had anal intercourse recently, this test is reliable.¹⁸

He said he also conducted penile exams on men suspected of homosexuality, claiming, “With the penis, you’re looking for infection or trauma.” It was unclear exactly why he believed that either infection or trauma on the penis would provide evidence of homosexual conduct.¹⁹

¹⁶ J. Lester Feder and Maged Atef, “Egyptian Doctors Think This Torturous Exam Can Detect ‘Chronic Homosexuals,’” *Buzzfeed*, February 16, 2015, <http://www.buzzfeed.com/lesterfeder/egyptian-doctors-think-this-torturous-exam-can-detect-chroni#.armgDXGBv> (accessed April 9, 2016).

¹⁷ Human Rights Watch interview with Michael Oligo, Kampala, February 4, 2016. Ugandan pastor Martin Ssemu has regularly made the sensational claim that gay men wear diapers, based on the belief that anal sex causes incontinence.

¹⁸ Human Rights Watch interview with Michael Oligo, Kampala, February 4, 2016.

¹⁹ *Ibid.*

In Tunisia, a forensic doctor gave a description that appeared to be straight out of Tardieu's 1857 study:

The genital examination can show either acute or chronic pederasty. For acute pederasty, we look for wounds and signs of trauma in the anus, redness, irritability, a funneling in the anus. For chronic passive pederasty, we look for signs like diminished anal sphincter tone. On the other hand, for acute pederasty – acute meaning recent, non-habitual, and sometimes involuntary – we look for augmented anal sphincter tone. In some cases, we can see signs of both. We sometimes look for sperm, but if it's been more than three to five days, we can't find them.²⁰

He did not seem to see any contradiction in stating that in one person, he could identify both augmented and diminished anal tone at the same time.

Worryingly, it appears possible that the use of forced anal examinations has increased in recent years. In Kenya, Uganda, and Zambia, prosecutions for consensual same-sex conduct were almost unheard of until 2013 or later. Uganda adopted its notorious Anti-Homosexuality Act in February 2014 and also stepped up arrests under the already existing section 145 of the penal code, which punishes "carnal knowledge against the order of nature" with life in prison.²¹ In Kenya and Zambia, moral panics targeting gay men and transgender women led to seemingly unprecedented arrests under similar laws, in 2013 in Zambia, and in 2015 in Kenya.²² These arrests were accompanied by forced anal exams—possibly because police, unfamiliar with handling such cases and at a loss as to how to find "proof" to help convict those who had been denounced for same-sex conduct but had not been caught in the act, fell back on the use of anal examinations.²³

²⁰ Human Rights Watch interview with a forensic doctor, Tunisia, February 2016, exact location and date withheld at the doctor's request.

²¹ Email communications with representatives of Human Rights Awareness and Promotion Forum (HRAPF) and Chapter Four Uganda, May 8 and May 9, 2016.

²² In Kenya in February 2015, the circulation on social media of reportedly pornographic videos of men engaged in same-sex conduct led to intense public pressure on the police, who normally do not aggressively pursue homosexuality allegations, to make arrests. In Zambia, media reports of an alleged attempt by four same-sex couples to register their marriages in April 2013 led to several arrests and a wave of homophobic and transphobic attacks. See Kenya and Zambia sub-sections in Section II below.

²³ A Ugandan police official told Human Rights Watch that Ugandan police began using forced anal exams in 2013, when heated debate around the proposed Anti-Homosexuality Bill appeared to lead to an increase in arrests. He explained that police resorted to the exams because they equated consensual anal sex with rape, and were already accustomed to

On the other hand, in Lebanon, activists conducted an effective advocacy campaign to ban forced anal exams in 2012, labeling them “Tests of Shame.” They gained support from the Lebanese Order of Physicians and the Minister of Justice, who both issued circulars calling for an end to the exams. The movement was largely successful, and offers much as an example to activists who would like to mount similar campaigns elsewhere. However, as documented in Section II, as recently as 2015, some prosecutors were still requesting, and some doctors were still conducting, anal exams on men accused of homosexual sex.

The countries this report focuses on may not be the only places where authorities forcibly subject people suspected of same-sex conduct to anal examinations.²⁴ Forced anal exams were reported in the United Arab Emirates in 2005, and the UN Special Rapporteur on Torture denounced them.²⁵ Human Rights Watch did not conduct research there, and it is unclear whether there have been more recent instances. Human Rights Watch also received two reports of cases of police in Syria ordering gay men to undergo forced anal testing, in 2012 and 2014, but has not independently verified the allegations.²⁶

conducting anal or vaginal exams on some rape victims in order to collect evidence – the key difference being, of course, that rape victims are examined with their consent. Human Rights Watch and Chapter Four Uganda interview with Erasmus Twarukuhwa, director of Human Rights and Legal Services, Uganda Police Force, Kampala, June 15, 2016.

²⁴ In closed societies or countries in which LGBT rights movements are nonexistent or not connected to broader global movements, forced anal examinations may be taking place without attracting international attention. The alleged use of forced anal examinations in Turkmenistan only came to the attention of Human Rights Watch because an activist working with the extensive Turkmen exile community introduced us to several gay men in exile. Even outside the country, they were fearful of speaking about their experiences.

²⁵ 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, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go7/120/41/PDF/Go712041.pdf?OpenElement>, para. 317.

²⁶ Managers at a refugee agency in Beirut told Human Rights Watch that one client, a Syrian asylum seeker, told them that he was subject to a forced anal exam while being detained at the Criminal Security Department in Harsata, a suburb of Damascus, in March 2014. The asylum seeker was no longer reachable at the phone number the refugee agency had on file when Human Rights Watch sought to contact him in March 2016. In a second case, Rifat, a Syrian asylum seeker in Beirut, told Human Rights Watch that police in Damascus arrested him in 2012 when he was on the way to a drag party and took him to a medical examiner for an anal examination, but that the medical examiner did not conduct the exam and forged the report. According to Rifat, “We were detained for a few days. On our third day, they took us to a medical examiner and ordered him to give us anal exams. Luckily for us, the medical examiner was gay himself and so forged the reports and told the police that there is no evidence we are gay.” Human Rights Watch interview with Rifat (pseudonym), Beirut, February 25, 2014, and with representatives of an organization working to assist refugees, Beirut, March 31, 2016. These two cases are cause for concern that there could be a wider practice of police ordering anal exams on persons accused of homosexual conduct in Syria.

Other Abuses in the Medical Setting

While conducting research on forced anal exams, we learned from both victims and medical professionals of other medical examinations that violated the rights of those undergoing the tests, including exams that were conducted without consent or where consent was sought giving medically incorrect information.

For instance, women and girls are subjected to unscientific “virginity tests” in a number of countries. The tests are used in prosecutions for consensual sex outside of marriage; on women who allege rape; at the behest of their families; or even to determine their eligibility for employment.²⁷ Egypt, one of the worst offenders in the world in its use of forced anal exams, has also used “virginity tests” under particularly shocking circumstances, including to humiliate female protestors arrested at anti-government protests.²⁸

Like forced anal examinations, “virginity tests” have no scientific value.²⁹ They have been recognized internationally as a violation of human rights, particularly the prohibition against “cruel, inhuman or degrading treatment” under article 7 of the International Covenant on Civil and Political Rights (ICCPR), and article 16 of the Convention against Torture.³⁰ In 2014, the

²⁷ In Afghanistan, authorities routinely subject women and girls accused of “moral crimes,” such as “running away,” zina (consensual sex outside of marriage), and attempted zina, to “virginity tests.” In parts of the Middle East and North Africa, including Egypt, Lebanon, Jordan, and Libya, women can be subjected to “virginity testing” in various circumstances, including at the behest of their families. In Indonesia, the national police incorporate “virginity tests” as part of recruitment procedures for women candidates. Human Rights Watch, “UN: WHO Condemns ‘Virginity Tests,’” December 1, 2014, <https://www.hrw.org/news/2014/12/01/un-who-condemns-virginity-tests>.

²⁸ In December 2011, Egypt’s administrative court, the Council of State, banned virginity tests for female detainees, citing article 40 of the Code of Criminal Procedure, which states that every detainee must be treated with respect for human dignity and prohibits physical or psychological ill-treatment, and article 46, which states that women can only be searched with their consent. However, the military has continued to use the tests as a method of humiliating and degrading women arrested during anti-government protests. Shahira Amin, “Virginity test allegations re-emerge in Egypt’s ‘climate of fear,’” CNN, February 21, 2014, <http://edition.cnn.com/2014/02/21/world/meast/egypt-virginity-testing-shahira-amin/> (accessed April 11, 2016). See also Human Rights Watch, “Egypt: Military Impunity for Violence Against Women,” April 7, 2012, <https://www.hrw.org/news/2012/04/07/egypt-military-impunity-violence-against-women>.

²⁹ “Forcibly conducting virginity testing is a human rights violation and may constitute torture,” International Rehabilitation Council for Torture Victims, December 16, 2014, <http://www.irct.org/media-and-resources/irct-news/show-news.aspx?PID=13767&NewsID=3943>; Physicians for Human Rights, “Virginity and Hymen Testing: No Factual, Scientific, or Medical Basis,” May 10, 2015, <http://physiciansforhumanrights.org/library/other/virginity-and-hymen-testing-no-factual-scientific-or-medical-basis.html> (accessed April 23, 2016).

³⁰ UN Human Rights Committee, General Comment 20, Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 (1994), para. 2, <https://www1.umn.edu/humanrts/gencomm/hrcom20.htm> (accessed May 17, 2016). It clearly specifies that the prohibition under article 7 applies to “patients” in “medical institutions.” For an act to constitute “cruel, inhuman, or degrading treatment,” it is not necessary to cause “physical pain.” “Acts that cause mental suffering to the victim” are also prohibited. Interim Report of the Special Rapporteur to the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/55/290, August 11, 2000, <http://www.un.org/documents/ga/docs/55/a55290.pdf> (accessed May 13, 2016), p. 7.

World Health Organization (WHO) condemned the use of “virginity tests” by health workers treating or examining survivors of sexual assault.³¹

In several of the countries covered in this report, including Egypt, Kenya, Lebanon, Uganda, and Turkmenistan, men accused of consensual same-sex conduct who were subjected to anal examinations were also subjected to forced HIV tests, or to blood tests the purpose of which was not explained. The result of an HIV test has no bearing on whether or not someone has engaged in consensual same-sex conduct. Involuntary HIV and STI tests constitute a violation of the right to bodily integrity and privacy, protected under the International Covenant on Civil and Political Rights, and the right to health under the International Covenant on Economic, Social and Cultural Rights.³² UNAIDS opposes involuntary HIV testing as a violation of human rights.³³

While this report focuses specifically on forced anal exams in the context of homosexuality prosecutions, Human Rights Watch also urges the countries in which “virginity tests” and forced HIV testing are conducted to take immediate steps to end them.

Implications for HIV Prevention

Human Rights Watch is concerned that the practice of forced anal exams may drive men who have sex with men (MSM) and transgender women away from health services. When doctors become tools of abuse, this risks undermining the already fragile trust between medical professionals and members of marginalized populations.³⁴ In countries such as Cameroon, Kenya, and Uganda, where the HIV epidemic has had a devastating impact on MSM, regular access to health services is essential for both HIV prevention and treatment.³⁵

³¹ World Health Organization, et al., “Healthcare for Women Subjected to Intimate Partner Violence or Sexual Violence,” 2014, (accessed May 13, 2016), p. 46.

³² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 7 and 17; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966), entered into force January 3, 1976, art. 12.

³³ UNAIDS, “Judging the Epidemic: A judicial handbook on HIV, human rights and the law,” May 2013, http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/201305_Judging-epidemic_en.pdf, pp. 72, 134-135 (accessed June 20, 2016). See also UNAIDS, “Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations,” May 2013, http://www.unaids.org/en/media/unaids/contentassets/documents/document/2013/05/20130530_Guidance_Ending_Criminalisation.pdf (accessed January 17, 2014).

³⁴ Human Rights Watch interview with Yves Yomb, Executive Director of Alternatives Cameroun, Douala, November 1, 2013.

³⁵ According to UNAIDS, “The median HIV prevalence among gay men and other men who have sex with men is 19% in western and central Africa and 13% in eastern and southern Africa.” UNAIDS, “The Gap Report,” 2014, http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf (accessed June 20, 2016), pp. 203-206. See graph on p. 204 for statistics on prevalence among MSM in Cameroon, Kenya and Uganda.

Felisha, a transgender woman in Zambia who underwent a forced anal exam, said that the traumatizing experience might influence her health-seeking behavior in the future:

I had gone before to that hospital for illnesses but now I wouldn't go because of that bad doctor. He would be pointing at me, saying 'This is the person.'³⁶

³⁶ Human Rights Watch interview with Felisha (pseudonym), Lusaka, January 11, 2016.

II. Forced Anal Testing: A Country by Country View

Cameroon

Cameroon, which punishes “sexual relations with a person of the same sex” with up to five years in prison, is one of a handful of countries that has vigorously applied its anti-homosexuality law—often using forced anal examinations to seek “proof” of same-sex conduct.³⁷

In October 2013, police in Yaoundé arrested two men, Pascal and Brice, after a mob denounced and nearly lynched them for alleged homosexual acts. Police brought them to a female doctor at Mvog Ada Medical Center, who subjected them to anal examinations. Brice told Human Rights Watch:

We had anal exams. She put two fingers inside me. It hurt. There was one policeman in the room [during the exam]. The doctor insulted us. She called us ‘dirty homosexuals,’ ‘dogs,’ and ‘devils.’³⁸

The medical reports, on file with Human Rights Watch, indicate how the doctor inserted two fingers into the anus of each man; they also provide her commentary on the odor of each man’s feces, as if this constituted evidence of homosexual conduct.³⁹ A judge sentenced both men to six months imprisonment, relying in part on the medical reports as “evidence.”

What Brice and Pascal experienced was not unusual.⁴⁰ Human Rights Watch conducted field research in Cameroon in 2012 and 2013 in partnership with Alternatives-Cameroun, the

³⁷ République du Cameroun, Code Pénal, n° 67/LF/1, 12 juin 1967, art. 347 bis. Between 2010 and 2012, Human Rights Watch documented 28 prosecutions for consensual same-sex conduct, and official statistics from the Ministry of Justice indicated that dozens more had taken place. Alternatives Cameroun, ADEFHO, CAMFAIDS, and Human Rights Watch, *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon’s Anti-Homosexuality Law*, March 21, 2013, <https://www.hrw.org/report/2013/03/21/guilty-association/human-rights-violations-enforcement-camerouns-anti>.

³⁸ Human Rights Watch interview with Brice (pseudonym), Yaoundé, November 4, 2013.

³⁹ Ministère de la Santé Public, Délégation Régionale de la Santé du Centre, Service de Santé de District de Djoungolo, Centre Medical de Mvog-Ada, No. 52/RP/MSP/DRSC/DDSD/CMA-Mvog-Ada, « Rapport d’Expertise Medicale Sur Monsieur [redacted], » and « Rapport d’Expertise Medicale Sur Monsieur [redacted], » Yaoundé, April 8, 2013, copy on file with Human Rights Watch. See Annex 1.

⁴⁰ Human Rights Watch first became aware of the potential use of anal exams in Cameroon in 2005, when gendarmes detained 11 men in a raid on a nightclub. After the men had been in detention for seven months, the Prosecutor’s Office

Association for the Defense of Homosexuals (ADEFHO), the Cameroon Foundation for AIDS (CAMFAIDS), and Avocats Sans Frontiers-Suisse (Lawyers without Borders-Switzerland), identifying numerous examples of the use of forced anal exams in different regions.

Freddy, a young man in the southwestern town of Kumba, told us that in December 2011, a male doctor at Kumba General Hospital conducted anal exams on him, two other young men, and a 17-year-old boy on the order of the police, who had arrested the four youths after they were attacked by a homophobic mob.⁴¹ All four were charged with same-sex relations. Ten months after the exams were conducted, their defense attorney told Human Rights Watch he still had not received a copy of the medical reports.⁴² The prosecutor eventually dismissed the case for want of evidence.⁴³

Florian and Zahid were arrested on March 21, 2013, and held at the 3rd Arrondissement Police Brigade, in Yaoundé. They told Human Rights Watch that police took them to Nkolndongo District Hospital, where a female doctor subjected Zahid to an anal exam, inserting one finger into his anus.⁴⁴

According to Florian, the doctor did not subject him to such an exam, but prepared a report stating that she had.⁴⁵ Her medical reports were presented as the sole prosecution evidence in a trial held at Ekounou Tribunal on November 5, 2013, apart from a convoluted

ordered them to undergo forced anal examinations. Although it appears that the accused in the 2005 case (seven of whom were convicted) were not ultimately forced to undergo the exams, in subsequent years, police and gendarmes ordered anal exams to be carried out on a number of occasions. Human Rights Watch documented one such case in 2007 in Yaoundé, and another in 2009 in Douala. Human Rights Watch et. al., "Letter to the Minister of Justice of Cameroon Regarding 11 Men Detained on Suspicion of Homosexual Activity," November 30, 2005, <https://www.hrw.org/news/2005/11/30/letter-minister-justice-cameroon-regarding-11-men-detained-suspicion-homosexual>; Human Rights Watch, *Criminalizing Identities: Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity*, November 4, 2010, <https://www.hrw.org/report/2010/11/04/criminalizing-identities/rights-abuses-cameroon-based-sexual-orientation-and>, p. 26; Alternatives-Cameroun, the Center for Human Rights at the University of Pretoria, the International Gay and Lesbian Human Rights Commission (IGLHRC), and Global Rights, *The Status of Lesbian, Gay, Bisexual and Transgender Rights in Cameroon: A Shadow Report*, 2010, pp. 8, 11, <http://www.iglhrc.org/content/cameroon-status-lesbian-gay-bisexual-and-transgender-rights-cameroon> (accessed November 5, 2013).

