



association for
the prevention
of torture

The Middle East and North Africa

A Torture Free Zone



A tribute to those who stand up against torture

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APT Secretary General

On 6 June 2014, a Geneva court condemned the former Chief of Police of Guatemala, Erwin Sperisen, to a life-sentence for seven extrajudicial executions in 2006. This judgment sends a strong signal to perpetrators and victims of torture alike. Philip Grant, director of the NGO TRIAL said: "The ruling shows that the ideal of justice pursued by so many can be achieved."

The UN High Commissioner for Human Rights, Navi Pillay, recently called [impunity the most powerful fuel for human rights violations](#). The case against Erwin Sperisen demonstrates how civil society, lawyers, prosecutors and judges can work together to fight impunity and extinguish the fire that burns human dignity and destroys people's lives, hopes

and trust in justice. Like all good fire fighters, legal professionals can do more than just extinguish fires. They are experts on hidden braze and embers. Through their direct contact with victims and perpetrators of torture, lawyers, judges and prosecutors also know the risk factors that favor torture. This makes them key advocates for installing safeguards, which can reduce the risk of torture and ill-treatment. This issue of the MENA e-bulletin is dedicated to the role of legal professionals in the fight against torture. I therefore would like to pay tribute to all the courageous lawyers, judges and prosecutors in the Middle East and North Africa, who stand up against torture and ill-treatment, sometimes risking their careers, sometimes their security and lives. The human rights movement owes a lot to their dedication in upholding justice at all times.

I would like to thank all authors who contributed to this issue and Mervat Rishmawi, editor, for having pulled together another inspiring edition of our MENA e-bulletin. I hope that it will be useful and motivating for all of us who believe that torture free zones are possible.

Editorial: The role of members of the legal profession in combating torture and ill-treatment



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Judges, lawyers, legal practitioners and other members of the legal profession can play a very important role in combating torture and other forms of ill-treatment. Lawyers and judges generally often come in direct contact with victims of torture and ill-treatment, and evidence related to such cases. They monitor and address cases of torture and ill-treatment, and they play an essential role in order to ensure reparation, including guarantees of non-repetition of such crimes.

Judges, as a branch of the authorities in any country, independent from the executive and the legislature, play very important roles, some of which are even detailed in human rights treaties like the Convention against Torture. They, for example, are obliged to reject any evidence that may have been extracted under torture or other forms of duress. They need to ensure an investigation when there are grounds to believe that torture may have taken place, even without complaints, or when allegations of torture are made. Judges are also able to visit places of detention, in accordance with provisions in their national legislation. They are therefore able to be in direct contact with persons in detention, and to observe conditions of detention.

Many lawyers play central role as legal professionals in human rights organisations. With other colleagues, they develop proposals for judicial reform. Many organisations also have programs for legal advice and counselling, and they analyse law and practice in light of international standards. Members of the legal profession are also defence lawyers, as part of teams within civil society organisations, as private lawyers, and as part of legal aid programs of bar associations or within authorities.

Contents

Editorial: The role of members of the legal profession in combating torture and ill-treatment	2
1. Opinion Pieces	4
The role of judges and prosecutors in combatting torture and other ill-treatment in the MENA region	4
The role of the judiciary and lawyers in combatting torture in Libya	7
2. Recent UN Reports and Developments	11
Death penalty in Egypt	11
Torture and killing in Syria	12
Israel and occupied Palestinian territories	12
The Human Rights Committee	12
Special Rapporteur on Torture: tainted evidence	13
Special Rapporteur on human rights and counter-terrorism: use of drones	13
Special Rapporteur on human rights defenders: fear of reprisals	13
Optional Protocol to the CRC	13
Revision of the Standard Minimum Rules	14
Palestine accedes to a number of human rights treaties, including UNCAT	14
Convention against Torture Initiative (CTI): global ratification	14
United Kingdom: UN Experts express concern over proposed official inquiry	14
3. From the field	15
Sexual violence in Egypt: Orchestration of torture against women in the public space	15
Defense lawyer before the Israeli military judiciary	18
4. Relevant Publications	22
5. Questions and Answers	23
The correlation between legal aid and prevention of torture	23

Legal professionals can also be found in relevant parliamentary committees, where they contribute to developing legislation and ensuring the appropriate questioning of the executive. Their legislative role helps ensure that national legislation is in conformity with obligations under international law.

As staff of National Human Rights Institutions they also visit places of detention and can report and intervene in cases of torture and other ill-treatment. Members of the legal profession also play an essential role as governmental advisors. Various ministries, not only those of justice, interior or defence, come in contact with issues related to torture and ill-treatment. For example, the Ministry of Health ensures that detention conditions do not amount to torture or ill-treatment, and that appropriate health care is provided during detention. Legal advisors can make sure that this is consistent with state obligations under international law.

While members of the legal professions have very important roles to play, their work can equally be difficult, or result in to restrictions, harassment, and intimidation.

This issue of APT's electronic bulletin "MENA: A Torture Free Zone" focusses on the role of members of the legal profession. Different articles explore the various roles of legal professionals, but also show the difficulties that they face in their work. The first opinion piece by the International Commission of Jurists highlights the role of judges and prosecutors in ensuring that cases of torture and other ill-treatment are adequately investigated, prosecuted and punished. It includes examples from the MENA region which demonstrate problems in these aspects including the failure to guarantee access to legal counsel; the use of incommunicado detention and prolonged solitary confinement; the failure by judges and prosecutors to investigate allegations of torture; impunity for those responsible; and the failure to exclude evidence extracted under torture or ill-treatment. The opinion piece highlights the need for legal and judicial reform. The opinion piece from Libya focuses on the role that judges and lawyers are playing in Libya during the transitional period and highlights issues related to legal reform. The piece also reflects on the challenges they face as the security situation in the country remains volatile.

