

» APT's 8 Building Blocks for a Torture-free Future: The prevention of torture and other ill-treatment in times of transition

Purpose of this paper

The Association for the Prevention of Torture (APT) is an international NGO based in Geneva, Switzerland, with 35 years of experience in the prevention of torture and ill-treatment.

The APT observes that the risk of torture and ill-treatment exists everywhere, unless concrete measures are taken to prevent these horrible acts. But under repressive rule, characterised by arbitrary arrest and torture of opponents and political prisoners, torture becomes extremely widespread and is routinely used in criminal proceedings as well. Torture therefore does not stop automatically with the fall of authoritarian regimes and the release of political prisoners. If not addressed with determination, the culture of torture will persist and obstruct the transition to democracy.

A lot of political will and hard work is needed to build a torture free future, in particular after a period of conflict and repression. In this paper, the APT recommends eight concrete measures that States in transition can take to reduce the risk. These recommendations are based on APT's world-wide engagement with international and national actors, including in many countries that have gone through transition. The paper has been drafted to respond to opportunities opened thanks to the "Arab Spring", but aims at being relevant for situations of transition world-wide.

Torture and the fall of authoritarian regimes

Torture and other ill-treatment is at the centre of systems of authoritarian control. It is used widely to compel compliance or eliminate perceived risks to state security. Yet experience from States in transition has shown that torture does not end automatically with the fall of an authoritarian regime. In contrary, the risk of torture remains high during the period of transition and for new administrations, as the culture of torture remains deeply entrenched in the security apparatus of States that emerge from decades of authoritarian rule. Institutional and social actors need clear political will and determination, and install concrete measures to change the culture of torture.

There is increasing acceptance that in order to put an

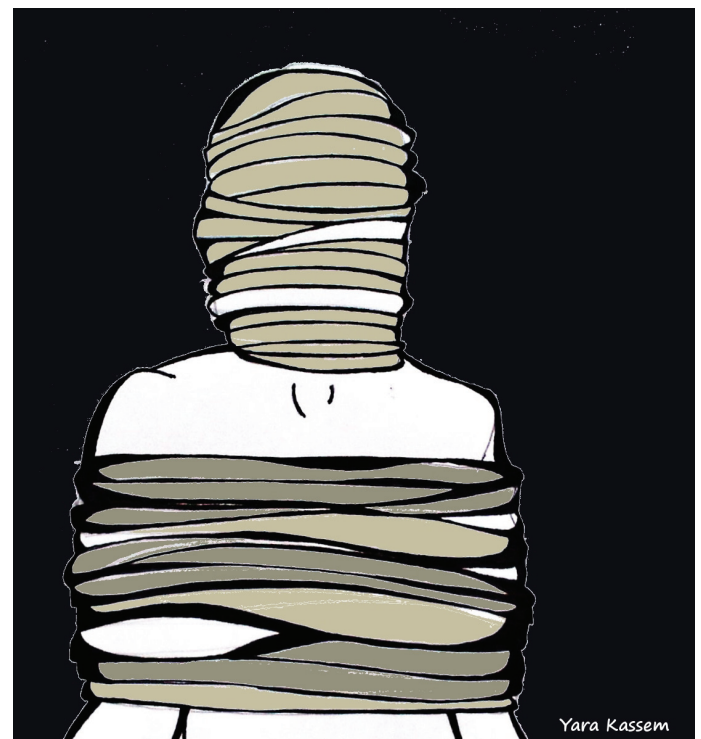
end to ongoing abuse and prevent torture in future, an integrated strategy is needed which lays several building blocks in the early stages of transition. Later, democratically elected governments will be able to continue to arrange these blocks into a sound foundation for a society based on dignity for all persons.

Eight building blocks for torture prevention in times of transition

1. "Never again:" public demonstration of political will

History has shown that the culture and the practice of torture will not disappear automatically. As long as there is any ambiguity around its permissibility, state agents will continue to apply the methods they have used in the past. Freedom from torture and other ill-treatment starts with a clear policy commitment at the highest level to eradicate it, together with measures translating this will into tangible change.