⁴¹ CAMFAIDS and Human Rights Watch interview with Freddy (pseudonym), Kumba, Cameroon, October 16, 2016.

⁴² CAMFAIDS and Human Rights Watch interview with Walter Atoh, Kumba, Cameroon, October 16, 2012.

⁴³ Human Rights Watch interview with Walter Atoh, Kumba, February 1, 2013.

⁴⁴ Human Rights Watch interview with Zahid (pseudonym), Yaoundé, November 4, 2013.

⁴⁵ Affidavit prepared by Florian (pseudonym) and submitted to the National Medical Council, November 6, 2013, on file with Human Rights Watch.

and contradictory statement from Zahid that prosecutors labeled a “confession.”⁴⁶ Zahid was convicted of same-sex relations and sentenced to one year in prison, while Florian was acquitted.⁴⁷

Even when the medical professionals conducting anal exams did not assert that the tests produced evidence of penetration, it did not help defendants in Cameroon. Guillaume told Human Rights Watch that a military doctor in Yaoundé subjected him and his co-accused, both age 17, to anal examinations in August 2011. Gendarmes had arrested the two boys along with two adult males after a neighbor accused one of the adults, with whom they lived, of selling pornographic videos. There was no evidence that any of the men or boys were engaged in same-sex conduct.⁴⁸

Guillaume told CAMFAIDS and Human Rights Watch:

The next morning [after the arrest] they took me and [another detainee] to the hospital to see if we’d been penetrated. A woman put on gloves and put in her hand. She said I had not been penetrated. On my PV [*procès verbal*; statement], they had at first said that [my friend] fucked me, but because of this exam they then said I fucked [my friend].⁴⁹

Their lawyers, Alice Nkom and Michel Togué, filed a motion to nullify the case based on due process violations, including the violation of the inviolability of the home and the ill-treatment of the defendants in custody, specifically the use of forced anal examinations, but the court ruled that the anal examinations did not constitute ill-treatment.⁵⁰ In July

⁴⁶ A Human Rights Watch researcher attended the trial.

⁴⁷ The court never released a written ruling. According to the men’s lawyers, Zahid’s (pseudonym) conviction was primarily on the basis of his “confession”; they are unsure whether the medical reports also contributed to the conviction. Human Rights Watch telephone interview with Michel Togué, May 9, 2016.

⁴⁸ CAMFAIDS and Human Rights Watch interview with Guillaume (pseudonym), Edea, Cameroon, October 14, 2012; Alternatives-Cameroun, Association for the Defense of Homosexuals (ADEFHO), Cameroonian Foundation for AIDS (CAMFAIDS), and Human Rights Watch, *Guilty by Association*, March 2013, <http://www.hrw.org/reports/2013/03/21/guilty-association>.

⁴⁹ CAMFAIDS and Human Rights Watch interview with Guillaume (pseudonym), Edea, October 14, 2012.

⁵⁰ Tribunal de Grande Instance du Mfoundi, “Ordonnance de Non-Lieu Partiel et de Renvoi Devant le Tribunal de Grande Instance du Mfoundi à Yaoundé, » July 20, 2012, on file with ADEFHO, viewed by Human Rights Watch.

2013, one of the adult males was convicted of same-sex relations and sentenced to two years in prison, while Guillaume received a one-year suspended sentence.⁵¹

In another case, Jose and Arnaud, arrested in Yaoundé in October 2010, said that a doctor falsified “positive” medical reports, possibly because she did not want to conduct anal examinations. Gendarmes arrested them with one other man after finding a large supply of condoms in their apartment while searching for a stolen laptop, and took them to a military doctor for anal examinations. The medical reports, which Human Rights Watch viewed, states that one of the men “seemed normal” but that “the digital rectal examination reveals a rectal cavity, which leaves nevertheless a doubt regarding sexorectal activity”; that another had anal lesions and “rectal hollowness, which suggests frequent and longstanding sexorectal activity;” and that a third had “a few fleshy bumps and a hollowness, indeed suggesting sexual activity but of moderate degree.”⁵²

Despite the doctor’s detailed descriptions of the men’s anal cavities, the men told Human Rights Watch that the anal exams never took place. According to Jose,

She didn’t touch me, she just looked at me. She asked me questions, ‘Why do you do that? You’re destroying yourself.’ Then they took us back to the gendarmerie.⁵³

Arnaud, interviewed separately, also said the doctor simply interrogated and chastised him about his alleged sexual practices. When the case was brought to trial, he said, “They introduced false medical exams saying there was proof of homosexuality. We were sentenced to 6 months imprisonment and a 29,000 CFA (US\$50) fine.”⁵⁴

In the cases we documented in Cameroon, anal examinations appeared to be largely conducted at the whim of police or gendarmes who were conducting preliminary investigations. Unlike in many other countries in which anal examinations were conducted

⁵¹ “Cameroon man jailed for homosexual acts,” BBC News, July 23, 2013, <http://www.bbc.com/news/world-africa-23422047> (accessed April 7, 2016). Cameroon does not have a juvenile justice system; children are regularly tried as adults and held in adult prisons.

⁵² Ministère de la Défense, Gendarmerie Nationale, Direction Centrale de la Coordination, Direction Technique et Logistique, Service Santé Gendarmerie, “Rapport,” Yaoundé, October 4, 2010; on file with ADEFHO, viewed by Human Rights Watch.

⁵³ CAMFAIDS and Human Rights Watch interview with Jose (pseudonym), Douala, October 15, 2012.

⁵⁴ CAMFAIDS and Human Rights Watch interview with Arnaud (pseudonym), Yaoundé, October 13, 2012.

on the order of a prosecutor or magistrate, in Cameroon, the police or gendarmes requisitioned the exams directly, in some cases using a form entitled “Enquête Préliminaire: Requisition à Personne Qualifiée.”⁵⁵

In several cases, parents or relatives forced their children to undergo anal examinations. Louis told Human Rights Watch that in 2007, when he was 18, his parents found text messages on his phone that led them to believe he was gay. They took him to his uncle, a police officer, who ordered him to undergo an anal exam and threatened to arrest him if he refused. A doctor examined Louis by inserting fingers into his anus, an experience Louis says he still has nightmares about nearly 10 years later. Louis was not prosecuted; the exam simply served to satisfy his family’s suspicions. He moved out of his parents’ home shortly thereafter.⁵⁶

In the case of at least one man accused of homosexual conduct, the National Commission on Human Rights and Freedoms, a quasi-governmental institution, in 2011 wrote to the Ministry of Justice to formally express opposition to anal exams, but received no response.⁵⁷ Since 2013, the number of arrests for consensual same-sex conduct appears to have declined in Cameroon, and lawyers and activists have reported no new cases of forced anal examinations to Human Rights Watch.⁵⁸ However, with no ban in place, the risk remains that law enforcement personnel could rely on forced anal examinations in the future—or could continue to do so in cases that simply go unreported.

⁵⁵ A copy of the form is on file with Human Rights Watch.

⁵⁶ Human Rights Watch telephone interview with Louis (pseudonym), June 17, 2016. CAMEF, an organization that works with men who have sex with men in Buea, southwestern Cameroon, also reported two cases to Human Rights Watch in which family members forced individuals to undergo anal exams. In one case, CAMEF reported, the mother and aunt of a 17-year-old boy took him to a doctor for anal testing because they felt he was too effeminate and suspected he was gay. In a second case, in September 2013, the uncle and guardian of a 19-year-old young man, similarly suspecting that his nephew was gay, took him to a hospital in Buea for a forced anal exam. CAMEF said that neither youth was given a choice as to whether they would undergo the exam; doctors willingly conducted the exams on the parent or guardian’s request. CAMEF, “Anal Examination,” unpublished report submitted to Human Rights Watch via email, November 2, 2013.

⁵⁷ Human Rights Watch meeting with Eva Etongué and members of the National Commission on Human Rights and Freedoms, Yaoundé, November 6, 2013.

⁵⁸ Human Rights Watch telephone interviews with a representative of Humanity First Cameroon and with Eva Etongué, Secretary General of the National Commission on Human Rights and Freedoms, June 17, 2016, and with Michel Togué, April 2016.

Egypt

Medical texts suggest that forced anal examinations have long been used in investigations of homosexual conduct in Egypt.⁵⁹ As noted above, Human Rights Watch first documented the practice in 2001, after the Queen Boat arrests.

In Egypt, prosecutors order the exams, which are carried out by the Forensic Medicine Authority, a department of the Ministry of Justice.⁶⁰ Some men report that doctors visually examined their anuses, while others say that doctors placed fingers or other objects inside them.

One of the men arrested in the Queen Boat case in 2001 described the test as follows:

[The director of the Forensic Medical Authority] walks in. ‘Strip, kneel.’ Oh, he talked to me like a dog. The lowest form of address possible. I got down on all fours. I’d taken my pants off. I assumed the position. He said, ‘No, no, no, this won’t do. Get your chest down and your ass up.’

I said ‘I can’t,’ I started crying hysterically. ... He said, ‘Shut up, everything is clear and we can see it in front of us.’ First he looked and he felt me up. Suddenly six doctors came in. What is there about my anus? They all felt me up, each in turn, pulling my buttocks apart.

They brought this feather against my anus and tickled it. Apparently that wasn’t enough. So they brought out the heavy artillery. After the feather came the fingers. Then they stuck something else inside. I would cry and he would stick stuff inside and I’d cry and he would stick stuff inside.

⁵⁹ Human Rights Watch found a citation of Tardieu’s theories in Dr. Hassan Pasha Hassan, (Public Health Inspector), *al-Tebb al-Shar’i* [Forensic Medicine] (Cairo: al-Matba’a al-Tebbeyya al-Durreyya, 1st ed. 1876, 2nd ed. 1889), p. 6. Tardieu was a patron of Dr. Hassan’s studies.

⁶⁰ J. Lester Feder and Maged Atef, “Egyptian Doctors Think This Torturous Exam Can Detect ‘Chronic Homosexuals,’” Buzzfeed, February 16, 2015, <http://www.buzzfeed.com/lesterfeder/egyptian-doctors-think-this-torturous-exam-can-detect-chroni#.armgDXGBv> (accessed April 9, 2016).

I hoped they'd feel sorry from all that crying, but they didn't, they didn't seem to feel anything. Fakhry [the director] said after, 'Why didn't you cry when men put their things in you?' I wanted to spit on him. But I was still crying.⁶¹

Mohamed, arrested in Cairo in 2002 at age 17, told Human Rights Watch that his test results were "positive," although he had never had sex in his life. Mohamed was set up by someone he had made a date with online. Police detained him and visually "checked" him in the police station, forcing him to strip and bend over. Three days later, they took him to the Forensics Department of the North of Cairo. There, Mohamed recalled:

[A doctor] said, 'We need to examine you now.' There was the examination table. I looked around. I was terrified from the whole experience. He said, 'Get on the bed, and take the prayer position.' The door was open and people were passing by. He told me to take down my pants completely and get on the bed. I did. He put on gloves and started to examine me. He wasn't intrusive, he was just examining it visually without touching. Then he went out of the room without telling me he was going out, and two minutes later I realized people were standing in the door and looking at me and laughing while I was still on the table in that position. So I sat down.

Then someone came who I think was the head of the forensics department, and shouted at me, 'No one has asked you to move,' so I went and got into the same position. Then he came and started prodding me with his fingers, putting one finger inside of me, and it was painful. I told him I was in pain, and he said, 'Shut up.' Then he left the room. The other doctor said 'We are finished.'⁶²

Mohamed was convicted of "debauchery" and sentenced to three years in prison as a result of the medical report, which he said included observations such as "absence of anal

⁶¹ *In a Time of Torture*, p. 114.

⁶² Human Rights Watch interview with Mohamed, Cairo, March 24, 2016.

fat” and “changing of anus from circle to oval shape,” despite the fact that he had never had anal sex.⁶³

Arrests on debauchery charges declined significantly in Egypt after 2004.⁶⁴ However, in an apparent crackdown on people suspected of being HIV-positive in 2008, police arrested 12 men on the basis of suspicion that they were both HIV-positive and homosexual. Doctors subjected them to forced anal exams and involuntary HIV tests.⁶⁵

After a coup resulted in a new government in late 2013, the Egyptian Initiative for Personal Rights (EIPR) began documenting increased arrests and harassment of people perceived to be gay or transgender by the public morals police, with at least 77 arrests taking place between October 2013 and May 2014.⁶⁶ Arrests continue at similar rates—many of them stemming from police efforts to entrap gay men by using social media.⁶⁷

One man, arrested along with eight others in November 2013 during a police raid on a private party, told EIPR that the process of undergoing anal examinations was marked with efforts to humiliate and degrade them from beginning to end:

The afternoon of November 6 we went to the forensic office in Ramses square. The low ranking officers refused to stop the car at the forensic office. They parked a long way from it. We walked in the street. Whenever someone asks who we are they say these are faggots, we caught them sleeping together. When we went up to the forensic office, the officers there beat us and verbally abused us. They kept saying we are garbage. They threw water on us, and kept humiliating us until the doctors came. They did

⁶³ibid.

⁶⁴ Email communication to Human Rights Watch from an Egyptian human rights activist, name withheld, June 22, 2016. See also Scott Long, “Brutal gender crackdown in Egypt: The tomorrows that never came,” A Paper Bird (blog), May 18, 2014, <https://paper-bird.net/2014/05/18/brutal-gender-crackdown-in-egypt-the-tomorrows-that-never-came/>.

⁶⁵ Human Rights Watch et. al., “Letter Regarding Arrests and Prosecutions of People Living with HIV/AIDS, April 8, 2008, <https://www.hrw.org/news/2008/04/06/letter-regarding-arrests-and-prosecutions-people-living-hiv/aids>.

⁶⁶ EIPR, informal briefing paper, May 2014, on file with Human Rights Watch. Most of the cases in the briefing paper are described in Scott Long, “Brutal gender crackdown in Egypt: The tomorrows that never came,” A Paper Bird (blog), May 18, 2014, <https://paper-bird.net/2014/05/18/brutal-gender-crackdown-in-egypt-the-tomorrows-that-never-came/>. The current president, Abdel Fattah al-Sisi, deposed Mohamed Morsy, Egypt’s first freely elected president, in July 2013. He then outlawed and repressed the Muslim Brotherhood and won the presidential election in July 2014.

⁶⁷ Email communication from EIPR to Human Rights Watch, June 20, 2016.

their tests, and when I asked the doctor what [they] are going to write in the report, he said he's not allowed to say.⁶⁸

The men said that they were also forced to give blood and urine samples, which they were told would be used to conduct HIV, Hepatitis C, and narcotics tests. They were released from custody a week later with the assistance of a lawyer.⁶⁹

In December 2014, the arrest of 26 men at a bathhouse in Cairo garnered national and international media attention, in part because of its scale—EIPR reported that it was the largest mass arrest for homosexual conduct since the Queen Boat case—and in part because it was a staged media event: a television presenter, Mona Iraqi, filmed the arrests and circulated footage of naked men being herded into the streets.⁷⁰ The men were charged with “habitual debauchery” and subjected to anal exams. Human Rights Watch interviewed Gamal, one of the victims of the bathhouse arrests, who described the exam as follows:

We were examined by the forensic doctor. I entered the room. There was one physician and two girls—young female doctors. I went on the bed and he examined me with a tool. He told me ‘Sit as if you are praying.’ He used a tool like a pen ... He was touching me with it but did not put it inside me. ...

I was feeling very bad, it's a bad experience. No one can accept that this can happen to them, especially since we are Egyptians.⁷¹

Although Gamal described police beatings and insults that he underwent before the anal examination in great detail, he grew visibly uncomfortable speaking about the anal

⁶⁸ EIPR, informal briefing paper, May 2014, on file with Human Rights Watch.

⁶⁹ EIPR, informal briefing paper, May 2014, on file with Human Rights Watch.

⁷⁰ Patrick Kingsley, “Egyptian TV crew criticised over police raid on Cairo bath house,” *The Guardian*, December 9, 2014, <http://www.theguardian.com/world/2014/dec/09/egypt-police-raid-cairo-bath-house> (accessed April 11, 2016). EIPR estimated that the raid brought to over 150 the number of people arrested on debauchery charges since the July 2013 coup. Egyptian Initiative for Personal Rights, “EIPR condemns violation of privacy and urges fair trial for defendants,” December 21, 2014, <http://eipr.org/en/pressrelease/2014/12/21/2308> (accessed April 11, 2016).