In Egypt, working on cases of sexual violence is far from being an easy task. The sexual violence that existed in the country before the revolution, and which still is a weapon of repression, has imposed itself on the agenda of human rights organisations. Many horrifying cases have been documented during the revolution and subsequent gatherings and protests. Activists consider sexual violence as a form of torture, as the article in this Bulletin shows. The piece also addresses the role of the state in cases of repression by non-state actors. Activists work together to try to influence policies and to find reparation for survivors. In their work to defend the rights of survivors, human rights defenders are themselves subjected to harassment, intimidation and violence.

Palestinian children, held by Israeli authorities in the Occupied Palestinian Territory, are in dire need for lawyers. However, the lawyers find themselves working within a legal system which lacks basic guarantees of fairness and legality and that does not respect their role as lawyers.

The section on Recent Developments from the UN system includes the increased concern over harassment and intimidation of human rights defenders. It highlights a report of the UN Special Rapporteur on Torture, focusing on the "exclusionary rule" – the exclusion of evidence that may have been extracted under torture. The section also provides information on Palestine's accession to international treaties.

1. Opinion Pieces

The role of judges and prosecutors in combatting torture and other ill-treatment in the MENA region

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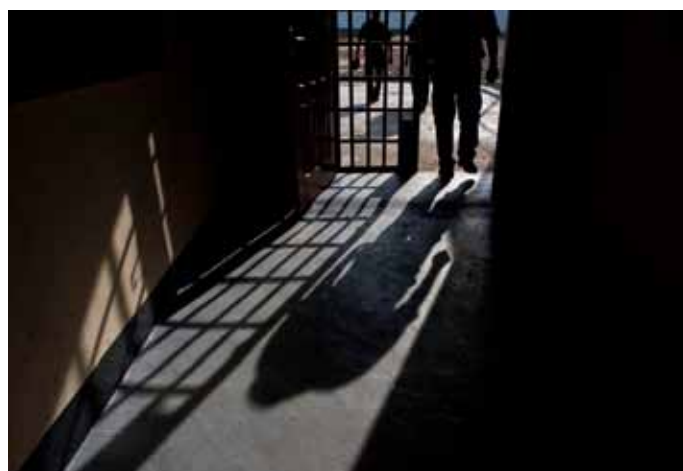
An independent and impartial judiciary and prosecutorial authority are crucial to ensuring the effective enforcement of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. However, in most of the Middle East and North Africa (MENA) region, judges and prosecutors have systematically failed to ensure that cases of torture and other ill-treatment are effectively investigated, prosecuted and punished.

This article highlights certain aspects of this failure, including by referring to a limited number of examples from MENA countries for illustrative purposes. This Article does not provide a comprehensive review of the matter.

In most MENA countries, detainees are rarely provided with adequate guarantees against torture and other ill-treatment, including the right to legal counsel from the moment of arrest and the right to challenge the lawfulness of detention. Many detainees are subject to prolonged incommunicado detention and sometimes to prolonged solitary confinement, both of which can amount to torture or other ill-treatment. In situations where the fact and/or location of the detention is undisclosed, the situation may amount to an instance of enforced disappearance, which is a crime under international law. Allegations of torture and other ill-treatment made by detainees are rarely investigated. Those responsible are almost never held to account, criminally or civilly, and victims' rights to effective remedies and to reparation continue to be largely denied. Further, where a detainee alleges, or where there are otherwise reasonable grounds to believe that he or she has been subjected to torture and other ill-treatment, the authorities generally will not provide independent medical examinations

conforming to international standards, including those set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). In addition, "confessions" obtained as a result of torture or other ill-treatment are regularly admitted as evidence by courts. Before such evidence is admitted, courts generally fail to require prosecution services to prove beyond reasonable doubt that the "confessions" were obtained by lawful means and voluntarily from the accused.

For MENA countries to meet their obligations under international law, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) and the International Covenant on Civil and Political Rights (ICCPR), to prevent, investigate, prosecute and punish acts of torture and other ill-treatment, they should end policies and practices of secret detention and prolonged incommunicado and other arbitrary detention, which are common in the region.



In Syria, the use of secret and prolonged incommunicado detention has been widespread and systematic, and includes holding detainees in unofficial and secret places of detention and denying their right to contact family members and to have access to legal counsel and to a court. In Libya, unofficial detention facilities continue to operate under the effective control of armed groups and outside any rule of law framework. Acts of torture and other ill-treatment are widespread in these facilities. Detention in these facilities might amount to an instance of enforced disappearance.

The Working Group on Arbitrary Detention has

stressed that “secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human being under customary international law. The arbitrariness is inherent in these forms of deprivation of liberty as the individual is left outside the cloak of any legal protection.” [Para 60 of the Working Group on Arbitrary Detention [report of 24 December 2012](#), A/HRC/22/44.]

To meet their obligations under international law, MENA States must ensure that all detainees are held and registered in official detention facilities, including by disclosing: their identity; the date, time and place of their detention; the identity of the authority that detained and interrogated them; the grounds for their detention; and the date and time of their admission to the detention facility. In order to comply with these obligations, MENA states should undertake comprehensive reforms of the framework relating to detention.

Indeed, in many MENA countries, acts of torture and other ill-treatment have been facilitated, and sometimes even exacerbated, by domestic laws relating to detention. In Morocco, for example, the Counter-Terrorism Act, No. 03-03 of 28 May 2003, permits the extension of the length of garde à vue (detention in police custody) in “terrorism” cases to 96 hours, renewable twice upon the authorisation of the public prosecutor. Furthermore, during the garde à vue, prosecutors, at the request of the police, may also delay the detained person from contacting a lawyer for up to 48 hours after the commencement of the first renewal period. Therefore, a “terrorist” suspect might be prevented from communicating with a lawyer for the first 6 days of garde-à-vue. Under international standards, anyone arrested or detained has the right to be assisted by a lawyer without delay and to communicate and consult with his/her lawyer without interception or censorship and in full confidentiality. This right may be delayed only in exceptional circumstances and must comply with strict criteria determined by law. In any event, the person deprived of their liberty should have access to a lawyer within 48 hours of their arrest or detention.