The new authorities are therefore advised to issue unambiguous statements making it clear that torture and ill-treatment will no longer be tolerated, followed by corresponding clear instructions to all relevant ministries.



In order to break with a past marked by torture, it is critical that the new authorities explicitly, publicly and repeatedly condemn the use of torture and other ill-treatment. They need to make it clear that there will be no impunity for perpetrators of torture or for those who condone torture. Such public announcements help to build trust between citizens and institutions of the State. Moreover, they avoid ambiguity among law enforcement personnel about the permissibility of torture and other ill-treatment.

Attacks on peaceful demonstrators - measures that mark the last desperate abuses of a despised regime - must also be condemned. The release of political prisoners and persons detained as a result of peaceful protests illustrates the new commitment to the right of all persons to participate in peaceful protest without fear of arbitrary arrest or reprisal.



2. “No taboo anymore”: speaking about torture in the media

Experience has shown that media actors, from journalists to blog writers to private individuals using social media, are key actors in transitional periods. Such actors raise the visibility of important issues during the transitional phase, and may highlight cases of abuse and opportunities for reform. Of course, media actors can only fulfil this important role if they are adequately protected in law and practice. Transitional authorities should publicly congratulate the media for their role in securing national change and protect media actors from interference or attacks.

Media actors are encouraged to ask political leaders for specific commitments on how they are acting to prevent further cases of torture, and how they plan to punish such cases. Any commitments to prevent and punish torture by political leaders should be published and

celebrated, and any declaration of a determination to effectively prohibit torture should be relied on to seek progress in future.

The media have also investigated and published stories of torture by state agents, often at great risk to their own security. In doing so, media actors demonstrate huge potential to mobilise popular support against abuse and condemn acts of torture and other ill-treatment.

Training of media should bring together multiple diverse actors to consider how to communicate stories of torture effectively, eliminate any remaining culture of torture toleration and contribute to its prevention.

3. “No more secrets”: monitoring prisons, police and detention centres

One of the most effective ways to eliminate practices of torture and ill-treatment is to open up places where persons are deprived of liberty to monitoring and inspections by various state and non-state actors. Many jurisdictions, including in repressive States, know some form of legal provisions allowing supervision of detention. These provisions have often been ignored during the times of repression, but transitional authorities can activate these monitoring mechanisms, including as transitory measures. Some examples of such monitoring mechanism are given below:

► *Judicial supervision of places of detention*

Many jurisdictions provide powers to judges and prosecutors to supervise persons deprived of their liberty, including through regular visits to prisons and police cells. Yet, in States where torture was systematically practiced, the judiciary have been discouraged from investigating cases of abuse.

New authorities seeking to distance themselves from the practices of the old regime should now strongly encourage the judiciary to discharge this part of their mandate as soon as possible, to visit detention centres, receive complaints, interview detainees and submit reports about their findings.

► *Detention monitoring by Civil Society Organizations (CSOs)*

In many States in transition, civil society organizations (CSOs) have made important contributions to improving conditions and treatment in places of detention.¹ If CSOs are independent, flexible and benefit from a high level of trust from detainees and the general public, they

1. Depending on the national context, this kind of detention monitoring might be taken up by human rights NGOs, humanitarian organizations, charities, rehabilitation centres for victims of violence, faith-based groups, University-based centres, community groups or others.

are able to introduce detention monitoring programs in a relatively short period of time. These visits have an immediate deterrent effect on law enforcement personnel. CSOs can also provide the transitional authority with observations and recommendations aimed at improving the treatment and the conditions in the places of detention, thus helping to prevent torture and ill-treatment in future.

Before starting the detention monitoring programme, the terms of access, guarantees and issues related to the protection of confidential information should be clarified between the CSO and the authority in order to make sure international standards are met and no harm is done.

In order to allow for an objective analysis, it is necessary for authorities to allow the CSO to conduct repeated visits to all areas within places of detention, to conduct private interviews with detainees and personnel of their own choice, to consult registers and submit reports with recommendations to the authorities, and subsequently to the public. Experience has shown that it is important to clarify these modalities in forms of Memoranda of Understanding or exchange of letters.²

In many States, Ministers of Justice or the Interior have the power to authorise monitoring visits without having to rely on legislative amendment. Monitoring programmes can therefore be negotiated and commenced in a relatively short period of time.