⁷¹ Human Rights Watch interview with Gamal (pseudonym), Cairo, March 24, 2016.

examination, and after providing the above information about it, asked to end the interview. He only added: “My rights have been taken away.”⁷²

The men were acquitted on January 12, 2015. In a turn of events that complicated Gamal’s attitude toward an exam that he found deeply humiliating, the Forensic Medical Authority announced on December 15, 2015 that, based on results of the forensic anal exams, the men had not engaged in anal sex, and the “negative” test results were used to secure their acquittal.⁷³

But a “negative” test is no guarantee of acquittal. Doctors routinely add a caveat in medical reports that concealment of signs of anal intercourse is possible through the use of lubricants and cosmetics, EIPR told Human Rights Watch.⁷⁴ In November 2014, a court sentenced eight men to three years in prison for appearing in a video that reportedly showed a “gay wedding.”⁷⁵ They were convicted despite the fact that a spokesman for the Forensic Medical Authority announced two months prior to the verdict that, based on results of the forensic anal exams, the men were “not homosexuals.”⁷⁶

Kenya

Section 162 of Kenya’s Penal Code, a British colonial relic, prohibits “carnal knowledge against the order of nature” and carries a 14-year prison sentence.⁷⁷ The law on “unnatural offenses” is rarely applied in cases involving consensual sex between adults. Only two

⁷² Ibid.

⁷³ Human Rights Watch, “Egypt: 26 Acquitted of Homosexual Conduct,” January 13, 2015, <https://www.hrw.org/news/2015/01/13/egypt-26-acquitted-homosexual-conduct>; Human Rights Watch interview with Gamal, Cairo, March 24, 2016.

⁷⁴ Email communication from EIPR to Human Rights Watch, June 20, 2016.

⁷⁵ Daniel Politi, “Egyptian Court Sentences Eight Men to Prison for Appearing in ‘Gay Wedding’ Video,” *Slate*, November 2, 2014, http://www.slate.com/blogs/the_slatest/2014/11/02/egypt_eight_men_sentenced_to_prison_for_gay_wedding_video.html (accessed April 11, 2016).

⁷⁶ Human Rights Watch, “Egypt: 7 Held for Alleged Homosexual Conduct,” September 9, 2014, <https://www.hrw.org/news/2014/09/09/egypt-7-held-alleged-homosexual-conduct>.

⁷⁷ Laws of Kenya, Cap. 63, Penal Code, section 162. “Unnatural offences” were first codified in British colonial law in 1860, in section 377 of the Indian Penal Code. It reads: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment ... for a term which may extend to 10 years, and shall be liable to fine. Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.” Human Rights Watch, *This Alien Legacy*, December 2008, <http://www.hrw.org/reports/2008/12/17/alien-legacy-o>, p. 18. This provision was then directly imported to a number of other colonies, including three of those discussed in this report: Kenya, Uganda, and Zambia.

cases are known to Human Rights Watch. One, filed in 2012 in Kifili, was dismissed in May 2015 for lack of evidence.⁷⁸ The other case, filed in Kwale County in February 2015, is ongoing, and marks the only case known to Human Rights Watch in which forced anal examinations have been used in Kenya.⁷⁹

The Kwale County arrests took place in the context of a weeks-long witch hunt for gay men and transgender women in the coastal towns of Ukunda and Diani, after photos and videos circulated on social media showing men—some who were known to be from the area—engaging in same-sex acts. Under pressure from the public, police began searching for gay men to round up. Acting on a tip-off, they arrested two men, Adam and Bryan, and took them to Diani Police Station. Police charged them with “unnatural offenses,” despite not having any evidence that the men had engaged in same-sex conduct.⁸⁰

At Kwale District Court, the prosecutor requested a court order for the men be taken for “medical examinations.” The magistrate, Christine Njagi, complied. She later told Human Rights Watch that she did not recall issuing the order, and could not say precisely what type of exams the court expected the men to undergo.⁸¹ The lawyer representing the two men in court that day, who had never met them before the hearing, did not object to the order for “medical examinations” and did not consult his clients about it—possibly, according to one of the men, because he did not have an inkling of what the “medical examinations” would consist of.⁸²

Armed with this court order, police escorted the men to Coast General Hospital, Kenya’s second largest public hospital, for forced anal exams and HIV and hepatitis B tests.⁸³ The

⁷⁸ According to one of the men charged, the case originated when his partner attempted to blackmail him by accusing him of rape. Police investigations revealed that the two men were in a consensual relationship, and police proceeded to charge both men. Human Rights Watch interview, Nairobi, July 14, 2015.

⁷⁹ In another case in August 2015, police arrested two Ugandan refugees whom they believed to be gay, and threatened to subject them to anal exams. Lawyers working with Kenya’s National Gay and Lesbian Human Rights Commission intervened quickly to secure the men’s release; it is unclear whether the exams would have taken place without their intervention. Email communication from Eric Gitari, NGLHRC, August 20, 2015.

⁸⁰ Human Rights Watch telephone interviews with Bryan (pseudonym), May 26, 2015, and with Adam (pseudonym), July 13, 2015.

⁸¹ Human Rights Watch interview with Christine Njagi, Kwale, August 7, 2015.

⁸² Human Rights Watch telephone interview with Adam (pseudonym) and with Eric Gitari, June 12, 2016. The lawyer who represented Adam and Bryan at the initial hearing is not associated with NGLHRC or with Ligunya Sande and Associates, which are now handling the case.

⁸³ Human Rights Watch telephone interviews with Bryan (pseudonym), May 26, 2015, and with Adam (pseudonym), July 13, 2015. “Arrested Diani gays to remain in police custody,” *News 24 Kenya*, <http://m.news24.com/kenya/MyNews24/Arrested->

doctor who conducted the anal exams, Dr. Stephen Kalai, told Human Rights Watch that he instructed the men to lie on a table with their legs in stirrups and to cough, while he used a magnifying glass to visually examine them. He then issued reports, using a “Post Rape Care Form”—a form intended to document abuses against rape survivors, but repurposed to report the results of the anal exams. One of the reports states, “anal sphincter intact/no homosexuality detected,”⁸⁴ while another purports to find evidence of “repeated penetration by blunt object.”⁸⁵ Dr. Kalai asserted that that he was able to draw these conclusions simply by conducting a visual examination.⁸⁶

Adam, one of the victims, described the anal examination differently:

They told me to lay down and put my legs up and they just looked at it. Then they put something inside that felt like a stick. I didn’t see it because I was lying down. It felt terrible, and uncomfortable.

One man and two ladies were all standing there watching. I don’t know what the police officer had told them, but they were not friendly.⁸⁷

At this writing, the criminal case against Adam and Bryan is ongoing, and it remains uncertain whether prosecutors will introduce the forensic reports into evidence. In September 2015, Adam and Bryan, with the support of the National Gay and Lesbian Human Rights Commission (NGLHRC), filed a petition before the High Court, challenging the constitutionality of forced anal exams and HIV and hepatitis tests.⁸⁸ The petition

Diani-gays-to-remain-in-police-custody-20150220 (accessed July 13, 2014); *C.O.I. and G.M.N. v. Chief Magistrate Ukunda Law Courts and 4 Others*, High Court of Kenya Petition No. 51 of 2015, Constitutional and Human Rights Division, filed September 3, 2015, on file with Human Rights Watch.

⁸⁴ Post Rape Care Form (first victim), February 24, 2015, signed by Kalai S.M. (examining officer) and Salim Yunus (police officer), on file with Human Rights Watch.

⁸⁵ Post Rape Care Form (second victim), February 24, 2015, signed by Kalai S.M. (examining officer) and Salim Yunus (police officer), on file with Human Rights Watch.

⁸⁶ Human Rights Watch interview with Dr. Stephen Kalai, Mombasa, August 7, 2015.

⁸⁷ Human Rights Watch interview with Adam, by telephone, July 13, 2015.

⁸⁸ Kenyan law provides for the collection of medical samples for forensic testing from suspects charged with offenses under the Sexual Offences Act, but that act does not prohibit consensual same-sex conduct. “[W]here a person is charged with committing an offence under this Act, the court may direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct for the purpose of forensic and other scientific testing, including a DNA test, in order to gather evidence and to ascertain whether or not the accused person committed an offence.” Laws of Kenya, Sexual Offences Act, no. 3, 2006, art. 36.

argued that the exams violate the constitutional prohibition on torture and cruel, inhuman, and degrading treatment; the right to privacy; and the right to health.⁸⁹

On June 15, 2016, the court ruled against the petitioners, claiming that the two men gave “consent” for the exams to take place and that Kenyan law allows for courts to order medical examinations of persons accused of “sexual offenses.” The petitioners have appealed the decision.

Lebanon

Police in Lebanon, where article 534 of the penal code punishes “any sexual intercourse contrary to the order of nature ... by up to one year in prison,” have a history of arresting, harassing, and sometimes torturing people suspected of being gay.⁹⁰ But it made headlines in August 2012 when, in response to an effective, media savvy campaign by activists, the justice minister at the time, Shakib Qortbawi, issued a statement calling for an end to anal examinations on men accused of homosexual conduct.

Anal exams had been used in homosexuality prosecutions in Lebanon for decades.⁹¹ But human rights organizations and lawyers only began documenting the cases a few years before the justice minister’s call for a ban. Nizar Saghieh, the director of the Lebanese NGO Legal Agenda, in a book chapter published in 2009, refers to the regular occurrence of forced anal examinations, specifically referring to one case in 2009 in which a man was arrested solely on the basis of “acting like a woman” and was subjected to an anal exam.⁹² Human Rights Watch documented a case in October 2010 in which police initially arrested a man because they suspected his brother of selling illegal drugs, but subsequently changed the

⁸⁹ Republic of Kenya in the High Court of Kenya at Nairobi, Constitutional and Human Rights Division, Petition No. 51 of 2015, on file with Human Rights Watch.

⁹⁰ Human Rights Watch, *“It’s Part of the Job”: Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, June 26, 2013, <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>.

⁹¹ Human Rights Watch interviews with Dr. Sami Kawas, Beirut, March 30, 2016, and Dr. Hussein Chahrour, Beirut, April 1, 2016.

⁹² Nizar Saghieh in cooperation with Helem, “Homosexuals in the Penal Code,” October 2009, in Doctor Wahid Al Farchichi and Professor Nizam Saghyieh, *Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia*, <http://daleel-madani.org/sites/default/files/HelemStudy.pdf> (accessed June 20, 2014), p. 41.

charges against him to homosexual conduct and subjected him to an anal exam.⁹³ An activist with the LGBT rights organization MOSAIC-MENA, Carol Abi Ghanem, said that in a number of early cases, “People would be arrested on suspicion of sex work, but there was no proof, so the police would do an anal test to try to pin something on them.”⁹⁴

Ghida Frangieh, a lawyer who has handled several arrests on homosexuality charges, said of the anal exam procedure in Lebanon: “Usually the person is bending down. It’s a visual exam, or in some cases, doctors insert a finger, sometimes with lubricant, sometimes without. Sometimes they photograph the anus.”⁹⁵

Dr. Sami Kawas, a forensic doctor who has conducted anal exams, explained:

I only do an external examination. Some doctors put their finger in to see if the sphincter is tight or loose. I have also heard of the older generation using objects.⁹⁶

Widespread mobilization against forced anal examinations in Lebanon began after police detained three men in April 2012 simply for “looking feminine,” according to their lawyer.⁹⁷ The lawyer was in the police station when the anal tests were conducted, and, outraged at the abusive practice, she and other activists organized a conference in May 2012 to call attention to the existence of forced anal exams. Several forensic medicine specialists attended the conference.

Legal Agenda published the testimony of one of the victims, who described how the doctor played interrogator, seeking to extract a confession:

⁹³ Human Rights Watch, *“It’s Part of the Job”: Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, June 26, 2013, <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>, pp. 25-27.

⁹⁴ Human Rights Watch interview with Carol Abi Ghanem, Beirut, March 29, 2016.

⁹⁵ Human Rights Watch interview with Ghida Frangieh, Beirut, April 1, 2016.

⁹⁶ Many Lebanese activists use an Arabic phrase which translates directly as “egg test” to describe anal exams, and several told Human Rights Watch that the exam involved doctors inserting an “egg-shaped object” into the victim’s anus. However, this appears not to be the case: Kawas and another forensic doctor, as well as Ghida Frangieh, told Human Rights Watch they were not aware of any cases in Lebanon in which doctors used an egg-shaped object to conduct the tests. Human Rights Watch interviews with Dr. Sami Kawas, Beirut, March 30, 2016; Dr. Hussein Chahrour, Beirut, April 1, 2016; and Ghida Frangieh, Beirut, April 1, 2016.

⁹⁷ Human Rights Watch interview with Ghida Frangieh, Beirut, April 1, 2016.

[The doctor] told me that he was going to examine me to know whether I used same-sex relations and he asked me if I had participated in it in the past, to which I responded with denial. He said to me, 'If you say to me that you have not practiced homosexuality and it turns out otherwise, then your punishment will be harsher.'⁹⁸

The victim described the process of the anal examination, which in this case appeared to be conducted by the doctor observing him tighten his anal sphincter:

After he asked me whether I had practiced homosexual relations before, he asked me to take my clothes off, then he told me to grab and tighten ... and he showed me how to grab my lower back and tighten it to open it and show the anus. I did what he asked, but he told me angrily, 'come on, tighten.' Then he took two photographs of my anus ... After he took the photographs, he looked at the computer, then I asked him what he had found, to which he answered he will see later. ...

As for the examination specifically, I felt that it was insulting and humiliating because someone has touched my body and violated my privacy.⁹⁹

Under pressure to respond to the allegations of abuse, the public prosecutor, Sa'id Mirza, issued a statement on July 9, 2012, which purported to require the tests only be done with the consent of the accused person, but which in fact explicitly threatened anyone who refused with criminal sanctions:

We ask the public prosecution offices, in case of suspicion in a homosexuality act, to give clear instructions to the concerned physician, and employees of the justice police, to execute this procedure only with consent of the suspect, and according to the regulations of sound medical practice, in a way that does not lead to a substantial damage.

⁹⁸ "Testimonies of doctors and victims," Legal Agenda, May 2012, <http://www.legal-agenda.com/article.php?id=142&folder=articles&lang=ar> (accessed April 8, 2016), translated from the original Arabic by Human Rights Watch.

⁹⁹ Ibid.

In case the suspect refuses to undergo the test, he should be notified that his refusal would be taken as evidence to the validity of the incident under investigation.¹⁰⁰

In August 2012, police conducted a mass arrest of 36 men, who were then subjected to anal exams to seek evidence of homosexual conduct.¹⁰¹ In response, Legal Agenda launched a campaign labeling anal exams “Tests of Shame,” and calling for an end to the practice. Helem, an LGBT rights organization working in partnership with Legal Agenda, organized sit-ins in front of the Lebanese Order of Physicians and the Ministry of Justice. Tarek Zeidan, one of the activists involved with the campaign, explained: “We called it ‘rape tests,’ because it was rape—you were violating someone against their will.”¹⁰²

In response, the head of the Lebanese Order of Physicians, Dr. Sharaf Abu Sharaf, issued a directive on August 7, 2012, calling for an end to the procedure.¹⁰³ The directive states:

It is scientifically established that this procedure is not even qualified as an experimental procedure. It does not provide the needed result and is considered a grave violation against the people who undergo it, and it is done without their prior consent. It is a humiliating practice that violates their dignity, and it is torture according to the definition of CAT [Convention against Torture].¹⁰⁴

¹⁰⁰ General Circular, Sa’id Mirza, Public Prosecutor at the Court of Cassation, July 9, 2012, <http://www.legal-agenda.com/images/legalnews/1344350673-%D8%AA%D8%B9%D9%85%D9%8A%D9%85%20%D8%B1%D9%82%D9%85%2039%D8%B52012.jpg> (accessed April 8, 2016).

¹⁰¹ See Human Rights Watch, *“It’s Part of the Job”: Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, June 26, 2013, <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>, and Human Rights Watch, “Lebanon: Stop ‘Tests of Shame,’” August 10, 2012, <https://www.hrw.org/news/2012/08/10/lebanon-stop-tests-shame>.

¹⁰² Human Rights Watch telephone interview with Tarek Zeidan, March 11, 2016.

¹⁰³ While most doctors in Lebanon are members of the Lebanese Order of Physicians, there is a second, independent medical association based in Tripoli, which did not issue any such directive. It is unclear whether doctors in Tripoli continue to conduct forced anal examinations.

¹⁰⁴ “تشرّعه التمييزية العامة والنيابة «المثلية فحص» يوقف الأطباء نقيب” (Head of Physicians Syndicate Halts “Homosexuality Tests,” Tests Legitimized by Appeals Courts’ General Prosecutor), Al-Akhbar, August 8, 2012, <http://www.al-akhbar.com/node/99597> (accessed April 25, 2016).

The directive further asked all doctors “not to do this kind of procedure, since whoever does it could be held responsible according to the code of ethics.”¹⁰⁵

After much public pressure on the Ministry of Justice to institutionalize a ban on anal examinations, Justice Minister Shakib Qortbawi issued a communication addressed to the public prosecutor on August 11, 2012, asking him to issue a directive ending the examinations completely. Qortbawi told the BBC: “From a humanitarian point of view, this is totally unacceptable.”¹⁰⁶

The new public prosecutor, Samir Hammoud, reportedly forwarded the Minister’s communication to prosecutors throughout the country, without actually issuing a directive ordering them to abide by it.¹⁰⁷ The office of the prosecutor is independent from the Ministry of Justice, and human rights activists told Human Rights Watch that only a definitive order from the public prosecutor could prevent prosecutors from ordering the exams.¹⁰⁸

Indeed, the Order of Physicians circular and the Ministry of Justice communication did not entirely put a stop to anal exams. In January 2014, police arrested five men in a private home, including two Syrian refugees. An investigator who seemed to be abiding by the public prosecutor’s instructions asked them to undergo the tests: the men initially refused, but “the investigator informed them that their objections would be used as proof that they have something to hide.”¹⁰⁹ When a physician arrived at the Moussaitbeh Internal Security Forces (ISF) station to conduct the tests, wrote Legal Agenda, “He did not introduce himself, neither by name nor by profession, and did not verify that the individuals concerned had agreed to be subjected to these tests.”¹¹⁰

¹⁰⁵ Ibid.