An effective means to combat policies and practices of arbitrary detention, torture and other ill-treatment and enforced disappearance is to ensure

that detention is subject to independent judicial review. Under international law and standards, all detained persons have the right to challenge the lawfulness of their detention and to be brought before a judge or a judicial authority within 48 hours of their arrest. However, in many of the MENA States, detention is subject to review by the Office of the Public Prosecutor (OPP). It is notable that in these States, prosecutors are under the authority of the Minister of Justice. As such, they cannot be considered as officers authorized to exercise judicial power. The Human Rights Committee considered that “it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with”. The Committee argued that it was “not satisfied that the public prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an “officer authorized to exercise judicial power” within the meaning of article 9(3)”. [For further details, see Human Rights Committee, Vladimir Kulomin v. Hungary. Communication No. 521/1992, 22 March 1996. CCPR/C/56/D/521/1992, paragraph 11.3.]

In many MENA countries, the subordination of the OPP to the executive has resulted in a lack of prompt, independent and impartial investigations into allegations of torture and other ill-treatment. Prosecutors regularly refuse to register complaints of ill-treatment or torture. In the limited cases where inquiries have been ordered subsequent to such complaints, investigations have been unreasonably prolonged and have failed to address the responsibility of superiors for the conduct of their agents.

Such practices breach the obligations of these States under international law, including the UN CAT and the ICCPR. Under Article 12 of this convention, “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. This obligation is also reflected in Principles 33 and 34 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. In addition, Article 13 of the UN CAT recognises the right of individuals to make a complaint regarding allegations of torture and “to

have his case promptly and impartially examined by, its competent authorities". Those carrying out the investigation must, among other things, seek to "recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible" and, to this end, should order a medical investigation as soon as possible.

In this context, the Committee Against Torture has recognized that, "Securing the victim's right to redress requires that a State party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)." [See Committee Against Torture, [General Comment No. 3 \(2012\)](#), para 25.]

In the case of *Khaled Ben M'Barek v. Tunisia*, concerning the death of Faisal Baraket due to police torture, the Committee Against Torture noted significant shortcomings on the part of the judge, the Public Prosecutor, and the Minister of Justice. In particular, the Committee stated that the Public Prosecutor had committed a breach of the duty of impartiality required of him by his obligation to give equal weight to both accusation and defence "when he failed to appeal against the decision to dismiss the case". The Committee went on to note: "In the Tunisian system the Minister of Justice has authority over the Public Prosecutor. It could therefore have ordered him to appeal, but failed to do so". [See *Khaled Ben M'Barek v. Tunisia*, Committee Against Torture Communication No. 60/1996, Views of 10 November 1999, UN Doc. [CAT/C/23/D/60/1996](#), para. 11.10.] More recently, in the report of his visit to Tunisia in 2012, the UN Special Rapporteur on torture noted, "a pattern of a lack of timely and adequate investigation of torture allegations by prosecutors or investigative judges". [See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Tunisia, 2 February 2012, UN Doc. [A/HRC/19/61/Add.1](#), para. 29.]

In its concluding observations on Egypt, the Committee Against Torture pointed to the "many consistent reports received concerning the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials, and the absence of measures to ensure effective protection and prompt and impartial investigations." [See Conclusions and recommendations of the Committee Against Torture, Egypt, 23 December 2002, UN Doc. [CAT/C/CR/29/4](#), para. 5.] A Fact-Finding Commission was established by the ousted President, Mohamed Morsi, to investigate human rights abuses committed from 25 January 2011 until 30 June 2012. The Commission, generally considered as impartial and credible, documented many cases of individuals: "arrested by military police and intelligence officers and subjected to torture and other ill-treatment in military prisons"; "who died from torture while in military custody"; and "who died from torture while in military prisons and were then buried as "unknown" after the authorisation of the public prosecution services". The Commission submitted its report to the Prosecutor General with a view to investigating all cases documented in the report. So far, the Prosecutor General has failed to investigate, order the investigation of or commence any criminal proceedings in relation to, the documented abuses. [For further details see the [ICJ's submission](#) to the Universal Periodic Review of Egypt.]

When prosecutors fail to discharge their duties by adequately investigating and prosecuting acts of torture and other ill-treatment, courts are under a duty to protect the rights of the persons deprived of their liberty not to be subjected to these acts. Courts must investigate or order the investigation of allegations of torture and other ill-treatment. They must not admit as evidence statements and "confessions" alleged to have been obtained as a result of torture or other ill-treatment. They should also require, before the admission of such evidence, that the prosecution prove beyond reasonable doubt that the "confessions" were obtained by lawful means.

In the "UAE 94 case", 94 individuals were prosecuted before the State Security Chamber of the UAE Supreme Court on charges of "opposing the Constitution and the basic principles of the UAE ruling system and establishing and managing an organization with the aim of committing crimes

that harm State security". On 6 May 2013, 71 of the detainees addressed a complaint to the President of the Court asking him to investigate the incidents of torture to which they had been allegedly subjected. The methods of torture they referred to in the complaint included severe beatings, pulling out the detainees' hair, sleep deprivation, exposure to extreme light during the day and night, death threats and other threats, insults and other verbal abuse, and prolonged solitary confinement that lasted, in some cases, more than 236 days. One of the accused described to the Court the beatings he received and stated that as a result of these beatings, he urinated blood and his leg swelled to the extent that he was unable to walk.