► **Monitoring by international organisations**

UN bodies and other international organisations are also in a position to assist transitional States conduct monitoring visits and offer advice and recommendations on how to prevent further human rights abuse.

Transitional authorities are strongly encouraged to liaise with the International Committee of the Red Cross and the UN Office of the High Commission for Human Rights to initiate visits to places where persons are deprived of liberty as soon as possible. Visits by Special Rapporteurs are helpful to analyse the situation and to suggest recommendations which can be used as a framework for further steps and reform.

4. “Set the bar high”: ratification of international instruments

As part of any authoritative denunciation of torture, the ratification of key human rights treaties should be a priority. Such ratification serves as a clear signal to the international community that the new authority will no longer tolerate the gross abuses committed in the past,



and begins a process of open dialogue with international human rights bodies which act to enhance human rights protections at the domestic level.

Ratification is not enough; it needs to be followed by concrete steps to transfer the obligations into law and everyday practice. Ratification sets the standards against which progress can be measured. Particularly relevant standards for the eradication of torture are enshrined in the International Covenant on Civil and Political Rights, the Convention against Torture and the Convention on Enforced Disappearances.

International Human Rights law provides for mechanisms to assist States in measuring progress against the targets set by these treaties. The Optional Protocol to the Convention Against Torture (OPCAT) creates such practical mechanisms to protect against torture. It establishes a system of regular visits undertaken by independent international and national bodies to places of deprivation of liberty, in order to decrease the risk of torture and other ill-treatment. In particular, States parties to the OPCAT have to create independent, national mechanism for the prevention of torture. The OPCAT promotes a cooperative and solution-oriented approach and is an ideal mechanism to accompany and steer justice reform processes.

Ratification of other human rights treaties, such as the Convention on Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities should also be considered to launch internal debate on the treatment of persons in detention and promote reform of detention standards and practices.

5. “Anti-torture alarm buttons”: lawyer, doctor, family

Safeguards are procedures, practices or laws which help prevent torture and other ill-treatment. They provide for something like an alarm button that a detainee can activate if his rights are not respected. The following three safeguards are particularly important to prevent torture in the first few hours of detention:

- prompt access to a lawyer
- right to a medical examination by an independent physician
- right to communicate a person’s detention to a third person.

Torture is most often practiced in places of secrecy. If each detainee can contact a lawyer, a doctor and a third person, he can mobilise others to intervene on his behalf, record any evidence of torture or ill-treatment, and alert the outside world to his detention.

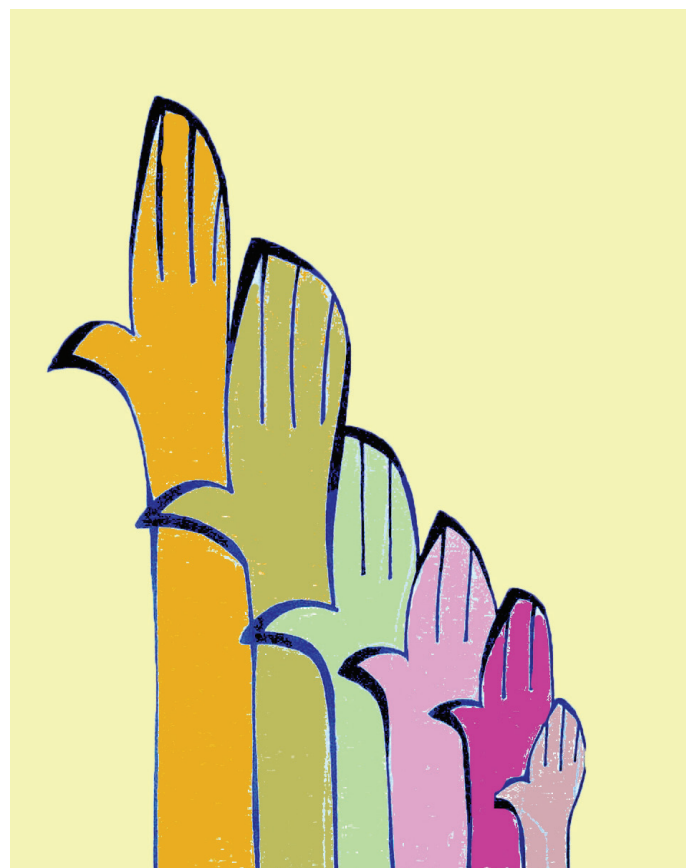
Such safeguards do exist in many jurisdictions, including in repressive States. However, they have probably not functioned during the years of repression. Transitional authorities need to reconnect the alarm buttons by implementing existing legislation where safeguards are in place and reform legislation where they are insufficient.