¹⁰⁶ “Outraged Lebanese demand end to anal exams on gay men,” BBC News, August 8, 2012, <http://www.bbc.com/news/world-middle-east-19166156> (accessed April 6, 2016).

¹⁰⁷ Human Rights Watch interview with Ghida Frangieh, Legal Agenda, Beirut, April 1, 2016.

¹⁰⁸ Human Rights Watch interviews with Georges Azzi, Arab Foundation for Freedoms and Equality, Beirut, March 30, 2016, and Ghida Frangieh, Legal Agenda, Beirut, April 1, 2016.

¹⁰⁹ Sarah Wansa, “Lebanon’s Republic of Shame: Law and Medicine as Means to Humiliate and Frighten,” Legal Agenda, July 29, 2014, <http://english.legal-agenda.com/article.php?id=632&lang=en> (accessed March 31, 2016).

¹¹⁰ Ibid.

In a video testimony recorded by Legal Agenda, one of Syrian men, Yazeed, said:

[The interrogator] told us that they were going to bring the forensic doctor to examine us. We said, ‘No, we don’t want that.’ Then he said, ‘This would prove that you have done something.’ Finally, we had to take the forensic test so that we don’t remain in detention. ...

The examination was very bad. Even the doctor became uncomfortable during the examination. ... He just told me to take my clothes off. We took our clothes off. The examination was done by hand.¹¹¹

His friend, also a Syrian refugee, Aasim, said:

Our dignity and feelings were really hurt in this country. Even the way they did the examination was very brutal and ugly. The doctor was very uncomfortable. We asked mercy from him. I asked him to have mercy on us because it is not easy to be tested as such. He didn’t answer me. He only said, ‘Just let me examine you.’ Security officers from Hbeish [police station] opened the door [while I was being tested]. The way they looked at us was very bad, more for being Syrians than being gay. ... We were treated very badly.¹¹²

The medical reports showed that the tests were “negative,” stating: “There appeared to be no traces of accumulation, lesions or redness in or around the rectal area; the shape of the rectum did not appear coerced, and the rectal sphincter is functioning normally. Conclusion: there are currently no traces indicating the occurrence of sodomy.”¹¹³

¹¹¹ Video testimony from Aasim, 2014, recorded by Legal Agenda, <https://www.youtube.com/watch?v=-X6EHeGR-wk> (accessed April 8, 2016), translated from the original Arabic by Human Rights Watch.

¹¹² Ibid.

¹¹³ Sarah Wansa, “Lebanon’s Republic of Shame: Law and Medicine as Means to Humiliate and Frighten,” Legal Agenda, July 29, 2014, <http://english.legal-agenda.com/article.php?id=632&lang=en> (accessed March 31, 2016)

The five men were provisionally released after four days of pre-charge detention.¹¹⁴ In March 2014, the prosecutor dropped charges against them due to insufficient evidence, and the two Syrians were eventually resettled to a third country.¹¹⁵

Legal Agenda filed a complaint with the Order of Physicians against the doctor who conducted the tests. The president of the Order of Physicians sent a reply indicating that the doctor had been investigated and had agreed not to conduct such investigations in the future.¹¹⁶

Anal exams or the threat of anal exams continued to be used in Lebanon throughout 2014 and 2015, although human rights activists in Beirut reported that the incidence of exams seemed to have diminished, probably due to some doctors, and prosecutors, respecting the circulars that were issued in 2012.¹¹⁷ Georges Azzi, of the Arab Foundation for Freedoms and Equality, said he was aware of at least one case, in 2014, in which a prosecutor general requested an anal examination, but the doctor who was requisitioned to conduct the exam refused to do it.¹¹⁸ But some members of the Internal Security Forces (ISF), Lebanon's main police force, seemed to be unaware of the circulars altogether.¹¹⁹

Dr. Sami Kawas, a forensic medicine specialist in Beirut, told Human Rights Watch that police still call upon him to conduct the tests and that he conducted such exams as recently as 2015.¹²⁰ Kawas said he conducted the exams with the patients' consent, which

¹¹⁴ Human Rights Watch interviews with Yazeed and Aasim, Beirut, February 27, 2014.

¹¹⁵ Email communication to Human Rights Watch from Ghida Frangieh, June 22, 2016.

¹¹⁶ "Response of Beirut Medical Order to LA complaint against doctor," Legal Agenda, August 2014, <http://legal-agenda.com/newsarticle.php?id=765&folder=legalnews&lang=ar> (accessed April 9, 2016).

¹¹⁷ Genwa Samhat, the executive director of Helem, told Human Rights Watch: "Police stations use it as a threat to get people to confess—so basically, it's still used." Georges Azzi concurred: "The police still threaten, 'Admit it, or we have to do anal tests.' And the victims are scared, because it's rape." Human Rights Watch interviews with Genwa Samhat, Beirut, March 29, 2016, and Georges Azzi, Beirut, March 30, 2016. In one case in 2014, military intelligence, which has no responsibility for enforcing sections of the penal code that deal with sexual conduct, detained and interrogated a young man about his sex life for six hours, threatening to subject him to an anal examination. The young man was blindfolded throughout the entire interrogation. "Six hours with the Lebanese intelligence to expose a crime: 'Do you prefer women or men?'" Legal Agenda, July 15, 2014, <http://legal-agenda.com/newsarticle.php?id=734&lang=ar> (accessed April 8, 2016).

¹¹⁸ Human Rights Watch interview with Georges Azzi, Beirut, March 30, 2016.

¹¹⁹ Georges Azzi said that when the Ministry of Justice prohibited forced anal examinations, "ISF never made a statement or responded in any way. A colonel at Hbeish, at the time of Agha Hammam, said 'Even if they don't confess, we can make them sit for the anal test.' He was shocked to hear about the [Ministry of Justice] statement; we told him about it." Human Rights Watch interview with Georges Azzi, Beirut, March 30, 2016.

¹²⁰ Dr. Kawas provided Human Rights Watch with a copy of the medical report from the most recent anal examination he conducted, on July 14, 2015. Dr. Sami Kawas, "Forensic Report on Mr " (name redacted), on file with Human Rights Watch.

he believed was consistent with the Order of Physicians circular.¹²¹ However, the circular does not, in fact, make exceptions for situations in which detainees give “consent.” It is questionable whether any detainees, in police custody and in all likelihood fearing that refusal to undergo the tests could be used as evidence against them, could be seen as having offered meaningful consent to undergo these tests.

Even a decline in the use of anal exams does not mean that gay men and transgender women in Lebanon are safe from torture. Legal Agenda and Helem documented an ISF raid on a bathhouse, Hammam al-Agha, in August 2014. Although the 28 men arrested were not subjected to anal exams, several victims reported that ISF officers subjected them to other forms of torture, including tying a victim’s hands behind their back while beating the soles of his feet, beating victims with wooden sticks, forcing them to walk on all fours, and placing bags over their heads. Police also subjected the men to involuntary HIV and drug tests.¹²²

Hamed, a 31-year-old Syrian refugee and student in Beirut, was arrested by Lebanese General Security (police in charge of immigration) in July 2015, when he went to seek a residence permit. An officer asked to see his phone and found intimate photos of Hamed and his male partner. General Security officers detained him on the spot. Hamed said that General Security officers tortured him and threatened him with an anal exam, in order to extract a confession. He wrote in an affidavit:

[The investigator was] shouting at me: ‘For how long have you been gay?’ I told the investigator I was there to get a residence permit, not to answer questions about my personal life. The investigator became very angry and told me I would not leave the building. Turning me to face the wall, he handcuffed me and whipped me with a makeshift whip made of electrical cables. He brought in other employees, and together, they beat, kicked and slapped me, all while hurling curses at me regarding my sexual orientation...

Then, the investigators brought in another detainee and informed me that the other detainee was going to ‘fuck’ me and that I should remove my

¹²¹ Human Rights Watch interview with Dr. Sami Kawas, Beirut, March 30, 2016.

¹²² Legal Agenda and Helem, *Al-Agha Bathhouse: A Raid from Another Age*, undated (2015), on file with Human Rights Watch.

clothes and wait in the bathroom. I followed their orders and waited, but no one ever came in...

At this point, investigators began to search my body and my belongings. They said they would run tests for drug abuse and AIDS and that I would be forced to submit to a rectal exam. The investigators drafted investigative reports and required my signature, but I was not afforded the opportunity to read or review them. I signed them in the desperate hope that the beating would cease.¹²³

Hamed was not subjected to an anal exam, despite the threats, but police did subject him to an HIV test without his consent. He was charged with “unnatural sex” and released on bail with the assistance of a lawyer. Hamed left Lebanon for resettlement in a third country before his case came to trial.¹²⁴

Shadi, a gay Syrian refugee, told Human Rights Watch that Military Intelligence officers arrested and tortured him in February 2016. Shadi was arrested at his home in Jounieh by military intelligence officers and then transported to the Sarba military intelligence branch in Jounieh. There, he said, officers hit him with electric prods and beat him in an attempt to elicit a confession about his alleged homosexual conduct. Then, he said, they took him to Rehanieh, a military police prison, where officers took him into a room and told him to undress.

Shadi was handcuffed and told to bend over facing the wall, naked, as an officer prepared to insert a wooden rod into his anus. The officer told Shadi, “I will insert this into your anus to determine how many times you’ve had sex”—an indication that the form of torture may have been inspired by Lebanon’s use of forced anal exams. According to Shadi, the officer anally penetrated him with the wooden rod, causing Shadi to scream in pain and beg for him to stop. He said that the officer replied, “The rod didn’t go in easily so this must mean you’ve only been fucked several times.”¹²⁵

¹²³ Affidavit prepared by Hamed (pseudonym), July 31, 2015, on file with Human Rights Watch.

¹²⁴ Ibid.

¹²⁵ Human Rights Watch interview with Shadi (pseudonym), Beirut, March 11, 2016.

During its Universal Periodic Review at the UN Human Rights Council in 2011, Lebanon agreed to a recommendation to “criminalize all forms of torture and ill-treatment,” meaning that ordering or conducting forced anal examinations should have criminal penalties.¹²⁶ However, article 401 of the Lebanese Penal Code still falls short of meeting Lebanon's obligations under the Convention against Torture as it does not apply to non-physical forms of torture, such as mental or psychological torture, and does not cover situations where the torture is used for objectives other than obtaining confessions.¹²⁷ In its 2016 report to the Committee against Torture, the Lebanese government stated that it had taken steps to “[restructure] the Department of Forensic Medicine with a view to consolidating action by the State to combat and prevent torture.”¹²⁸

Tunisia

Article 230 of Tunisia’s penal code, which dates to the French colonial era, punishes “sodomy” with up to three years in prison.¹²⁹ Several recent high-profile cases have cast the spotlight on Tunisia’s sodomy law and the use of forced anal examinations, although LGBT activists in Tunisia told Human Rights Watch that they have been quietly documenting arrests and forced anal exams for many years.¹³⁰

When police arrest men suspected of sodomy, they request a court order to conduct an anal exam, and then take the accused to a forensic doctor.¹³¹ In recent cases, doctors have requested “consent” from the accused, but often proceed to conduct exams without it, as

¹²⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Lebanon, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/11/PDF/G1110211.pdf?OpenElement>

¹²⁷ Lebanese Penal Code, 1943, https://www.unodc.org/res/cld/document/lebanon-penal-code_html/Lebanon_Penal_Code_1943.pdf (accessed May 25, 2016), art. 401.

¹²⁸ Lebanese Republic, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21,” Human Rights Council, September 25, 2015, http://www.upr-info.org/sites/default/files/document/lebanon/session_23_-_november_2015/a_hrc_wg.6_23_lbn_1_e.pdf (accessed June 20, 2016)

¹²⁹ République Tunisienne, Code Pénal, 2012, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf> (accessed April 22, 2016). The sodomy law was originally imposed by French colonizers in 1913, and was retained when most of the Penal Code was revised in 1964 following independence.

¹³⁰ In one earlier high-profile case, Mounir Baatour, an opposition politician, was arrested on sodomy charges and subjected to an anal exam in 2013. Tristan Dreisbach, “Politician Arrested for Sodomy Subjected to Invasive Examination,” Tunisia Live, April 19, 2013, <http://www.tunisia-live.net/2013/04/19/politician-arrested-on-sodomy-charges-remains-in-jail/#sthash.g1zcpbaD.dpuf> (accessed April 22, 2016). Baatour was sentenced to three months in prison.

¹³¹ Human Rights Watch interview with Badr Baabou, Damj, by telephone, April 25, 2016. However, Baabou said that police sometimes take the accused for anal exams first and request a court order later.

discussed below. The results are handed over to the police and have been used as a key element in prosecutions. Badr Baabou of the Tunis-based LGBT rights group, Damj (“Inclusion”), told Human Rights Watch that he had analyzed 34 consensual sodomy cases between 2008 and 2015, and that in nearly all of those cases—the only exception being when witnesses actually caught men in the act of having sex—the accused were subjected to forced anal exams. He said that because there is often no evidence other than hearsay, “Medical exam reports are the key element of proof against them in court cases.”¹³²

Doctors conduct the tests by penetrating victims with their fingers. Four victims interviewed individually by Human Rights Watch also described the use of a tube that was inserted in the anus, following digital penetration, although a doctor familiar with the use of anal exams in Tunisia denied that any object was used.¹³³

Marwen, a 22-year-old student, 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:

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.’¹³⁴

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. Marwen said that 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:

¹³² Human Rights Watch interviews with Badr Baabou, Damj, Tunis, February 15, 2016, and by telephone, April 25, 2016.

¹³³ Human Rights Watch interview with a forensic doctor, Tunisia, February 2016, exact location and date withheld at the doctor’s request.

¹³⁴ Human Rights Watch interview with Marwen (pseudonym), Tunis, February 16, 2016.

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.¹³⁵

Marwen described to Human Rights Watch the emotional impact of the exam:

The anal exam was difficult both physically and emotionally. It was physically painful to have the doctor put his fingers in me. Emotionally, I felt like I didn't have any rights in Tunisia.¹³⁶

The doctor did not inform Marwen of the “results” of the test, nor did he inform him that the test would in fact be used against him in court as general evidence of homosexual conduct.

Human Rights Watch reviewed the forensic report, in which the doctor states that 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.”¹³⁷

The judge 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, 2015.¹³⁸ 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).

Marwen's case spurred protest from LGBT groups and other human rights organizations in Tunisia and internationally. The LGBT rights organizations Shams and Damj launched campaigns calling for an end to forced anal exams and an end to the criminalization of consensual same-sex conduct.¹³⁹ Even the minister of justice spoke out in support of

¹³⁵Ibid.

¹³⁶Ibid.

¹³⁷Forensic report on file with Human Rights Watch.

¹³⁸Judgment on file with Human Rights Watch.

¹³⁹ « Tunisie : des associations de défense LGBT dénoncent 'les tests de la honte.' » MYTF1 News, September 23, 2015, <http://lci.tf1.fr/monde/afrique/tunisie-des-associations-de-defense-lgbt-denoncent-les-tests-8661238.html> (accessed June 3, 2016); Scott Long, “Anusbook. Be connected. Be discovered.” A Paper Bird (blog), September 28, 2015, <https://paper-bird.net/2015/09/28/anusbook-forensic-exams-tunisia/> (accessed June 19, 2016).

decriminalization.¹⁴⁰ (The prime minister fired him a month later, apparently for reasons unrelated to his position on LGBT rights.)

However, in December, police again relied on forced anal exams after arresting 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 Jassar hospital, in Kairouan, the following morning for forced anal examinations.

Human Rights Watch interviewed four of the students about their experiences. All four 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 inserted a long, thin transparent tube, about the size of a pen, apparently to look for semen.¹⁴¹

One of the students, Amar, 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.

¹⁴⁰ Amnesty International, “Challenging Tunisia’s homophobic taboos,” September 30, 2015, <https://www.amnesty.org/en/latest/news/2015/09/challenging-tunisias-homophobic-taboos/> (accessed June 3, 2016).

¹⁴¹ Human Rights Watch interviews with Amar, Wassim, and Mehdi (pseudonyms), Tunis, February 15, 2016, and with Kais (pseudonym), Carthage, February 16, 2016.

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 okay 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.

The doctor seemed angry with all of us during the exam. He didn’t say anything, but I saw it in his face. I felt that if I did the exam or if I didn’t, he was going to say I was gay.¹⁴²

According to Wassim, another student whose case is cited at length at the beginning of this report, the emotional abuse began when the police were driving the students to the hospital for the tests. Wassim said that when he asked what tests they were going for, a police officer responded: “It’s a test to see if you are a Sodomite, if you are fucking like a Sodomite.”¹⁴³ The abuse continued at the hospital, where he attempted to refuse the test; in response, he said, “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?’”