Neither the President of the Court nor the prosecutor investigated or ordered investigation into the allegations made by many of the detainees during the hearings and in the complaint. Neither the President of the Court nor the prosecutor ordered any medical examination of the detainees who alleged that they were subjected to acts of torture or other ill-treatment. Furthermore, "confessions" alleged to have been obtained as a result of these acts were admitted as evidence by the Court. Before allowing the admission of such evidence, the President of the Court failed to require the prosecution to prove beyond reasonable doubt that these "confessions" were obtained voluntarily and not by coercive means. Sixty-nine of the accused were convicted on 2 July 2013 by the State Security Chamber and sentenced to serve terms of imprisonment ranging between 5 and 15 years. (For more information about the UAE 94 case, see ICJ report, [Mass convictions following an unfair trial: The UAE 94 case.](#)]

Preventing and eradicating acts of torture and other ill-treatment in the MENA region requires holding the perpetrators of these acts to account and ensuring the rights of victims to effective remedies and reparation. It also requires comprehensive reform of the criminal justice systems, including laws and policies on detention, evidence, and forensic medicine. Ultimately, however, these reforms will be illusive if, as illustrated by the UAE 94 case and numerous other cases, judges and prosecutors fail to carry out their functions independently, impartially and in defence of the absolute right of the persons deprived of their liberty not to be tortured or ill-treated.

The role of the judiciary and lawyers in combatting torture in Libya

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1. Introduction

On 27 April 2014, the most anticipated trials since the end of the 2011 Revolution began in Libya. 37 detainees associated with the Gaddafi regime, including his son Saif Al-Islam Gaddafi and Abdullah Al-Senussi, Intelligence Chief under the Gaddafi regime, have been accused of conflict-related crimes and are currently being prosecuted in Tripoli. While this evidences efforts made by the legal profession and the state to prosecute grave crimes, it is not reflective of the overall situation in Libya. Access to justice continues to be, in fact, rarely available and cases that do begin are often adjourned for indefinite periods.



It is worrying to see that the desire to provide transitional justice has seemingly taken priority over combatting current violations. While transitional justice remains a fundamental aspect of providing redress and in ensuring accountability for past crimes, it is vital that it is coupled with addressing issues which continue in post-conflict situations. This new post-conflict era in Libya provides lawyers and judges with the unique opportunity to combat torture and other forms of ill-treatment, thus changing the culture of impunity which has continued on from the Gaddafi era. To understand why this opportunity has yet to be seized, it is worth reflecting on the current prevalence of torture in Libya, why the judiciary and lawyers are currently at

an impasse, and what measures need be taken in order to overcome it.

2. Obstacles

a) The prevalence of torture in Libya

The legacy, of both the colonial and Gaddafi eras in Libya, has been the establishment of a culture where torture is deemed acceptable in certain circumstances. This has been entrenched further by revolutionary legitimacy, as public opinion frequently deems acts of torture as legitimate if they are carried out by pro-revolutionary forces against suspected Gaddafi loyalists. Violations of international law, such as stress positions, are frequently not considered human rights abuses, even by the survivors of such acts themselves. The extent of these misconceptions was made clear to [Lawyers for Justice in Libya \(LFJL\)](#) during our organisation's constitutional outreach efforts. In 2012, LFJL travelled to 37 communities in order to discuss human rights issues and canvas the opinion of the Libyan public. When discussing with participants the meaning of torture, over 64% were of the opinion that freedom from torture should not be an absolute right and more than 40% felt that there were instances where torture was in fact justified.



The widespread prevalence of torture has continued to be documented in post-revolutionary Libya. Torture is unsurprisingly more frequently reported in detention institutions controlled by non-state actors. This is due to the de facto guards lacking necessary experience or training, lack of oversight, as well as the fact that access of detainees to legal representatives or civil society actors is extremely restricted. The [United Nations Special Mission in Libya](#) has recorded at least 27 cases where significant

information suggests that torture has resulted in the death of detainees. Eleven of the deaths alone took place in detention facilities under the authority of the Government, but which are effectively under the authority of armed brigades, between January and June 2013.

The United Nations Human Rights Council has therefore called upon the Libyan government to urgently increase its efforts to establish full and effective control of detention centres. This is considered vital in order to ensure that all detainees are treated in accordance with international standards and have access to their fundamental rights, notably those relating to due process of law and fair trials. It has urged the state to immediately release all detainees who will not be charged.

b) Insecurity

The political situation in Libya remains highly turbulent. Violence and riots have continued to occur regularly since the end of the Libyan revolution. Most recently, on 16 May 2014, a coup led by General Khalifa Haftar demanded Libya's government hand power to the judiciary and called for the formation of a Presidential Council. Such ongoing uncertainty has created significant challenges for the legal profession.

The lack of internal security has meant that it has been difficult to start proceedings on behalf of torture victims. This is particularly due to the reluctance of armed non-state groups to hand over power or to be held accountable to law other than their own. This has made it dangerous to be publically critical of the actions of such groups. For making such assertions several lawyers, judges and journalists have died, or been injured, as a result of targeted assassinations. The will of armed non-state actors to carry out such violent responses, is only strengthened by the popular belief that torture can be legitimate in certain circumstances.

Although various international standards, such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) place an obligation upon states

to take 'effective legislative, administrative, judicial or other measures to prevent acts of torture', the Libyan state has thus far failed to provide safeguards to lawyers and judges. Without such, lawyers and judges will continue to be restricted in exercising their professional duties freely, impartially and independently.

c) Legal and institutional obstacles

Judges and lawyers are currently contending with the previous regime's legal infrastructure; the laws of which are not always comprehensible, desirable or easily enforceable. While some efforts have been made to adopt new provisions in line with international human rights obligations, realistic means of anti-torture enforcement remain weak in Libya. For example, Article 2 of the new 2013 Law Criminalising Torture, Enforced Disappearances and Discrimination specifies a person responsible for torture as:

"Anyone who personally inflicted or ordered another person to inflict pain or suffering whether physical or mental, on a detainee under his control for such purposes as obtaining from him a confession for an act committed, or for any reason based on discrimination of any kind or revenge for any cause..."