During the early phase of transition, detainees are also held by armed groups including unofficial militia. The detention of persons in secret and unofficial places of detention is contrary to international law. Therefore, the detention of all persons, both combatants and civilians, must be regulated quickly and transparently during periods of transition to demonstrate to all parties that adherence to human rights will be a priority.

Lawyers and doctors and their professional associations are key allies in the prevention of torture, if they actively seek to obtain access from the first hour to persons deprived of liberty.

6. “Get the basics right”: Constitutional and legal amendments

Constitutional reform provides States with a golden opportunity for constitutional entrenchment of the



absolute prohibition of torture and the basic safeguards against torture and other ill-treatment.

In times of transition, the timing of important legal reforms is a significant challenge. During his recent Mission to Tunisia, Juan Mendez explored whether reform was appropriate or possible during periods of transition. He accepted that structural reforms and fundamental legislative changes must wait until a legitimate assembly is established by popular election. However, Mendez considered that many other changes should not wait, and warned that inaction at this key time may even hamper the possibility of delivering bold and aggressive steps in restoring the rule of law.³



Several legislative changes, such as the repeal of abusive laws or the passage of laws which bring the domestic code in line with existing international commitments and standards are among those which a State may undertake during the transitional period. One necessary reform now required in Tunisia is legislative reform to exclude evidence obtained by torture from all judicial proceedings, in line with Article 15 of the Convention Against Torture.⁴

Other necessary reforms may criminalise the offence of torture, or amend the definition of torture in the State's criminal code, to bring it in to line with the definition in the Convention Against Torture, and prohibit all forms of cruel, inhuman or degrading treatment or punishment.⁵

3. Press Statement of the SRT, *supra*.

4. Mendez noted that in Tunisia, judges are currently not obliged to exclude evidence or statements obtained by torture and recommended an amendment in the law to meet the obligation to exclude such evidence. In another example from Egypt, legislation provides that persons may be held in any places of detention defined by a decree of the Ministry of the Interior. In order to protect detainees from arbitrary arrest and detention, and better protect persons from torture and ill-treatment, detainees should be held in officially recognised places of detention only. Therefore, laws which permit such secret detention must be repealed as incompatible with established human rights practice to protect the detainee. Amnesty International report (2011), *supra*, p.27.

5. For instance, Egyptian law currently defines torture narrowly in the context of eliciting a confession only, under Art's.126-132 of the Egyptian Penal Code. No revisions to these Articles has yet been approved.

States must also require that all allegations of torture or ill-treatment are effectively investigated, and that any evidence obtained by torture or ill-treatment is not used in trials. Cases of torture must be duly criminalised and punished with sentences that reflect the seriousness of the crime of torture. It is often the case in national laws in the MENA region that torture is punished as a misdemeanour, or that administrative sanctions are imposed. This does not reflect the gravity of the crime and does not send a clear message that torture cannot be tolerated.

7. "Resist denial": address past abuses

Where a State shows itself as unwilling to prosecute gross violations of human rights such as torture, it is likely that the culture of impunity which encouraged it will remain, and further violations will follow. Transitional justice is therefore essential to deter further abuse.

Transitional justice may include fact-finding or truth commissions,⁶ reconciliation procedures, institutional reforms and criminal prosecutions. Though the most serious perpetrators must be tried in a court, each State must decide for itself how to balance different elements including accountability, truth, and reparation.