Wassim described how the doctor inserted his fingers and then a plastic tube, about the size of a pen, into his anus, which was “physically painful.” He said two police officers were in the room, observing the exam. As he left the room, crying, Wassim said that the doctor recited, “There is no higher power than God,” while laughing.¹⁴⁴

¹⁴² Human Rights Watch interview with Amar (pseudonym), Tunis. February 15, 2016.

¹⁴³ Human Rights Watch interview with Wassim (pseudonym), Tunis, February 15, 2016.

¹⁴⁴ Ibid.

According to another student, Kais,

At the hospital I saw a sign for ‘Forensic Doctor’ and I asked why we were there. The police officer said, ‘I’m going to check if you’re a virgin or not.’ ...

I said to the policeman, ‘You don’t have the right, why are you doing this to us?’ The police said, ‘Because you are *mouabna* [an offensive term for homosexual].’

I said, ‘But article 23 of the constitution protects physical integrity.’ One of the two policemen said, ‘I will show you what these rights mean.’¹⁴⁵

Kais said that 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.¹⁴⁶

¹⁴⁵ Human Rights Watch interview with Kais, Carthage (pseudonym), February 16, 2016.

¹⁴⁶ Ibid.

Mehdi, another student from Kairouan, 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.¹⁴⁷

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.¹⁴⁸ 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 requested that the forensic doctor of the Ibn Jazzar hospital, in Kairouan, determine whether any of the students was “used to anal sexual intercourse. In the case the answer is positive, the date of the last anal sexual intercourse.”¹⁴⁹

Human Rights Watch also reviewed the forensic doctor's report, which concludes that “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 a male penis in erection.”¹⁵⁰

The judge relied almost exclusively on the medical reports in convicting the six young men on December 10—International Human Rights Day—and sentencing them to three years in prison and five years' banishment from Kairouan.¹⁵¹

¹⁴⁷ Human Rights Watch interview with Mehdi (pseudonym), Tunis, February 15, 2016.

¹⁴⁸ Human Rights Watch interview with a forensic doctor, Tunisia, February 2016, exact location and date withheld at the doctor's request.

¹⁴⁹ Kairouan judicial police, order number 3/1610, dated December 5, 2015, on file with Human Rights Watch.

¹⁵⁰ Forensic doctor reports, dated December 5, 2015, on file with Human Rights Watch.

¹⁵¹ Wassim told Human Rights Watch: “The judge said that in the forensic report the same thing was written on all of them, which meant to him that we had all had sex that night with each other or with someone. The medical report and the dresses

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.

On March 26, three of the six students from Kairouan were re-arrested in Tunis, together with five other men and two women, when police raided the house where they were staying, allegedly on the grounds of suspicion that the house was being used for sex work.¹⁵² The women were released without charge, but the men were charged with both sodomy and drug possession. Once again, police attempted to subject them to anal examinations, but the men refused—this time, successfully. With no evidence of any kind suggesting their involvement in same-sex conduct, they were acquitted on sodomy charges but convicted of drug possession.¹⁵³

Advocacy against anal exams continues in Tunisia, but Baabou of Damj expressed concern that the National Medical Council had retreated from an initially strong position, condemning the practice of anal exams after Marwen’s case made headlines.¹⁵⁴ He said, “But after this, there was a lot of media pressure against homosexuals and they quieted down and didn’t make any statement during the Kairouan affair.”¹⁵⁵ Damj has called on the National Medical Council to adopt a formal position prohibiting doctors from conducting anal exams, similar to the position of the Lebanese Order of Physicians.

Turkmenistan

Article 135 of Turkmenistan’s criminal code outlaws sodomy and makes it punishable with up to two years in prison.

were presented as evidence in trial – the only evidence.” Human Rights Watch interview with Wassim (pseudonym), Tunis, February 15, 2016. The judgment is on file with Human Rights Watch.

¹⁵² Conor McCormick-Cavanagh, “Three of the Kairouan Six Charged in Connection to Prostitution Ring,” Tunisia Live, March 26, 2016, <http://www.tunisia-live.net/2016/03/26/three-of-the-kairouan-six-arrested-in-connection-to-prostitution-ring/> (accessed April 25, 2016).

¹⁵³ Conor McCormick-Cavanagh, “Court acquits eight youths charged with homosexual acts for first time ever in Tunisia,” conormichaelblog, April 6, 2016, <https://conormichaelblog.wordpress.com/2016/04/06/court-acquits-eight-youths-charged-with-homosexual-acts-for-first-time-ever-in-tunisia/> (accessed April 25, 2016).

¹⁵⁴ FIDH, “Tunisie : Trois ans de prison pour homosexualité,” December 16, 2015, <https://www.fidh.org/fr/regions/maghreb-moyen-orient/tunisie/tunisie-trois-ans-de-prison-pour-homosexualite> (accessed June 3, 2016).

¹⁵⁵ Human Rights Watch interview with Badr Baabou, Damj, Tunis, February 15, 2016.

Turkmenistan has one of the most closed and repressive governments in the world, which does not tolerate independent civil society.¹⁵⁶ Human Rights Watch is unaware of the existence of any organization that monitors abuses related to sexual orientation or gender identity in Turkmenistan. Nyazik’s detailed account of being subjected to an anal examination by a virulently homophobic doctor, recounted in detail in Section I above, is the only case of anal examinations in Turkmenistan that Human Rights Watch has documented, although an exiled civil society activist told us that the results of such exams are frequently used as “evidence” in sodomy cases there.¹⁵⁷ Human Rights Watch interviewed Nyazik in the country to which he fled after his release from prison.

Nyazik told Human Rights Watch that a police informant, who was also gay, turned him in, along with other friends. He said that about 20 other people were detained on suspicion of homosexuality at the same time that he was, in January 2013. He said they were moved between two detention centers, Zhitnikovo and Arzuv, where guards regularly tortured them, including by beating them with truncheons and allowing other prisoners to beat them. Nyazik says that about 11 days after they were detained, all of the men were taken to a building where a doctor subjected them to anal exams. Nyazik says he saw the same doctor who examined him performing anal exams on other men.

All of the men were tried together in May 2013. They were sentenced to two years in prison on the basis of article 135. Nyazik told Human Rights Watch that the results of the anal examination were introduced by the prosecution and played a role in their conviction, although Human Rights Watch did not have access to court records in order to verify this independently.¹⁵⁸

Nyazik told Human Rights Watch, “I still don’t understand why we were taken there and had to undergo this test. I really want to look her [the doctor] in the eye now.”¹⁵⁹

¹⁵⁶ Human Rights Watch, “Turkmenistan: Events of 2015,” World Report 2016, <https://www.hrw.org/world-report/2016/country-chapters/turkmenistan>.

¹⁵⁷ Human Rights Watch telephone interview with Ruslan Myatiyev, an exiled human rights activist and journalist from Turkmenistan and founder of Alternative Turkmenistan News, May 24, 2016.

¹⁵⁸ Human Rights Watch interview with Nyazik (pseudonym), location withheld, July 24, 2015.

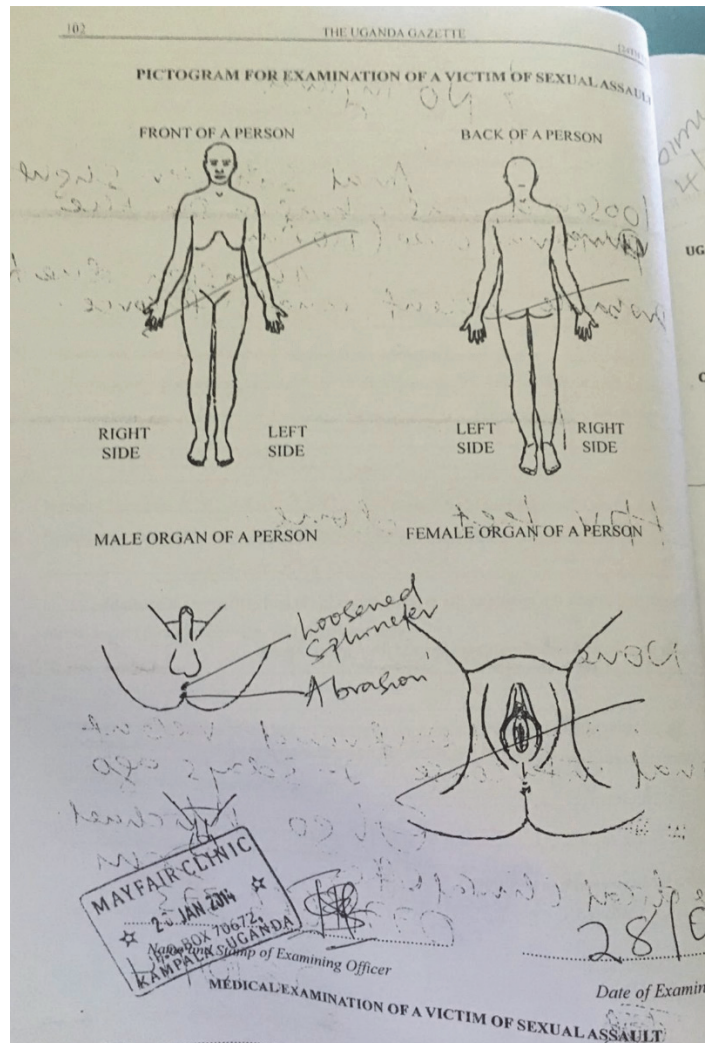
¹⁵⁹ Ibid.

Nyazik and the rest of the men convicted under article 135 were pardoned and released after one year and three months in prison, on May 18, 2014.¹⁶⁰ The release was part of a sweeping amnesty in which 2,184 Turkmen and 10 foreign nationals were pardoned on the occasion of the Day of Revival, Unity and Poetry of Makhtumkuli Fraga.¹⁶¹

His testimony in Section I above, as the only testimony Human Rights Watch was able to obtain from Turkmenistan, cannot be taken as representative, but it raises the possibility that forced anal examinations have been or are being used against others charged with sodomy in Turkmenistan. Lack of access to the country prevented Human Rights Watch from undertaking follow-up research, but the subject merits further investigation.

Uganda

Uganda's Penal Code punishes "carnal knowledge against the order of nature" with a penalty of up to life in prison.¹⁶² In December 2013, Uganda's parliament voted on a new, harsher law, the Anti-Homosexuality Act, which had been first presented for consideration in 2009.¹⁶³ The original draft included the death sentence for homosexual acts in certain circumstances (eventually changed to life imprisonment), and the act



¹⁶⁰ Human Rights Watch telephone interview with Nyazik (pseudonym), April 30, 2016.

¹⁶¹ "В Туркменистане объявлена очередная амнистия," Turkmeninform.com, May 17, 2014, <http://www.turkmeninform.com/ru/news/20140517/08389.html> (accessed May 4, 2016).

¹⁶² Laws of Uganda, Chapter 120, The Penal Code Act, enacted June 15, 1950, art. 145.

¹⁶³ Human Rights Watch, "Uganda: 'Anti-Homosexuality' Bill Threatens Liberties and Human Rights Defenders," October 15, 2009, <https://www.hrw.org/news/2009/10/15/uganda-anti-homosexuality-bill-threatens-liberties-and-human-rights>

criminalized the undefined “promotion” of homosexuality, as well as renting rooms to anyone “for purposes of homosexuality.”¹⁶⁴ Heated discourse around the law and its draconian provisions appears to have led to an increase in harassment of persons perceived to be LGBT by civilians and the police alike.

In one of the first cases of forced anal examinations in Uganda that Human Rights Watch documented, police in Entebbe arrested two men, Robert and Christopher, in October 2013, on charges related to alleged homosexual conduct. The men told Human Rights Watch that they were subjected to forced penile and anal exams, involving digital penetration, and forced HIV tests. Robert told Human Rights Watch:

On Saturday at 6am there was a knock on the door. Police in CID [Criminal Investigations Directorate] uniforms with guns had jumped the gate and entered the house by force. ... There was no warrant. They took us to the [jail] cells and separated us. Other detainees slapped me and told me I had to pay 19,000 Uganda shillings (US\$6). A policeman said to them, ‘Yeah, you go ahead and beat him, he’s been brought here because he’s homosexual.’

One hour later they took us out, handcuffed us together, and put us in a vehicle. They drove us to a clinic in Kampala. ... We each were supposed to pay 40,000 for exams. The police paid it. They took Christopher into a room and checked his blood. They didn’t tell us why. They checked us by force, with a gun pointing at us. ...

Christopher came out and they took me in. The surgeon checked my penis—I don’t know for what. Then the surgeon told me to bend over. He put on gloves and used his fingers, which was wrong. He told the CID officer, ‘You come nearby and see.’ He said, ‘I’m seeing some small pimple behind.’ He called in another police officer and said, ‘He has a small pimple, but that has nothing to do with sodomy.’ We were taken back to the cell in Entebbe.

defenders; Human Rights Watch, “Uganda: Reject Anti-Homosexuality Bill,” May 10, 2011, <https://www.hrw.org/news/2011/05/10/uganda-reject-anti-homosexuality-bill>.

¹⁶⁴ Human Rights Watch, “Uganda: President Should Reject Anti-Homosexuality Bill,” December 20, 2013, <https://www.hrw.org/news/2013/12/20/uganda-president-should-reject-anti-homosexuality-bill>.

[On Monday] they took me for another medical checkup. They did the same anal exam and HIV test—this time, in Entebbe police station. There was a doctor there; I don't know his name.¹⁶⁵

Christopher, interviewed together with Robert, added with regard to the first exam:

It was physical assault by the police. [First] it was an HIV test. The nurse took my blood. ... Then I was taken into a room with the police surgeon. He put on a rubber glove and put one finger inside me. Another police officer from CID was standing there the whole time, watching. The police surgeon made me bend over standing up to do the test. He said verbally, 'No recent sign of being sodomized.'¹⁶⁶

Christopher, a British citizen, was deported in January 2014 before his case came to trial, and prosecutors subsequently withdrew charges against him.¹⁶⁷ Prosecutors withdrew the charges against Robert in March 2015.¹⁶⁸

In another case, in November 2013, police allegedly threatened a young man, David, with an anal exam to try to force him to confess to homosexual conduct:

A police was slapping me repeatedly on the shoulder, telling me to accept [confess], saying, 'We will take you for medical examinations to check your asses.'

After David's lawyer intervened, the police dropped the idea of forced medical examinations, David said.¹⁶⁹

¹⁶⁵ Human Rights Watch interviews with Robert (pseudonym), Entebbe, November 26, 2013, and by telephone, April 28, 2016.

¹⁶⁶ Human Rights Watch interview with Christopher (pseudonym), Entebbe, November 26, 2013.

¹⁶⁷ Republic of Uganda, Directorate of Public Prosecutions, Withdrawal Form, dated March 12, 2014, on file with Human Rights Watch.

¹⁶⁸ Email communication from Christopher to Human Rights Watch, March 24, 2015.

¹⁶⁹ Human Rights Watch interview with David (pseudonym), Kampala, November 27, 2013.

In January 2014, police arrested two young people, Rihanna (a transgender woman) and Kim, after their neighbors attempted to lynch them on suspicion of homosexuality. On police orders, a medical officer at Mayfair Clinic in Kampala subjected both of them to anal exams.¹⁷⁰ Rihanna told Human Rights Watch:

Two policemen were in the room when the doctor was examining me. They held onto my hands after detaching me from handcuffs. ... [The doctor] put two fingers in my ass. It was so painful. He was feeling the size of the hole. I was feeling so bad. I don't even want to think about it. I was being forced to do something, after a lot of slaps and beating me. They didn't ask my consent and I didn't sign anything, they just did what they wanted and took me back to the cells.¹⁷¹

Jojo, a restaurant manager, was subjected to an anal exam at Muyenga Dispensary when police from Kabalagala police station detained him on homosexuality charges in April 2014.¹⁷² Jojo said it was the first time he had ever been anally penetrated:

I had to take my pants off. [The doctor] even put his fingers in my ass. He opened my dick [pulled back foreskin], and then he told me to bend over and put several fingers in my ass. He told me it was positive. I don't even know what that means. I've never been fucked up the ass. It was nasty stuff. He just rammed his fingers in and pulled them out—it was like he was just doing his formal thing to write a report. I jerked away because it was painful. I jumped. He said, 'He's sensitive, that means he does it.'¹⁷³

¹⁷⁰ In Uganda, a medical officer is someone who has completed a bachelors' degree in medicine, but has not undertaken an internship which allows them to qualify as a doctor.

¹⁷¹ Human Rights Watch interview with Rihanna, Kampala, February 3, 2016.

¹⁷² Unlike most cases described in this report, Jojo (pseudonym) was arrested not for consensual sex, but on charges of rape which he denied. The director of public prosecutions eventually dismissed all charges for lack of evidence. Jojo told Human Rights Watch that he was set up by a police informant who encouraged two of his disgruntled employees to file false charges against him, with the hopes of eliciting bribes from Jojo to get the case dropped. It was impossible for Human Rights Watch to verify Jojo's claims with regard to the fabricated charges.

¹⁷³ Human Rights Watch interview with Jojo (pseudonym), Kampala, February 4, 2016.

The medical report, on file with Human Rights Watch, says, “Sodomy is a strong possibility.”¹⁷⁴ This finding conflicts with the same doctor’s own personal assessment, described in Section VI below, that anal examinations cannot determine much.