This definition is narrower than that included in UNCAT as it restricts torture to acts committed against detainees. By restricting acts to detention facilities, the law fails to comply with the broader definition in UNCAT where torture may be committed against a 'person', that is a person who is not necessarily detained. The law also fails to protect the 'third person' which is provided in the international standard. Under Article 1 of UNCAT torture is defined as any act carried out for the purposes of obtaining from a person himself or a third person information or a confession, punishing him or a third person for an act committed, or intimidating or coercing him or a third person. This fails to provide a sound basis on which to build a comprehensive anti-torture framework, especially in the current environment in Libya where a significant proportion of torture occurs outside official detention facilities. The Law also fails to adhere to the principle of non-refoulement, which guarantees the prohibition of deporting, extraditing or otherwise transferring a person to a state where

there are substantial grounds for believing that he or she would be subject to torture.

Attempts to increase accountability for human rights violations are on-going and welcome. The National Council for Civil Liberties and Human Rights (NCCLHR), for example, has recently begun to provide a complaints procedure for those who survive acts of torture. However, this is a limited first step, as notably it has only received 61 complaints throughout the whole of 2013, of which only one was addressed in their annual report.



Further attempts at accountability and redress were made by the Minister of Justice on 19 February 2014 who adopted a text protecting victims of sexual violence by ministerial decree. The decree suggests victims of sexual violence, during the 2011 conflict, should be entitled to reparation measures, including financial compensation, health care, granted training, education, discounts to vehicles, employment opportunities and access to housing, as well as legal support for bringing perpetrators to account. Whilst this was a desirable step in recognising that survivors of sexual violence can be considered victims of war crimes, the decree seemingly lacks any real applicability. This is due to the lack of a realistic mechanism by which to determine beneficiaries or how access to provisions will be secured without further stigmatisation of victims. In this way it threatens to act as merely a tokenistic gesture that will leave victims with little real redress.

3. Specific post-conflict obligations and recommendations

In light of these significant institutional and cultural challenges it would be understandable to simply

relegate Libyan lawyers and the judiciary to the sidelines, until other actors have managed to progress the transitional process further. However, there is a pressing need for lawyers and judges to creatively redefine their roles and actively be involved in transition. Indeed this is necessary in order for some semblance of justice, the rule of law, and respect for human rights to result from this period.

The role of judges

According to the Istanbul Protocol, '[a]s arbiters of justice, judges play a special role in the protection of the rights of citizens. International standards create an ethical duty on the part of the judges to ensure the rights of individuals are protected.' Judges are obliged to uphold national laws, and ensure that domestic legislation remains compatible with international standards. In deciding cases impartially and independently, judges also ensure the accountability of perpetrators of torture. Judges should ensure that the power of militia groups should not influence the judiciary and the administration of justice as a whole.



Nevertheless, as much of the role of the judiciary is within the setting of the courtroom, and due to the security situation in Libya causing a de facto suspension of the judiciary on certain occasions, judges must take creative and assertive roles in combatting torture. For example, judges may provide comments on torture laws in Libya, advocate for legal reforms, assist with advising on the constitution, or provide much-needed assistance to external forces. Assistance may take the form of establishing a system to monitor places of detention which would empower judges to make recommendations that could help result in improvement. This would satisfy the requirement

under Article 15 of UNCAT where competent authorities are obligated to proceed in conducting investigations promptly and impartially. Judges should further ensure that any statement made as a result of torture is not permitted as evidence in any proceedings, as provided by Article 12 of UNCAT. Such measures, while only temporary, could help contribute to the combatting of torture until the security situation permits more substantial change. The judiciary must resist calls to take on other roles or powers of state branches during the transitional period. Whilst such calls are understandable in an environment which lacks credible and viable political actors, such actions would only undermine the judiciary's current credibility and violate the country's fragile separation of powers.

The role of prosecutors

As 'essential agents of the administration of justice,' prosecutors have the duty to take an active role in criminal proceedings of the state. In doing so, they must ensure that the prosecution of crimes committed by the state such as grave violations of human rights and other crimes in international law are duly investigated. In particular, prosecutors are obliged to ensure that evidence and information gathered during an investigation has been properly obtained. In doing so, prosecutors guarantee that detainees' fundamental freedoms, such as the right not to be tortured or ill-treated, are not violated during the course of an investigation.

There are currently between 6,000 and 8,000 conflict-related detainees in detention facilities. It is the duty of prosecutors in Libya to ensure that all those in pre-trial detention are charged or released and to check the maintenance of effective custody records. Prosecutors, having the specific duty in charging perpetrators, should take active steps to ensure that they are conducted legally and safely. As many cases of torture occur during pre-trial detention, this would help reduce the exposure of detainees to human rights violations and ill-treatment.

Role of lawyers

Lawyers have a specific obligation and play an important role in ensuring that those subjected to torture and ill-treatment are aware of their legal

rights and are assisted with any legal action needed to protect their interests. They must ensure victims have the ability to seek redress within a court, tribunal or administrative authority. As access to justice has been limited in Libya, lawyers should take assertive measures to actively seek cases. Where legal mechanisms are lacking, lawyers should endeavour to exhaust all regional and international mechanisms available to them. While efforts to provide accountability for torture and ill-treatment may be hindered within Libyan courts, lawyers can seek to combat torture by educating various groups, such as students, government officials and activists about the absolute prohibition and the importance of ending impunity for such crimes. Lawyers, who are denied access to detention facilities, should challenge this within the domestic and international forums. Lawyers may also enhance the capabilities of medical professionals by providing training on how to document suspected cases of torture.

For further information on Lawyers for Justice in Libya please visit www.libyanjustice.org or contact info@libyanjustice.org

2. Recent UN Reports and Developments

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The following is a brief summary of selected highlights of main developments relating to detention and prevention of torture and ill-treatment in the work of UN human rights mechanisms.