There must be a clear strategy for accounting for past violations, in order to move forward. After long periods of authoritarian rule, society is often burdened with deep-seated resentment and anger. Victims must be heard in order for society to find peace with its past. States in transition must ensure that the truth is told, that justice is done and that reparation is provided to all victims. In this sense, truth, justice and reparation are three aspects of the struggle against impunity in the past and for the future. Judicial measures may be combined with non-judicial measures, including truth commissions, effective procedures for granting reparation and mechanisms for vetting armed and security forces. Measures taken to prohibit torture and ill-treatment in the future must be seen as part of guarantees for non-repetition, which is an essential element of reparation. Thorough discussions with civil society and representatives of victims guarantee that the country will move safely in the transition period.

6. Some examples of truth commissions which were established after periods of conflict are in Argentina (1983), Chile (1990), Guatemala (1996), and South Africa (1995). However, the role of these bodies was limited and each experienced only limited success. See APT, *Truth Commissions: Can they prevent further violations?*, at www.elsam.or.id/pdf/Truth%20Commissions%20-%20Executive%20summaries.pdf.

However transitional justice is to be achieved, due regard must be paid to the rights of accused persons to ensure they are not at risk of torture or other ill-treatment and to protect the integrity of the process.

Military and security trials have generally failed to afford fair trial guarantees to accused persons, and their use has recently been criticized heavily in Egypt, where trials violate important rights to a public trial before an independent and impartial tribunal, the right to prompt access to a lawyer, the right to prepare an adequate defence, and until recently, have denied the right of appeal.⁷ Military and security courts have also sentenced convicted persons to death following unfair trials.⁸

There is a great risk that critical testimony and written evidence will be destroyed during periods of transition. Such evidence must be preserved as a priority. Even in States without independent National Human Rights Institutions, NGO's should seek to record and preserve all evidence of abuse.

8. "Avoid re-infection": exclude perpetrators from the new state sector

Vetting processes assess an individual's integrity to determine whether he or she remains a suitable candidate for public office.⁹ Vetting is a form of administrative justice, widely recognised as a necessary part of broader institutional reforms undertaken during the transitional period aimed at re-establishing public trust after years of serious abuse.¹⁰

Where a person who participated in torture or other ill-treatment is identified, perhaps as a result of a managed vetting process, the State has an obligation remove the person from their post to prevent further abuse. Such administrative liability must extend beyond physical perpetration, to persons who gave authority for acts of torture and ill-treatment as well.

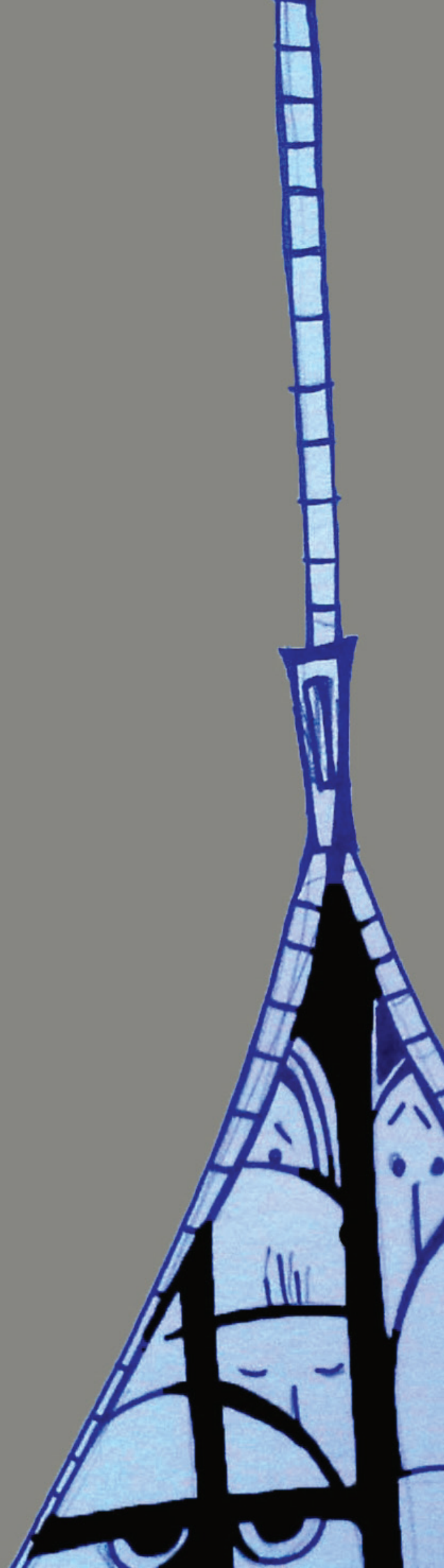
Vetting processes are generally not used to examine the entire public sector. Rather, relevant ministries,