In Pader, in northern Uganda, at least two men of five who were arrested on charges of consensual same-sex conduct were subjected to forced anal examinations in June 2014. Human Rights Watch was not able to interview the victims, but has seen the medical reports, which state that the men’s anal sphincters are “normal.”¹⁷⁵

Police in Kampala arrested Chloe, a transgender woman whose story is recounted above, and her partner, Eric, in May 2015. Police took the two to Muyenga Dispensary for anal examinations, where Chloe described a glass object, like a thermometer, being inserted inside her anus.

I was too embarrassed, I felt too bad. I was standing up and [the doctor] told me to take off my clothes and to bend over. It was very painful when he put that thing inside me but I had no choice. ... I was crying, I was deep in tears, but I had no choice. The police were saying. ‘Why are you crying, you have no choice! You deserve death!’ There were three police there.

¹⁷⁴ Medical report signed by Dr. Jackson Kakembo, April 9, 2016, on file with Human Rights Watch.

¹⁷⁵ The medical reports from the Pader case, on file with Human Rights Awareness and Promotion Forum, were viewed by Human Rights Watch on February 4, 2016.

Chloe reported that the doctor inspected her anus, and inspected Eric’s penis as well as his anus. She added, “If I were sick, I could not go to that clinic after all that I went through—no, no, no, I can’t. It was too painful. I felt that the doctor abused me.”¹⁷⁶

All of the above-mentioned cases were withdrawn before they reached trial. In one of the few cases involving charges of homosexuality that reached the trial stage, the judge dismissed the medical report—submitted by a defense attorney in an attempt to prove his client’s innocence—on the grounds that too much time had lapsed between the alleged incident and the medical examination: in this case, more than five years.¹⁷⁷

On January 20, 2014, Human Rights Watch wrote to Uganda’s Inspector General of Police (IGP), General Kale Kayihura, to raise concerns over forced anal examinations and HIV tests. Human Rights Watch asked Kayihura to “urgently inform all your officers that forced medical and physical testing of defendants is not permitted without a court order and that anal examinations have no evidentiary basis ever,” and further, to “investigate the officers involved in these three cases and take disciplinary action against them.”¹⁷⁸

Kayihura did not respond in writing to the letter. At a subsequent meeting with Human Rights Watch, Kayihura suggested he would order police surgeons not to carry out forced anal exams, but made no concrete commitment as to timeframes.¹⁷⁹ The order was apparently never given: in June 2016, the director of Human Rights and Legal Services in the Uganda police told Human Rights Watch, “It’s too early to say we can stop the examinations, but it’s never too early to start the discussion.” He said that in order to

¹⁷⁶ Human Rights Watch interview with Chloe (pseudonym), Kampala, February 5, 2016.

¹⁷⁷ The case involved allegations of non-consensual sex, unlike most of those described in this report. Chris Mubiru, a well-known football manager, was arrested in December 2013 on charges of raping a 17-year-old boy in 2009. In April 2015—more than five years after the alleged incident—his defense attorney referred him to a doctor for genital examinations. The doctor reportedly informed the court: “The request for the check-up was specific, I had to find out if he had ever used his [genitals] to forcefully commit sodomy acts and to conduct an HIV/Aids test on him.” The doctor’s conclusions—“There was no darkening or change on foreskin, his anus had a normal tone so it would withhold stool and his HIV/Aids status was also negative”—demonstrate the preposterousness of relying on genital exams to identify the perpetrators of sexual assault: the logic seems to be that if Mubiru did indeed commit the assault, he would have the marks of a “homosexual,” perhaps on his penis, perhaps on his anus, regardless of the time lapse and the fact that no evidence had been presented suggesting Mubiru himself had been anally penetrated. Human Rights Watch interview with Isaac Semakadde, Kampala, February 3, 2016; Betty Ndagire, “Doctor defends Mubiru on sodomy,” *Daily Monitor* (Kampala), July 2, 2015, <http://www.monitor.co.ug/News/National/Doctor-defends-Mubiru-on-sodomy/-/688334/2772260/-/137fa2hz/-/index.html> (accessed April 25, 2015).

¹⁷⁸ Human Rights Watch letter to Gen. Kale Kayihura, January 20, 2014, on file with Human Rights Watch.

¹⁷⁹ Human Rights Watch interview with Gen. Kale Kayihura, Kampala, February 4, 2014.

definitively stop the examinations, the IGP would need to issue a written circular to all police units.¹⁸⁰

A Ugandan activist described raising similar concerns about anal examinations with the IGP:

HRAPF [Human Rights Awareness and Promotion Forum] approached the IGP [Inspector General of Police] on anal exams in 2014 when LGBT activists met with him, shortly after the Anti-Homosexuality Bill passed. The IGP said, ‘If victims of rape are examined, why not victims of homosexuality?’ He doesn’t find it problematic, and says the police have no other option.¹⁸¹

The remarks attributed to the IGP are not only troubling, but advance a comparison that makes no logical sense. Rape victims are generally, and should only be, examined with their consent, in order to obtain evidence against people who have attacked them.¹⁸² People accused of homosexuality are coerced into undergoing abusive anal exams in furtherance of the governments’ efforts to persecute them.

Ugandan activists are considering filing a constitutional challenge to the use of forced anal examinations. Article 24 of the Constitution provides that no person shall be subjected to any form of torture or cruel, inhuman, or degrading treatment or punishment.¹⁸³ Uganda’s Prevention and Prohibition of Torture Act, 2012, which domesticates the Convention against Torture into Ugandan law, specifically defines torture as including “rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals.”¹⁸⁴ It also provides that, “Any information, confession or

¹⁸⁰ Human Rights Watch interview with Erasmus Twarukuhwa, Kampala, June 15, 2016.

¹⁸¹ Human Rights Watch interview with Adrian Jjuuko, executive director of HRAPF, Kampala, February 4, 2016.

¹⁸² See, for instance, World Health Organization, “Health care for women subjected to intimate partner violence or sexual violence,” September 2014, http://apps.who.int/iris/bitstream/10665/136101/1/WHO_RHR_14.26_eng.pdf?ua=1 (accessed May 17, 2016).

¹⁸³ Constitution of the Republic of Uganda, 1995.

¹⁸⁴ Acts Supplement No. 1, Prevention and Prohibition of Torture Act, Second Schedule: Acts Constituting Torture, 1(g), September 18, 2012, http://www.ulii.org/ug/legislation/act/2012/3/prevention_prohibition_of_torture_act_no_3_of_2_17440.pdf (accessed April 7, 2016).

admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceeding.”¹⁸⁵

Zambia

In 2005, Zambia amended its penal code, replacing a British colonial-era law that had penalized same-sex conduct with up to 14 years in prison with a new law that provides for 15 years to life in prison for “carnal knowledge of any person against the order of nature.”¹⁸⁶ As in many African countries that inherited sodomy laws during the colonial period, neither the old law nor its revision have been enforced regularly.

However, in April 2013, an anti-gay moral panic spread throughout Zambia after local media outlets reported that four same-sex couples had attempted to register marriages, a claim that Zambian activists believe was falsified to intentionally provoke hostility toward LGBT people.¹⁸⁷ In May 2013, police in the Kapiri Mposhi district in central Zambia arrested James and Felisha in response to reports from neighbors that the two were engaging in homosexual acts. As part of the police investigation both individuals—one, Felisha, was described as a “man” in press coverage at the time but now self-identifies as a transgender woman—were subjected to anal examinations without their consent at the Kapiri Mposhi District Hospital.¹⁸⁸

Felisha said that the police who brought her to the hospital for testing did not have a court order; instead, they gave the doctor verbal instructions.¹⁸⁹ She told Human Rights Watch that the doctor who conducted the exam demonstrated clear bias:

¹⁸⁵ Prevention and Prohibition of Torture Act, 14(1),

http://www.ulii.org/ug/legislation/act/2012/3/prevention_prohibition_of_torture_act_no_3_of_2_17440.pdf.

¹⁸⁶ Republic of Zambia, Chapter 87, The Penal Code Act,

https://www.unodc.org/res/cld/document/zmb/1931/the_penal_code_act_html/Zambia_Penal_Code_Act_1930_as_amended_2005.pdf, art. 155.

¹⁸⁷ Colin Stewart, “43 anti-LGBT violations in Zambia; ‘accident waiting to happen,’” Erasing 76 Crimes (blog), September 30, 2013, <https://76crimes.com/2013/09/30/43-anti-lgbt-violations-in-zambia-accident-waiting-to-happen/> (accessed June 4, 2016); Human Rights Watch, “Zambia: Stop Prosecuting People for Homosexuality,” May 20, 2013, <https://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality>.

¹⁸⁸ Human Rights Watch, “Zambia: Stop Prosecuting People for Homosexuality,” May 20, 2013, <https://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality>.

¹⁸⁹ Human Rights Watch interview with Felisha (pseudonym), Lusaka, January 11, 2016.

In the police station, we were detained for three days, and then the cops said, ‘No this case is a big one, you have to go to the hospital for a test.’ So they forced us to go to the hospital.

The police told the doctor, ‘These two people are men, but they are living as man and wife, so they have to be tested.’

So the doctor said, ‘Oh! This is a big sin, and these people deserve to be punished.’ He’s the one who testified against us.¹⁹⁰

Felisha described how the doctor asked her to bend over and inserted “a small tube” into her anus. A police officer was present in the room during the exam.¹⁹¹

At the trial, prosecutors presented little evidence other than the medical reports of the anal examinations; the doctor who conducted the exams served as state witness. Defense counsel called another doctor as witness, to challenge the reliability of anal examinations.¹⁹² On July 3, 2014, after more than a year in detention, a judge acquitted Felisha and James for lack of evidence. According to media reports, the judge found that even though the medical report claimed to find evidence of “anal warts and anal pipe dilation” on one of the accused, and “bruises on the manhood” of the other, this was “not enough to prove the involvement of the two accused persons in a sexual act,” ruling that “other conditions such as constipation and compromised immunity. ... can cause the physical examination findings on the two suspects.”¹⁹³

As the Kapiri Mposhi case worked its way through the courts, in March 2014, police arrested two men on homosexuality charges in Chisamba, a town in central Zambia.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Human Rights Watch interview with Sunday Nkonde, Lusaka, January 13, 2016.

¹⁹³ “Kapiri ‘Homosexual Couple’ set free, State failed to prove the case beyond any reasonable doubt,” *Lusaka Times*, July 3, 2014, <https://www.lusakatimes.com/2014/07/03/kapiri-homosexual-couple-set-free-state-failed-prove-case-beyond-reasonable-doubt/> (accessed April 11, 2016).

According to defense lawyer Sunday Nkonde, they too were subjected to anal exams.¹⁹⁴ A judge acquitted them in April 2015 for lack of evidence.¹⁹⁵

However, these judgments did not put to rest the use of anal examinations in Zambia. In September 2015, police arrested Hatch, a transgender woman in Mongu district in western Zambia, after her male partner turned her in, claiming he had been deceived into thinking he was having sex with a cisgender (non-transgender) woman. A judge convicted Hatch in October, citing “evidence” from a medical report of an anal examination which allegedly found a “tear around his anal area.”¹⁹⁶ Lawyers are currently appealing the verdict.

¹⁹⁴ Human Rights Watch interview with Sunday Nkonde, Lusaka, January 13, 2016.

¹⁹⁵ “Zambia: Two men acquitted of homosexuality charges,” Mamba Online, April 16, 2015, <http://www.mambaonline.com/2015/04/16/zambia-two-men-acquitted-homosexuality-charges/> (accessed April 11, 2016).

¹⁹⁶ Elizabeth Chatuvela, “Fake woman convicted of sodomy,” *Zambia Daily Mail*, October 31, 2015, <https://www.daily-mail.co.zm/?p=48588> (accessed May 12, 2016); Michael K. Lavers, “Transgender woman in Zambia convicted of sodomy,” *Washington Blade*, November 5, 2015, <http://www.washingtonblade.com/2015/11/05/transgender-woman-in-zambia-convicted-of-sodomy/> (accessed May 12, 2016).

III. International Human Rights Standards and Medical Ethics

Forced anal exams are a human rights violation. States should abolish the practice of conducting these exams. They are also a clear violation of medical ethics, and medical professionals should not agree to carry them out.

International Human Rights Standards

Forced anal exams constitute a form of cruel, inhuman, and degrading treatment that can in some cases rise to the level of torture.¹⁹⁷ While the following pages offer additional critiques of the exams, all governments should prohibit them for this reason alone.

As evidenced by the testimonies in this report, forced anal exams are often physically painful, profoundly degrading and humiliating, and apt to produce lasting psychological trauma. Some of the people Human Rights Watch interviewed said that they experienced the exams as a form of sexual violence, and in Human Rights Watch's view, they amount to acts of sexual assault. In all of this, the exams are akin to so-called "virginity tests" carried out in some countries on women who are accused of prohibited sexual activity.¹⁹⁸

¹⁹⁷ Article 7 of the International Covenant on Civil and Political Rights prohibits torture as well as cruel, inhuman or degrading treatment or punishment. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. The Convention against Torture, which all eight states discussed in this report have ratified, requires states to prevent and punish all acts of torture. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. The constitutions of all eight states also prohibit torture and cruel, inhuman or degrading treatment. Six of the countries in which Human Rights Watch has documented the use of forced anal examinations are in Africa, and the African Charter on Human and Peoples' Rights also expressly prohibits torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), <http://www.refworld.org/docid/3ae6b3630.html> (accessed 23 April 2016), article 5.

¹⁹⁸ See, for example, Human Rights Watch, "Indonesia: Virginity Tests for Female Police: 'Testing' Applicants is Discriminatory, Cruel, Degrading" November 17, 2014, <https://www.hrw.org/news/2014/11/17/indonesia-virginity-tests-female-police>.

Several international human rights institutions have identified forced anal examinations as a form of torture or cruel, inhuman, and degrading treatment. A 2015 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) called for banning forced genital and anal examinations,¹⁹⁹ and the exams were condemned in a statement by 12 UN agencies on anti-LGBT violence in September 2015.²⁰⁰ The UN Special Rapporteur on Torture has described forced anal examinations as “intrusive and degrading”²⁰¹ and has raised concern about them with several governments, including Cameroon in 2011,²⁰² and the United Arab Emirates in 2007.²⁰³ In a January 2016 report, he stated:

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.²⁰⁴

The UN Committee on Torture first expressed concern about the practice of conducting forced anal examinations with regard to Egypt, in 2002.²⁰⁵ The UN Working Group on Arbitrary Detention maintains that, “forced anal examinations contravene the prohibition of torture

¹⁹⁹ Office of the 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, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc (accessed May 20, 2016).

²⁰⁰ 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.

²⁰¹ UN General Assembly, “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> (accessed May 22, 2016), para. 24.

²⁰² UN Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez,” A/HRC/16/52/Add.1, March 1, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.Add.1_EFOnly.pdf (accessed May 20, 2016), para. 16.

²⁰³ 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, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/120/41/PDF/G0712041.pdf?OpenElement>, para. 317.

²⁰⁴ 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, <http://www.refworld.org/docid/56c435714.html> (accessed May 19, 2016), para. 36.

²⁰⁵ 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> (accessed May 22, 2016), para. 6(k).

and other cruel, inhumane and degrading treatment, whether ... they are employed with a purpose to punish, to coerce a confession, or to further discrimination.”²⁰⁶

The Special Rapporteur on Torture has also noted that:

States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances.²⁰⁷

The African Commission on Human and Peoples’ Rights, through its Committee on the Prevention of Torture in Africa (CPTA), has called on states parties—including the six African countries in which Human Rights Watch has documented forced anal exams—to:

Ensure that torture or ill-treatment is not perpetrated on individuals on account of sexual orientation or gender identity. In particular, States should forbear from adopting policies or legislation whose effect may be to encourage perpetration of torture or ill-treatment on the basis of such characterisation by State agencies or private individuals or other entities.²⁰⁸

In 2014, the African Commission passed Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity. The resolution “urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including by ... prohibiting and

²⁰⁶ UN Working Group on Arbitrary Detention, 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 (accessed May 19, 2016).

²⁰⁷ 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, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement> (accessed June 20, 2016), para. 10.

²⁰⁸ Committee for the Prevention of Torture in Africa, Inter-session Activity Report (November 2013 to April 2014) and Annual Situation of Torture and Ill-treatment in Africa Report, Presented to the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights, Luanda, Angola, 28 April to 12 May 2014, <http://www.achpr.org/sessions/55th/intersession-activity-reports/cpta/> (accessed May 23, 2016), para. 47.

punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities.”²⁰⁹ Commissioner Lawrence Mute, a member of the African Commission and the chair of the Committee for the Prevention of Torture in Africa, told Human Rights Watch that in his view, forced anal exams fall under the resolution’s purview as a form of violence, and that member states should take immediate steps to prohibit their use.²¹⁰

In addition to being cruel, inhuman and degrading, anal exams represent a breach of criminal suspects’ rights to privacy and physical integrity that would not be justifiable even if the exams did *not* constitute cruel, inhuman, and degrading treatment.²¹¹ States do have some latitude to legitimately intrude upon those rights during bodily searches carried out pursuant to a criminal investigation—including for example by subjecting some criminal suspects to mandatory DNA testing.²¹² But such actions must be justified by, and proportional to the importance of, a legitimate state interest. States’ criminalization of same-sex conduct is itself a human rights violation and forced anal exams serve only one purpose—to assist a government in its efforts to persecute and punish people on the basis of their actual or perceived sexuality.²¹³ States therefore have no legitimate interest in

²⁰⁹ African Commission on Human and Peoples’ Rights, Resolution 275, “Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity,” 2014, <http://www.achpr.org/sessions/55th/resolutions/275/> (accessed June 7, 2015).