Death penalty in Egypt

In April 2014, nine United Nations independent experts, together with the Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa raised grave concern over the death sentences imposed in April 2014 on a group of 683 persons, on charges related to the events in Al-Minya in August 2013. The verdicts were pronounced in the aftermath of a first round of mass death penalties imposed upon 529 individuals in March 2014. In both cases the death sentences were pronounced, reportedly under similar charges, after proceedings that seriously violated international standards of fair trial and 'the most serious crimes' provisions included in international and regional standards. Among concerns were the lack of clarity on the precise charges against each individual, conduct of the trials in the absence of the defendants and their lawyers, and mass sentencing. "The right to life is a fundamental right, not a toy to be played with. If the death penalty is to be used at all in countries which have not abolished it, international law requires the most stringent respect of a number of fundamental standards," the experts said. The experts called on the Egyptian authorities to bring its legal system into compliance with international and regional standards so as to ensure long-term justice and contribute to reconciliation efforts in Egypt. For the text of the statement, [click here](#).

The UN High Commissioner for Human Rights also strongly condemned the shocking imposition of the death penalty after mass trials that, she said, clearly breached international human rights law. For the statement and the list of experts, [click here](#).

Torture and killing in Syria

The UN Office of the High Commissioner for Human Rights issued a paper detailing rampant use of torture in detention facilities across Syria by Government forces and some armed opposition groups. The analysis is based on interviews by the UN Human Rights Office with individuals who have spent time in detention facilities in Syria during the conflict.

The Human Rights Council also extended the mandate on Syria in March 2014. The Council also heard from the Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, in which he reminded the Council that:

“The lives of over one hundred thousand people have been extinguished. Those freed from detention now live with the physical and mental scars of torture. The fate and whereabouts of thousands more remain unknown.” He added that “civilians in besieged areas have been reduced to scavenging. A recent photograph showing thousands of people queuing for food at the Yarmouk camp in Damascus has underlined how desperate, and how precarious, the lives of the besieged have become.”

He also added that civilians are repeatedly the victims of acts of terror, including from car and suicide bombs targeting civilian areas by non-State armed groups, which have caused extensive casualties and destruction, and the Government’s campaign of barrel-bombing. For the text of the report of the Commission of Inquiry, [click here](#).

Further, the Working Group on Enforced or Involuntary Disappearances called for action by the highest United Nations bodies to tackle the disappearance issue in Syria.

Israel and occupied Palestinian territories

In his report before the Human Rights Council in March 2014, the UN Special Rapporteur on the occupied Palestinian territories called for an assessment by the International Court of Justice (ICJ) on the legal status of the prolonged Israeli occupation of Palestine, and allegations that it has legally unacceptable characteristics of ‘colonialism’, ‘apartheid’ and ‘ethnic cleansing.’ This was the final report of the current Special Rapporteur on the situation of human rights in the Palestinian territories. In the report, the Special Rapporteur addresses Israeli settlements in the West Bank, including East Jerusalem, and the wall in the context of the tenth anniversary of the advisory opinion of the ICJ. He also addresses concerns in relation to the deterioration of the human rights situation of Palestinians living under the Israeli blockade in the Gaza Strip. For a copy of the report, [click here](#).

On the other hand, the Human Rights Council adopted in March 2014 the Universal Periodic Review Outcome Document of Israel, for the first time ever in the history of the Council in the absence of the official delegation of state. It should be noted that the Council was supposed to start the review process of Israel in January 2013. However, Israel refused to cooperate and to attend the session, the first delegation ever to have done so. The Council then decided to postpone the review to October 2013. For full information on the Israel UPR review and all the related documents, [click here](#).

The Human Rights Committee

In March 2014, The UN Human Rights Committee concluded its first reading of its draft General Comment on Article 9 of the International Covenant on Civil and Political Rights, regarding the right of everyone to liberty and security of person. The General Comment elaborates on who benefits from the protection (both in criminal proceedings, and other forms of deprivation of liberty). The draft General Comment also elaborates on the connection between deprivation of liberty and freedom from bodily injury, and the duty of the State to protect persons from injury caused by agents of the State

or third parties. The draft General Comment also addresses the issues of arbitrary and unlawful detention, the requirement of notice for reasons of arrest and criminal charge, judicial control of detention in the context of criminal charge, the right to proceedings for release from unlawful or arbitrary detention, the right to compensation for unlawful or arbitrary detention, and the relationship of Article 9 with other Articles of the Covenant. Comments by various stakeholders will be taken into account during a second session in July 2014. For the text of the draft General Comment 35, [click here](#).

Special Rapporteur on Torture: tainted evidence

The UN Special Rapporteur on Torture urged governments in his report to the Human Rights Council in 2014 to strictly abstain from using information or products of acts of torture and ill-treatment collected by third parties in other countries. "It is hypocritical of States to condemn torture committed by others while accepting its products," he underscored. He added that "Governments cannot condemn the evil of torture and other ill-treatment at the international level while condoning it at the national level." The Special Rapporteur outlined in his thematic report of March 2014 the use of torture-tainted evidence and what is known as the exclusionary rule. For the text of the report, [click here](#).

Special Rapporteur on human rights and counter-terrorism: use of drones

The Special Rapporteur highlighted in his last report the use of remotely piloted aircraft, or drones, in extra-territorial lethal counter-terrorism operations. He pointed to allegations that the increasing use of drones had caused a disproportionate number of civilian casualties. The Special Rapporteur outlined in his report a number of critical legal questions including those related to transparency and accountability. He also noted that the General Assembly took the view that human rights and humanitarian law were relevant in the context of drones. For the full report, [click here](#).