7. Amnesty International report (2011), *supra*, pp.31-33.

8. Amnesty International report (2011), *supra*, p.34.

9. Alexander Mayer-Rieckh & Pablo De Grieff (ed.), *Justice as Prevention; Vetting Public Employees in Transitional Societies* (Social Science Research Council: New York, 2007), p.17.

10. UNDP, *Vetting Public Employees in Post-Conflict Settings; Operational Guidelines* (2006), at www.undp.org/cpr/documents/jssr/trans_justice/Vetting_Public_Employees_in_Post-Conflict_Settings.pdf.



or even just senior posts in particular ministries such as the Ministry of Justice and Interior are the focus of vetting procedures. Where an individual is found to have committed abuses, sanctions involve non-prosecutorial sanctions, with referral to an independent criminal prosecution service where necessary.¹¹

For those who are able to remain, a programme of human rights training should be institutionalised to ensure that remaining oppressive attitudes or abusive legacies of the past are challenged and abandoned.

Eight recommendations on torture prevention in times of transition

1. **“Never again”**: public demonstration of political will statements unambiguously condemning all acts of torture and other forms of ill-treatment should be issued immediately. All public actors should add their pledge to help prohibit torture, and such calls must be repeated whenever such acts reoccur. As political figures prepare for assuming representative roles in a new legislative assembly, commitments should again be sought by civil society.
2. **“No taboo anymore”**: speaking about torture in the media training bringing together multiple diverse media actors to consider how to communicate stories of torture effectively, eliminate any remaining culture of torture toleration and contribute to its prevention should be commenced as soon as it is reasonably safe to do so during the transitional phase.
3. **“No more secrets”**: monitoring prisons, police and detention centres monitoring of places of detention by multiple experts is a critical measure that should be commenced as soon as possible during the transitional phase. Three categories of monitoring bodies capable of initiating visits quickly are the judiciary, CSOs, and international organisations.
4. **“Set the bar high”**: ratification of international instruments transitional authorities should ratify the OPCAT and other key human rights treaties as soon as possible.
5. **“Anti-torture alarm buttons”**: lawyer, doctor, family Key legal and procedural safeguards should be activated as soon as possible to help prevent torture and other ill-treatment.
6. **“Get the basics right”**: constitutional and legal reform the absolute prohibition of torture and basic safeguards should be entrenched in the constitution. Changes to the penal code, repeal of offensive laws or the adoption of existing international obligations

11. Non-prosecution sanctions may involve dismissal, retirement, an invitation to resign or have the decision made public, and other measures. Mayer-Rieckh & De Grief (ed.) (2007), pp.23-25.

should be commenced to effectively prohibit torture and other ill-treatment when an interim transitional authority is installed. Some fundamental or particularly challenging legislative changes should be put on hold until a democratically elected parliament is in place.

7. **“Resist denial”**: address past abuses independent resources should be deployed to preserve important pieces of evidence from destruction immediately, and an inclusive process of transitional justice should be initiated that deals with the violations of the past, giving due regard to the rights of accused persons.

8. **“Avoid re-infection”**: exclude perpetrators from the new state sector leaders who authorised torture and other ill-treatment, and other classes of perpetrators liable for such acts, should be removed from their posts in a fair, open and accountable process of administrative justice during the transitional period.

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