²¹⁰ Human Rights Watch interview with Lawrence Mute, Nairobi, June 7, 2016.

²¹¹ Article 17 of the International Covenant on Civil and Political Rights guarantees the freedom from “arbitrary or unlawful” interference with one’s privacy. ICCPR, art. 17.

²¹² For example, in some circumstances criminal justice systems may lawfully subject individuals suspected of serious offenses to involuntary DNA testing. Article 8 of the European Convention on the Protection of Rights and Fundamental Freedoms guarantees the right to privacy, and allows that public authorities may interfere with this right only in accordance with the law and as is necessary for purposes that include the protection of public safety and the prevention of disorder or crime. European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively., Art 8. The European Court on Human Rights has held that this allows member states to collect DNA samples from criminal suspects, but not to store them indefinitely for indeterminate purposes. See European Court of Human Rights, *Case of S. and Marper v. The United Kingdom*, (application nos. 20562/04 and 30566/04), Judgment of 04 December 2008, <http://www.bailii.org/eu/cases/ECHR/2008/1581.html> (accessed June 20, 2016). The US Supreme Court has held that when law enforcement officers arrest a person suspected of a serious offense, taking and analyzing a cheek swab containing a sample of that person’s DNA is reasonable under the US Constitution’s Fourth Amendment, which protects against unreasonable search and seizure—partly because the intrusion represented by the cheek swab is “minimal.” *Maryland v. King*, United States Supreme Court, 133 S. Ct. 1958, June 3, 2013, http://www.supremecourt.gov/opinions/12pdf/12-207_d18e.pdf (accessed June 20, 2016).

²¹³ Criminalizing same-sex conduct between consenting adults violates the right to privacy and the right to freedom from discrimination. Articles 2 and 26 of the ICCPR affirm the equality of all people before the law and the right to freedom from discrimination. Article 17 protects the right to privacy. See also *Toonen v. Australia*, 50th Sess., Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, April, 14, 1994, sec. 8.7. The UN Working Group on Arbitrary Detention has ruled that arrests for consensual same-sex conduct are, by definition, arbitrary. See *François Ayissi, et al. v. Cameroon*, UN Working Group on Arbitrary Detention, Opinion No. 22/2006, U.N. Doc. A/HRC/4/40/Add.1 at 91 (2006),

subjecting anyone to forced anal exams, irrespective of how they are carried out. Furthermore, and as discussed in detail below, in most if not all cases, the exams are objectively worthless in evidentiary terms.

Some states' legal frameworks purport to allow anal exams of people accused of same-sex conduct only with the consent of the accused. Yet the reality in all of the cases Human Rights Watch documented in all eight countries, was that the examinations were clearly and unequivocally coercive, whether the victim "consented" nor not.

Several of the people we interviewed described being beaten or threatened until they gave their "consent" for an anal exam. Others were told that a refusal to undergo the tests could count as evidence against them in court, or that the tests were the only way to prove their innocence. In Tunisia, Wassim, one of the students from Kairouan, said:

They gave me a blank page and the doctor told me to write, 'I the undersigned, accept and hereby authorize you to conduct an anal examination on me.' The doctor told me, 'If you don't sign, I will put in your report that you had sodomy.'²¹⁴

In other cases, coercion is somewhat less explicit but no less clear. Dr. Jackson Kakembo, who has conducted anal exams in Uganda, explained, "The accused cannot refuse to undergo the exams. They're under duress. Sometimes they're in handcuffs and are brought in at gunpoint—these police are armed."²¹⁵ Mehdi, another Tunisian student, said the presence of police was the deciding factor in his providing "consent":

When it was my turn, when I entered the room the doctor asked me to sign my consent for the test, and I refused. The doctor said, 'You have to sign.' He gave me a blank paper. He showed me an example of a signed paper,

<https://www1.umn.edu/humanrts/wgad/22-2006.html> (accessed June 7, 2016). The African Commission on Human and Peoples' Rights has called for an end to arbitrary imprisonment, as well as all forms of violence, on the grounds of sexual orientation and gender identity. African Commission on Human and Peoples' Rights, Resolution 275, "Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity," 2014, <http://www.achpr.org/sessions/55th/resolutions/275/> (accessed June 7, 2015).

²¹⁴ Human Rights Watch interview with Wassim (pseudonym), Tunis, February 15, 2016.

²¹⁵ Human Rights Watch interview with Dr. Jackson Kakembo, Kampala, February 5, 2016.

and told me to write the same. I felt compelled to do it because there were two policemen in the room.²¹⁶

Mehdi added: “I felt like the doctor was homophobic and that he was on the side of the policeman and was forcing me. I felt it wasn’t his role—he wasn’t supposed to do that.”²¹⁷

A forensic doctor in Tunisia who sometimes conducts anal exams told Human Rights Watch that he only does so with consent, but when asked whether police might have used force or coercion to compel detainees to undergo the test, he said: “I can’t know what happens outside this room.”²¹⁸

The British Medical Association provides helpful guidelines on situations in which informed consent cannot be given:

A fundamental ethical principle guiding medical practice is that no examination, diagnosis or treatment of a competent adult should be undertaken without the person’s consent. The ethical obligation to seek consent applies even where this is not a legal requirement. In order for consent to be ‘valid’ the individual must have been given sufficient, accurate and relevant information; the individual must have the competence to consider the issues and to reach a decision; and that decision must be voluntary in terms of not being coerced. There are a number of ways in which the ability of detainees to give consent may be compromised:

- the individual’s competence to make a decision may be affected by illness, fear, fatigue, distress or by the effects of alcohol or drugs
- the lack of privacy during the consultation may affect the individual’s willingness to ask questions in order to receive sufficient information to make an informed decision

²¹⁶ Human Rights Watch interview with Mehdi (pseudonym), Tunis, February 15, 2016.

²¹⁷ Ibid.

²¹⁸ Human Rights Watch interview with a forensic doctor, Tunisia, February 2016, exact location and date withheld at the doctor’s request.

- the individual may give general consent to anything proposed in the hope of being released more quickly without considering the actual procedure to be undertaken
- the fact that a refusal to permit an intimate search may be seen to imply guilt, may pressurise the patient to give consent ²¹⁹

Medical Ethics

Medical personnel should not engage in acts of torture or other forms of cruel, inhuman, or degrading treatment.²²⁰ Yet this is precisely what forced anal exams amount to. Dr. Vincent Iacopino, Senior Medical Advisor for Physicians for Human Rights and one of the principal drafters of UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), told Human Rights Watch:

Anal exams to ‘detect’ homosexuality ... are unethical, and constitute cruel, inhuman and degrading treatment, and possibly torture. Sexual identity and orientation is not a disease or a crime, and health professionals have no business diagnosing it or aiding State officials in policing and punishing people on the basis of their sexuality.²²¹

The United Nations’ “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” of 1982 reinforce and

²¹⁹ BMA Ethics, “Recommendations for healthcare professionals asked to perform intimate body searches: Guidance for doctors from the British Medical Association and the Faculty of Forensic and Legal Medicine,” July 2010, <http://www.bma.org.uk/-/media/files/pdfs/practical%20advice%20at%20work/ethics/intimatebodysearchesjuly2010.pdf> (accessed April 8, 2016). p. 1.

²²⁰ See, for example, World Medical Assembly, Declaration of Tokyo: Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, Adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975 and editorially revised by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005 and the 173rd WMA Council Session, Divonne-les-Bains, France, May 2006, <http://www.wma.net/en/30publications/10policies/c18/> (accessed April 10, 2016). The declaration provides the following definition of torture: “For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.”

²²¹ Email communication from Dr. Vincent Iacopino to Human Rights Watch, May 2, 2016.

elaborate the principle that medical professionals should never participate in cruel, inhuman or degrading treatment. Particularly relevant are the following:

Principle 2. It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle 4: It is a contravention of medical ethics for health personnel, particularly physicians ...to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments.²²²

The heads of national medical councils in both Cameroon and Uganda, when interviewed by Human Rights Watch, appeared shocked to learn that forced anal examinations were being conducted by medical practitioners under their watch. Dr. Katumba Ssentongo Gubala, the registrar of the Uganda Medical and Dental Practitioners Council (UMDPC), said:

Homosexuality is forbidden in Uganda, but medical ethics are the same the world over, and we have to treat them like everyone else. ... We are only interested in treatments that add value to the patient, and that are not coerced by anyone. If our people are involved in these exams, that is unethical.²²³

²²² “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,” G.A. Res. 37/194, annex, 37 U.N. GAOR Supp. (No. 51) at 211, U.N. Doc. A/37/51 (1982), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx> (accessed April 10, 2016).

²²³ Human Rights Watch interview with Dr. Katumba Ssentongo Gubala, Kampala, February 4, 2016.

He added:

Police surgeons are bound to respect the code of medical ethics just like everyone else. We've insisted to them: even if you are police, the most important thing is that you are a doctor.²²⁴

In response to a letter from Human Rights Watch outlining five cases of forced anal exams in Uganda involving three different clinics, Dr. Katumba told Human Rights Watch in June 2016 that the UMDPC would soon embark on a program to sensitize doctors about the importance of consent, and would investigate the allegations regarding the particular clinics where the use of forced anal exams has been documented.²²⁵

Dr. Guy Sandjon, the president of the National Medical Council of Cameroon, also expressed surprise when Human Rights Watch, in November 2013, presented him with evidence of forced anal examinations. He said he was not aware that such exams were conducted in Cameroon, and added:

Police don't have the right to do this—it's illegal. Doctors can refuse. We have to respect patients' privacy, and do what is in the interests of the patient. Doctors should never examine patients in front of the police. Results of medical tests should only be given to the patients. ... Even military doctors take vows with the Medical Council and have to respect our judgments on medical ethics.²²⁶

Dr. Sandjon assured Human Rights Watch that if the victims or their lawyers submitted specific complaints, he would summon the doctors who had conducted the exams, hold a Medical Council hearing on their conduct, and communicate the decision to all doctors.²²⁷ Human Rights Watch worked with Cameroonian lawyer Alice Nkom to obtain statements from four victims of anal exams, which Nkom submitted to Dr. Sandjon, in the form of

²²⁴ Ibid.

²²⁵ Email communication from Dr. Katumba to Human Rights Watch, June 7, 2016.

²²⁶ Human Rights Watch interview with Dr. Guy Sandjon, Yaoundé, November 1, 2013.

²²⁷ Ibid.

formal complaints in late 2013.²²⁸ Dr. Sandjon later informed Nkom that he had delegated the affair to a colleague. As of June 2016, Nkom had not received any further information as to what had been done, if anything, to address the complaints.²²⁹

Some individual doctors who conducted anal exams, when interviewed by Human Rights Watch, fell back on the claim that they did so with the “consent” of the victim. But as described above, in all of the cases Human Rights Watch documented, that consent was illusory even where formally sought and obtained.

On March 3, 2016, the Independent Forensic Experts Group (IFEG), composed of 35 preeminent forensic doctors from around the world, published a statement roundly condemning the use of anal examinations to prove same-sex conduct. Regarding the question of consent, IFEG explains:

In our experience, ensuring informed consent is almost impossible for examinations based on profound discrimination and criminalisation, where individuals understand that State officials have the power to compel the examination, and non-compliance is likely to result in adverse legal outcomes, ill-treatment, and reprisals. For this reason, anal examinations and other tests targeting “homosexuality” should be presumed to be conducted forcibly and without informed consent.²³⁰

On June 24, 2016, the World Professional Association for Transgender Health (WPATH) issued a statement expressing its “deep concern” about the complicity of medical personnel in forced anal exams. WPATH added:

We are of the opinion that medical personnel, who prepare ‘medical reports’, which are used in trials to convict men and transgender women of

²²⁸ Email from Alice Nkom to Dr. Guy Sandjon, November 18, 2013, on file with Human Rights Watch.

²²⁹ Human Rights Watch telephone interview with Alice Nkom, June 23, 2016.

²³⁰ Independent Forensic Experts Group, “Statement on Anal Examinations in Cases of Alleged Homosexuality,” May 3, 2016, <http://www.ircct.org/media-and-resources/ircct-news/show-news.aspx?PID=13767&Action=1&NewsId=4037> (accessed May 22, 2016).

consensual same-sex conduct, engage in unethical and inhumane abuse of medical authority.²³¹

Lack of Evidentiary Value

As some of the cases documented in this report make clear, there are medical professionals in some countries who were taught, and continue to believe, that forced anal exams have real probative value in investigating allegations of same-sex conduct. A few of the medical professionals whom Human Rights Watch interviewed for this report claimed that they could find evidence of anal penetration by conducting anal exams. But these views fly in the face of an increasingly firm medical consensus that forced anal examinations are not only unethical and abusive, but also entirely without evidentiary value in the vast majority of cases. While forced anal exams might, in certain circumstances, succeed in finding semen that could be evidence of very recent same-sex conduct, they do nothing to reveal whether men or transgender women regularly engage in same-sex conduct.²³² Yet this is precisely the purpose for which they seem most often to be used.

Dr. Robert Nye, a historian of sexology, told Human Rights Watch that the medical theories underlying the use of forced anal exams, as advanced by Ambroise Tardieu in 1857, are “utterly discredited” and have been considered antiquated for over a century. He added, “The famous six ‘signs’ of passive sodomy were questioned and disregarded by the very next generation of forensic doctors and sexologists.”²³³ A growing body of expert opinion offers emphatic support for this view.

The Independent Forensic Experts Group (IFEG), in its May 2016 statement condemning forced anal examinations, stated that the exams should be rejected both for reasons of human rights and medical ethics and on the grounds that “the examination has no value in

²³¹ WPATH Statement Against Forced Anal Exams, June 24, 2016, on file with Human Rights Watch.

²³² The only case in which semen might be found is if the exam takes place in the approximately three days immediately following sexual intercourse and only if a condom was not used correctly. John W. Eddy and Helen M. James, “Forensic gynaecological examination for beginners: management of women presenting at A&E,” *The Obstetrician & Gynaecologist*, 2005, 7:82-88, <http://onlinelibrary.wiley.com/doi/10.1576/toag.7.2.082.27064/pdf> (accessed May 20, 2016).

²³³ E-mail communication to Scott Long, former director of the LGBT Rights program at Human Rights Watch, from Professor Robert Nye, Department of History, Oregon State University, July 18, 2003, quoted in Human Rights Watch, *In A Time of Torture*, p. 109.

detecting abnormalities in anal sphincter tone that can be reliably attributed to consensual anal intercourse.” As IFEG points out:

There is no standardised, quantifiable method for describing anal sphincter tone on digital rectal examination and no data to support any correlations between digital anal examinations and actual anal sphincter pressures. ... There is no data to support consistency among examiners in their assessments of anal tone and what may or may not be clinically significant.

Further,

decreased anal sphincter pressure may be caused by a wide range of conditions, including: mechanical trauma, increasing age, haemorrhoids, chronic constipation, irritable bowel syndrome, neurologic conditions such as pudendal neuropathy from constant straining, cauda equine syndrome, diabetic neuropathy, multiple sclerosis, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Guillain-Barre syndrome, iatrogenic causes (caused by physicians) such as surgical sphincterotomy for the treatment of anal fissures and other anal/rectal surgeries, benign prostatic hypertrophy, and side effects from medications.²³⁴

Based on these findings, Dr. Vincent Iacopino of Physicians for Human Rights, who is also a member of IFEG, stated that “Anal examinations to ‘detect’ homosexuality have no scientific value.”²³⁵

Dr. Lorna Martin, an acclaimed forensic specialist at the University of Cape Town, affirmed that “it is impossible to detect chronic anal penetration; the only time the [forensic anal]

²³⁴ Independent Forensic Experts Group, “Statement on Anal Examinations in Cases of Alleged Homosexuality,” May 3, 2016, <http://www.irct.org/media-and-resources/irct-news/show-news.aspx?PID=13767&Action=1&NewsId=4037> (accessed May 22, 2016).

²³⁵ Email communication from Dr. Vincent Iacopino to Human Rights Watch, May 2, 2016.

examination could be of any use is for acute non-consensual anal penetration, when certain injuries may be seen.”²³⁶

A senior forensic medicine specialist in Kampala, Dr. Sylvester Onzivua, was dismissive of Ugandan medical practitioners who claim to find evidence of anal intercourse. He said:

Ninety-five percent of our Ugandan doctors have no experience handling cases of sexual assault, especially sodomy. They just get one or two lectures on sexual assault in their entire medical education. ... The doctors fill in these forms and take money for it—so there’s money to be made.²³⁷

Onzivua added:

I haven’t seen cases of consenting adults that would allow me to draw any conclusions. People talk about things to do with the tone of the anus, the anal sphincter—but these are not reliable. I wouldn’t judge that there has been anal sex simply based on the anal sphincter ... The anal sphincter on any patient can loosen, depending on what position you can put them in.²³⁸

Dr. Jackson Kakembo, a retired police surgeon who conducted anal exams out of his private clinic in Kampala, was also not very convinced by the procedure. He said:

If it is a case involving consenting adults, you can’t tell much from examining them. ... The police bring them for exams because the neighbors are complaining that someone is homosexual, and the police become suspicious. They ask me to fill in the form, but it doesn’t serve much purpose.²³⁹

²³⁶ Human Rights Watch, et. al., “Letter to the Minister of Justice of Cameroon Regarding 11 Men Detained on Suspicion of Homosexual Activity,” December 1, 2005, <http://www.hrw.org/news/2005/11/30/letter-minister-justice-cameroon-regarding-11-men-detained-suspicion-homosexual-acti>.