Special Rapporteur on human rights defenders: fear of reprisals

The Special Rapporteur on human rights defenders expressed deep concern about continuous violations against human rights defenders by both State and non-State actors, ranging from threats and criminalisation, to torture and killings. She expressed grave concern that claiming and defending human rights today remained highly dangerous in many parts of the world and the space for civil society and human rights defenders was shrinking. Defenders and their families were often intimidated, harassed, subject to enforced disappearances and sometimes even killed by both State and non-State actors, while impunity for those acts prevailed. In her interactive dialogue with the Human Rights Council, the Special Rapporteur raised concern about reprisals against human rights defenders who engaged with international human rights systems. Among the countries in MENA which the Special Rapporteur expressed concern about with regards to ongoing reprisals include Bahrain, Israel, Syria and the United Arab Emirates. In her report, the Special Rapporteur highlighted a number of elements for a safe enabling environment for human rights defenders, including the need for a conducive legal environment, fight against impunity, and special attention to risks and challenges against women defenders. For the full report of the Special Rapporteur, [click here](#).

Optional Protocol to the CRC

On 14 April 2014, the Optional Protocol to the Convention on the Rights of the Child on Communications Procedure entered into force following its ratification by the required 10 countries. This will allow children and their representatives to submit complaints directly to the UN Committee on the Rights of the Child about alleged violations of their rights under the Convention on the Rights of the Child, as well as under its other two Optional Protocols (on the involvement of children in armed conflict and on the sale of children, child pornography and child prostitution). For text of the Optional Protocol in all UN official languages, [click here](#).

Revision of the Standard Minimum Rules

The last expert meeting looking into the revision of the Standard Minimum Rules for the Treatment of Prisoners was held in Vienna in March 2014, where stakeholders again argued for specific revisions in nine broad areas of the Rules. Previously, the APT, together with other human rights organisations, made submissions with proposals for the Review. It is expected that further discussions and proposals, and expert meetings will be held before the revised Minimum Rules are adopted. For an article on this subject in Issue 4 of the MENA Electronic Bulletin, [click here](#).

Palestine accedes to a number of human rights treaties, including UNCAT

On 2 April 2014, the State of Palestine deposited with the Secretary-General its instruments of accession to 15 international treaties. These included seven of the nine core human rights treaties plus one of the substantive protocols, without any reservations, in addition to the four Geneva Conventions and the Hague Protocol IV. The State of Palestine is the only country in the whole of the Middle East and North Africa not to make a single reservation on any of the treaties it has ratified. For the list of ratified treaties and further information, [click here](#) and also [here](#).

Convention against Torture Initiative (CTI): global ratification

On 4 March 2014, the Governments of Chile, Denmark, Indonesia, Morocco and Ghana launched a public appeal, inviting other States to join them over the next decade to achieve universal ratification of the UN Convention against Torture, and to put the Convention into concrete practice. This ten-year State-led Initiative intends to offer technical support and legal advice to States to achieve universal ratification and effective implementation of the UNCAT. For further information about the Initiative, [click here](#).

United Kingdom: UN Experts express concern over proposed official inquiry

The UN Special Rapporteur on Torture and the Special Rapporteur on the Protection and Promotion of Human Rights While Countering Terrorism welcomed the publication of parts of an interim report of an official investigation into the extent of the United Kingdom's involvement in torture and other human rights violations concerning people detained overseas in the context of counter-terrorism operations. However, concern was expressed that a proposed official inquiry is to be entrusted to a parliamentary body, the Intelligence and Security Committee (ISC). The Special Rapporteur on Torture was concerned that this body has previously failed to fully investigate prior allegations of torture, ill-treatment, rendition and surveillance in the context of counter-terrorism and national security. He reminded the UK that according to the UNCAT, States have the obligation to ensure that all allegations of torture or other cruel, inhuman or degrading treatment or punishment are promptly, effectively and impartially investigated by an independent, competent domestic authority. This obligation applies also whenever there is reasonable ground to believe that such an act has been committed. For full text of the statement, [click here](#).

3. From the field

Sexual violence in Egypt: Orchestration of torture against women in the public space

Amal Elmohandes
Director of the Women Human Rights Defenders Programme
Nazra for Feminist Studies

At the age of 20, during my Gender and Women's Studies Program, I learnt that sexual crimes are crimes of violence, and that the fact that they are "sexual", does not mean that we have to approach them, or deal with them with a heightened sense of secrecy or shame.

Since joining [Nazra for Feminist Studies](#), I have come to believe that they are not only crimes of violence, but crimes of sheer and utter torture when committed by agents of the state or under their consent and acquiescence, including their failure to protect persons from actions by private individuals. It is no secret that sexual violence has been evident in Egypt's public space for many years. However, a real debate around these crimes of torture has begun during the past 2 years.

This is as a result of the efforts made to put it on the public agenda by various organizations, one of which, I'm proud to say, is Nazra for Feminist Studies,

a feminist group in Egypt that aims to foster a strong feminist movement with a different perspective, as well as pioneers of the Egyptian feminist movement, such as [El Nadeem Center for the Rehabilitation of Victims of Violence and Torture](#), [Center for Egyptian Women's Legal Assistance \(CEWLA\)](#), and [New Woman Foundation](#) (to name but a few) in the issue of sexual violence.