²³⁷ Human Rights Watch interview with Dr. Sylvester Onzivua, Kampala, February 4, 2016. One of the Ugandan medical professionals interviewed by Human Rights Watch, Dr. Jackson Kakembo, acknowledged that the victims themselves were required by police to pay him 20,000 Uganda shillings (approximately US\$6) to conduct the exams. In other words, victims of forced anal exams are paying for their own violation. Human Rights Watch interview with Dr. Jackson Kakembo, Kampala, February 5, 2016.

²³⁸ Human Rights Watch interview with Dr. Sylvester Onzivua, Kampala, February 4, 2016.

²³⁹ Human Rights Watch interview with Dr. Jackson Kakembo, Kampala, February 5, 2016.

Asked what signs he was looking for when conducting the exams, Dr. Kakembo said:

That's the problem. What am I to check for? I just examine them because they're being sent to me, but what they do in their bedrooms is not my business. I check the penis to see if there are tears, sores, tenderness, or bruising, but most of the time there is nothing. Then I have them turn around, and I put on my gloves and check their anal area, but I really don't find much. I check for tightness and tenderness. I haven't found one case of an anal sphincter that is loose. There are no cases with feces dropping out. ...

I did not receive any specialized training on how to conduct these exams. I just use my common sense ... It's not an examination that can determine much.²⁴⁰

In Lebanon, too, although some doctors continue conducting the tests, forensic experts find them useless. Lebanese forensic specialist Dr. Elias Sayegh's 1997 book, *Al-Tub Al-Shar'i Al-'amali: Muktatafat Khibra wa Qanun* (Practical Forensic Medicine: Fragments of Experience and Law) argued, "It is important to bring attention to the fact that same-sex relations, if done with gentleness and consent, do not leave any signs that can help in diagnosing even if it was done repeatedly."²⁴¹

Dr. Hussein Chahrour, the president of the Forensic Medicine Society of Lebanon, told Human Rights Watch, "It's impossible to find any signs to say this is definitely homosexuality."²⁴² He added:

There are no signs that are unique to homosexuality. When I'm asked, I call the judge and say that I can't reach a result unless I find sperm, and most people are using condoms these days so you're unlikely even to find that. [Doctors who are not experts] would say 'redness, tenderness, the diameter

²⁴⁰ Human Rights Watch interview with Dr. Jackson Kakembo, Kampala, February 5, 2016.

²⁴¹ Sgeyh's book is quoted in "Testimonies of doctors and victims," Legal Agenda, May 2012, <http://www.legal-agenda.com/article.php?id=142&folder=articles&lang=ar> (accessed April 8, 2016); quote translated from the original Arabic by Human Rights Watch.

²⁴² Human Rights Watch interview with Dr. Hussein Chahrour, Beirut, April 1, 2016.

is a little wider than normal’—but what is the normal diameter? Do they know it? They would say, ‘I put my finger inside and it went smoothly.’ Even constipated people may get fissures, redness, pain. What is the ‘normal’ to say that this is ‘abnormal’?²⁴³

Dr. Sami Kawas, a forensic medicine specialist in Beirut who has carried out anal examinations for years, told Human Rights Watch frankly:

This is a bullshit thing. You can find nothing. There are false positives and false negatives. If you find a funnel shape, it can be from some disease, or from other anal sphincter issues. Or you can have a real homosexual with a normal anus.²⁴⁴

In sum, Dr. Kawas said, “You cannot conclude anything, medically.”²⁴⁵

²⁴³ Human Rights Watch interview with Dr. Hussein Chahrour, Beirut, April 1, 2016.

²⁴⁴ Human Rights Watch interview with Dr. Sami Kawas, Beirut, March 30, 2016.

²⁴⁵ Ibid.

VII. Recommendations

To all State Governments, notably the governments of Cameroon, Egypt, Kenya, Lebanon, Tunisia, Turkmenistan, Uganda and Zambia

- Ban the use of anal examinations on men and transgender women accused of consensual same-sex conduct. Such bans should take place at several levels in order to ensure that the practice of forced anal examinations is eliminated:
 - Heads of State should take steps that are legally within their powers to end forced anal examinations. Depending on the constitutional powers of the head of state, this may involve: issuing executive orders prohibiting the use of anal examinations in prosecutions for consensual same-sex conduct; introducing and advancing legislation banning forced anal examinations; or instructing relevant ministries, including those whose responsibilities include justice, security, and health, to take steps to ban forced anal exams.
 - To the extent allowed under domestic law, Ministries of Justice should prohibit judges and magistrates from admitting the results of anal examinations into evidence in cases involving charges of consensual same-sex conduct or other private sexual behavior between adults.
 - Law enforcement agencies, including public prosecutors' offices and police departments, should prohibit law enforcement officials from ordering anal examinations of suspects. They should ensure that medical personnel who refuse to conduct the exams do not face any legal consequences.
 - Ministries of Health and national medical councils or similar regulatory bodies should prohibit medical personnel from conducting anal examinations on persons accused of consensual same-sex conduct unless under explicit threat of criminal sanction.
 - National human rights institutions should conduct investigations into the use of forced anal examinations and should call on the relevant authorities to put a stop to the practice.
- Decriminalize consensual same-sex conduct between individuals who are above the minimum age of consent to sex.

To the World Health Organization

- Issue a document, in the form of a statement, ethical guidance note, or technical document, condemning the use of forced anal examinations as a method of investigating consensual same-sex conduct on the grounds that the exams are medically worthless and violate medical ethics, and urging member states to abandon this practice.
- On the basis of such a document, reach out to ministries of health, medical councils, ethics committees within national health agencies, and law enforcement agencies on medical ethics, including the requirement that no health personnel may “engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment,” and the relevance of this requirement to forced anal exams.
- Educate ministries of health, medical professionals and law enforcement agencies on the lack of medical or scientific value of anal exams as a form of evidence of consensual same-sex conduct. Work with them to ensure that medical textbooks are up to date and to prevent antiquated theories on anal exams from being taught in medical schools.

To the World Medical Association and the Conférence Francophone des Ordres des médecins (Francophone Conference of Medical Councils)

- Issue statements condemning forced anal examinations as a violation of medical ethics and a form of cruel, inhuman, or degrading treatment that can rise to the level of torture.
- Engage with member medical associations to urge them to prohibit members from conduct forced anal examinations, following the example of Lebanon.
- Urge physicians from member medical associations to participate in national institutions for the prevention of torture (National Preventive Mechanisms) as established by the Optional Protocol to the United Nations Convention against Torture (OPCAT), and to ensure that the National Preventive Mechanisms play a role in stopping or preventing the use of forced anal examinations.

To UNAIDS

- Issue a statement condemning the use of forced anal examinations as a method of investigating consensual same-sex conduct, noting that forced anal examinations are damaging to doctor-patient relationships that must be strengthened in order to address the spread of HIV/AIDS among marginalized populations.

To the Office of the High Commissioner on Human Rights (OHCHR) and regional human rights bodies, including the African Commission on Human and Peoples' Rights

- Monitor and report on the use of forced anal examinations, and work with governments to put an end to the use of these exams.

To the Special Rapporteur on Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment

- Request visits to the countries named in this report to investigate cases of torture, including the use of forced anal examinations, and issue communications calling on offending governments to ensure accountability for torture and degrading treatment, and put an end to the practice of forced anal exams.

To the Committee for the Prevention of Torture in Africa at the African Commission on Human and Peoples' Rights

- Issue a guidance paper clarifying that forced anal examinations are a form of torture and should be banned by all states party to the African Charter on Human and Peoples' Rights.

To the UN Human Rights Council and all member states

- Use the Universal Periodic Review process to hold states accountable for the use of forced anal examinations by posing questions to states as to their use of anal exams and making specific recommendations to ban the use of such exams.

To donor countries that provide support, including finances and training, for law enforcement agencies in countries in which anal exams are conducted

- Train law enforcement officials, including police and prosecutors, on the lack of evidentiary value of anal examinations and the fact that forced anal examinations constitute an illegal form of torture or cruel, inhuman, and degrading treatment.
- Consider withholding resources from law enforcement agencies that persistently practice forced anal examinations.
- Support national medical councils in their work to enforce standards of medical ethics.

Acknowledgments

This report was researched and written by Neela Ghoshal, senior researcher in the LGBT Rights Program at Human Rights Watch. Research in Tunisia was undertaken in collaboration with Amna Guellali, Tunisia researcher, and field research on Turkmenistan was conducted by Viktoriya Kim, senior coordinator in the Europe and Central Asia Division. Haley Bobseine, Lebanon researcher, contributed to research on Lebanon. A research assistant in the Middle East and North Africa (MENA) division provided desk-based research assistance on Egypt.

The report was reviewed by Graeme Reid, director of the LGBT Rights Program; Amna Guellali; Viktoriya Kim; Haley Bobseine; Maria Burnett and Dewa Mavingha, senior researchers in the Africa Division; a researcher on Egypt; Nadim Houry, deputy director of the MENA Division; Rachel Denber, deputy director of the Europe and Central Asia Division; Otsieno Namwaya, Kenya researcher; Corinne Dufka, deputy director of the Africa Division; Diederik Lohman, acting director of the Health and Human Rights Program; Aruna Kashyap, senior researcher in the Women's Rights Division; Chris Albin-Lackey, senior legal advisor; and Joseph Saunders, deputy program director.

Adam Frankel, coordinator in the LGBT rights program; Olivia Hunter, publications associate; and Fitzroy Hepkins, administrative manager, provided production assistance.

We worked in collaboration with a great many partner organizations in the countries in which we conducted research. In several cases, representatives of national and local human rights organizations conducted interviews with us. In other cases, they provided background research, analysis, and insights, shared case files, connected us with victims of forced anal exams, and in some cases provided direct feedback on drafts of this report. These include: CAMFAIDS, Alternatives-Cameroun, ADEFHO, and Avocats Sans Frontieres-Suisse (Cameroon); an LGBT organization that requested its name be withheld and the Egyptian Initiative for Personal Rights (Egypt); the National Gay and Lesbian Human Rights Commission and PEMA Kenya (Kenya); Legal Agenda (Lebanon); Chapter Four Uganda and Human Rights Awareness and Promotion Forum (Uganda); and Friends of Rainka (Zambia). Ruslan Myatiyev connected us to exiled gay men from Turkmenistan. Physicians for Human

Rights (U.S.) and the Independent Forensic Experts Group (global) provided expert knowledge on medical science and medical ethics. A number of lawyers, including Alice Nkom, Michel Togu , Saskia Ditisheim, Fadoua Braham, and Ghida Frangieh also provided indispensable assistance.

We are particularly grateful to the survivors of forced anal examinations who shared their experiences with us. By making the difficult decision to speak out, they have made an invaluable contribution toward ending forced anal examinations. We are also grateful to Scott Long, the former director of the LGBT Rights Program at Human Rights Watch, for his groundbreaking research on this topic.

Annex I

MINISTÈRE DE LA SANTÉ PUBLIQUE
.....
DELEGATION REGIONALE DE LA SANTÉ DU CENTRE
.....
SERVICE DE SANTÉ DE DISTRICT DE DJOUNGOLO
.....
CENTRE MEDICAL DE MVOG-ADA
.....
N.....RP/MSP/DRSC/DDSD/CMA MVOG-ADA

REPUBLICQUE DU CAMEROUN
Paix - Travail - Patrie

18

RAPPORT D'EXPERTISE MEDICALE SUR

[REDACTED]

Age :

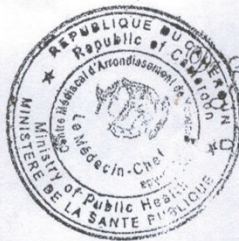
Toucher rectal : on note une odeur nauséabonde l'anus. On note également à 06 heures, une cicatrice d'une dermatite.

L'anus laisse passer l'index et le majeur de la main droite sans douleurs, le doigtier ramène une pâte composée d'un enduit blanchâtre et de selles mal odorante.

Conclusions : Monsieur [REDACTED] a l'habitude d'entretenir des rapports par voie anale.

Yaoundé, le 08 Octobre 2013

La Directrice



Alamba Anastasie Clivice
Médecin
M.C.N. 3842/98
A.C.D.
Médecin de Sport
Directeur du C.M.A.

Annex 2

Dr. Sami Kawas

Family Medicine Specialist

Forensic & Legal Medicine

*Graduate of the American University of Beirut and
Swedish Medical Centers with dual specialty in Family Medicine
University Diploma in Legal Medicine from the
Faculty of Medicine of Saint Joseph University in
Lebanon and Rouen University in France
Licensed Medical Practitioner by the Lebanese
Ministry of Health and the Swedish National
Board of Welfare*

Forensic Report on Mr. XXXX

On 14/07/2015, upon request from Mr. xxxxx, his mother's name is xxxx, born in 1958, Lebanese according to his ID card, a forensic and clinical test was done at my clinic in Beirut at 16:30, in order to find out if there are any clinical evidence to homosexual practices or not. After the full clinical test (also upon his request) it is evident that he is of sound health. Upon performance of an anal test on him, the anus appeared to be normal, without a funnel shape on the outside, or injuries, scratches, redness or chronic diseases.

We took photographs for documentation.

Therefore, there is no medical evidence that suggests he is practicing homosexuality. The clinical test brought normal results.

Beirut, 14/07/2015

Dr. Sami Kawas

Family Medicine Specialist

Forensic & Legal Medicine

*Graduate of the American University of Beirut and
Swedish Medical Centers with dual specialty in Family Medicine
University Diploma in Legal Medicine from the
Faculty of Medicine of Saint Joseph University in
Lebanon and Rouen University in France
Licensed Medical Practitioner by the Lebanese
Ministry of Health and the Swedish National
Board of Welfare*

Number 2013/5 – Report # 76/302

Forensic Report on Mr. XXXX

On 04/02/2013, upon request from the appeals prosecution office in Beirut in the person of Supreme Judge xxx, and through the vice police office in Beirut, with full consent from the defendant, I was assigned the task of examining Mr. xxxx, his mother's name is xxxx, born in 1992, Lebanese, at my clinic in Beirut, in order to know if he is practicing homosexuality or not. After an anal test on him, the anus appeared to be normal, without a funnel shape on the outside, or injuries, scratches, redness or diseases.

Note: absence of clinical evidence at anus does not rule out the possibility of practicing homosexuality through the anus in the past.

DIGNITY DEBASED

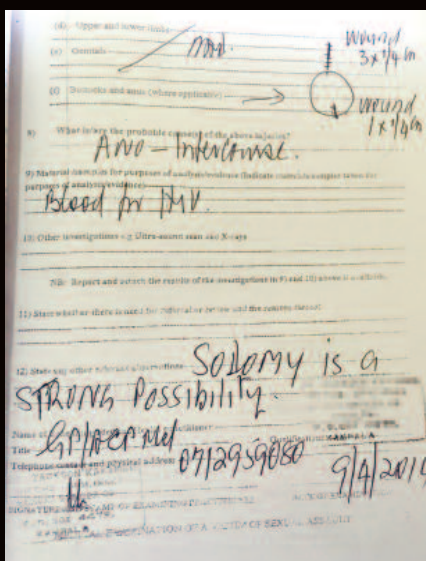
Forced Anal Examinations in Homosexuality Prosecutions

In at least eight countries in which consensual same-sex conduct is criminalized, law enforcement officials working in tandem with medical personnel subject men and transgender women who are arrested on homosexuality-related charges to forced anal examinations, with the purported objective of finding “proof” of homosexual conduct.

These examinations, based on long-discredited 19th century science, often involve doctors or other medical personnel forcibly inserting their fingers, and sometimes other objects, into the anus of the accused in order to determine the tone of the anal sphincter or the shape of the anus. The overwhelming weight of medical and scientific opinion holds that it is impossible to use these exams to determine whether a person has regularly engaged in same-sex conduct.

Forced anal examinations are a form of cruel, degrading, and inhuman treatment that can rise to the level of torture. They violate the Convention against Torture, the International Covenant on Civil and Political Rights, and the African Convention on Human and Peoples’ Rights. As the UN Committee against Torture has emphasized, they “have no medical justification and cannot be consented to fully.” Medical personnel who agree to conduct forced anal exams do so in violation of international principles of medical ethics.

Dignity Debased is based on interviews with 32 men and transgender women who underwent forced anal examinations, compiles evidence of the use of forced anal exams in eight countries: Cameroon, Egypt, Kenya, Lebanon, Tunisia, Turkmenistan, Uganda, and Zambia. The report recommends that all states ban forced anal examinations, and that international and domestic human rights and health institutions vigorously and vociferously oppose their use.



A medical report filled out by a doctor in Kampala, Uganda, after conducting a forced anal examination on a man suspected of consensual same-sex conduct.

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