Women have been subjected to sexual assaults by mobs and gang rapes in public venues before the January 25th Revolution in 2011, whether in music concerts, in front of movie theatres, or at public celebrations. However, the huge influx of both women and men in the public space since the Revolution, has forcefully prompted the question of how women's bodies are accepted in the public space, and even how they are used or abused politically. On 11 February 2011, the day Mubarak was removed and

the Supreme Council of Armed Forces (SCAF) came into power, several mob-sexual assaults and gang rapes were reported to have taken place in Tahrir Square and its vicinity. Following that, several incidents were reported by Nazra for Feminist Studies. Under the rule of SCAF, 7 women human rights defenders (WHRDs) were subjected to virginity tests on 9 March 2011; women protesters were arrested during the Mohamed

Mahmoud clashes in November 2011, where they were threatened with rape and were sexually assaulted by the police forces; and during the dispersal of the Cabinet sit-in in December 2011,



the infamous 'Blue Bra Girl' incident took place, in addition to the severe physical and sexual assault that was conducted against women and WHRDs [For Nazra's report "One Year of Impunity: Violations against Women Human Rights Defenders in Egypt From August to December 2011" [click here](#).] These crimes took place with complete impunity, and more crimes followed, by both state and non-state actors. These include and are not limited to the attack on the Anti-Sexual Harassment demonstration that took place on 8 June 2012, after the 3 documented cases of mob-sexual assault and gang rapes that happened on 2 June, 2012 in Tahrir Square [For "Testimonies on the Recent Sexual Assaults on Tahrir Square Vicinity" [click here](#)].

In addition there were 19 documented cases of gang rapes and mob-sexual assaults in November 2012, which included rape with fingers and sharp objects, as well 24 cases documented in January 2013 on the anniversary of the Revolution. For a report compiling and analysing these cases, including the testimonies themselves, [click here](#). 186 cases documented during the period 28 June to 7 July 2013, during demonstrations calling for the removal of Mohammad Morsi, where survivors were again raped with fingers and sharp objects, mirroring the crimes that had taken place in both November 2012 and January 2013 by non-state actors.

[Click here](#) for a joint statement on these events was issued in July 2013. See "Brutal Sexual Assaults in the Vicinity of Tahrir Square and an Unprecedentedly Shameful Reaction from the Egyptian Authorities: 101 Incidents of Sexual Assaults during the Events of June 30th 2013". On the third anniversary of the Revolution, 3 more cases were documented. One included an attack which was inadvertently shown live on television during coverage of the anniversary celebrations, and was watched by the programme's presenters without comment.

Other examples of such crimes include the tragic turn of events that resulted in the murder of two young women by their sexual harassers for daring to defend themselves against verbal sexual harassment in 2012 and 2013; and the sexual assault of women protesters in the Al-Fath and Al-Tawheed Mosque clashes on August 16, 2013 after the dispersal of Raba'a Al-Adawia and Al-Nahda sit-ins by members

of the Central Security Special Forces [for a report detailing these cases, [click here](#)]. On November 26, 2013, at least 17 WHRDs were sexually assaulted in front of the Shura (Consultative) Council as they were arrested by the security forces during the dispersal of the demonstration against bringing civilians in front of military trials [[click here](#) for "Concept Paper: Different Practices of Sexual Violence against Women"]. They were severely physically assaulted at the police station, and 'dumped' in the middle of the desert. These were quickly followed by the sexual assault and a case of oral rape that was documented during the ongoing clashes taking place in Egyptian universities, including Al-Azhar University (according to a testimony collected by Nazra for Feminist Studies).



Moreover, mob-sexual assault has taken place in Cairo University on March 16, 2014, coinciding with the Egyptian Woman's Day, where a female student was chased by a mob of men on the campus of the Faculty of Law, sexually assaulted and her clothes torn [for further information, [click here](#)]. Crimes committed and testimonies collected show clearly a systematic pattern of actual rape and the threat of it, and of sexual assault. These include the use of vaginal tests conducted at Al-Qanater Women's Prison, where married women are stripped naked, aggressively and intrusively have their vagina checked by the fingers of the prison warden (a woman) who wears a used plastic bag on her hand, to check for any hidden weapons, drugs or other objects [for further information, [click here](#)]. Testimonies collected show how such a test causes severe psychological trauma and humiliation to the women who are subjected to it, not to mention the potential health hazards they might suffer from afterwards.

These examples are symbolic of Egyptian society's ambivalence towards such crimes, including the attitudes of politicians, governmental officials, the media (which disclose the identity of survivors and fetishize the sexual aspect of these crimes in their coverage), police officers who emotionally blackmail survivors who seek legal redress and prevent them from going forward with the legal process they seek, and the majority of nurses and physicians, who lack training, and treat survivors with disdain and negligence.

Nazra for Feminist Studies continues to receive reports of cases of rape through its hotline.



Faced with the utter silence of the concerned national machinery, grassroots groups took it upon themselves to take action. These include intervention groups such as Tahrir Bodyguard, Operation Anti-Sexual Harassment and Mob-Sexual Assault (OpAntiSH) [[click here](#)], and many others. As detailed earlier, members of these groups, including women and men, were themselves subjected to various forms of torture, including mob-sexual assaults, and brutal physical attacks, in addition to the post-traumatic symptoms they still suffer from, as a subsequence of the violence they were exposed to, as they intervened in mobs of perpetrators.

In these cases approximately 70 to 100 men tear away at survivors' bodies, strip them of their clothes, and rape them with their fingers and sharp objects, leaving survivors to suffer from severe physical injuries, which are sometimes life threatening.

Since January 2013, feminist groups have demanded, until they were literally 'blue in the face', that thorough and comprehensive investigations take place. They have submitted a set of recommendations to the Ministry of Transitional

Justice [[click here](#)], and sent other recommendations to the Independent Fact-Finding Commission [[click here](#)]. Unfortunately, yet unsurprisingly, none of these recommendations were taken into account or effect, and as a result, these crimes only increased, paralleling the escalating societal violence taking place, and the crackdown of the security forces after the issuance of the Protest and Public Assembly Law [[click here](#) for further information].

Despite the response of different grassroots initiatives and groups, including Nazra for Feminist Studies and other feminists, for example training in listening skills to survivors, first-aid medical tips, set up of operation rooms, provision of guidelines to the media on how to cover these crimes, in addition to the provision of psychological, medical and legal support to survivors, it became abundantly clear that a holistic national strategy is needed to be designed and implemented by the national machinery on multiple facets. This must include the amendment of the Egyptian Penal Code to include the definition of rape to portray oral and anal rape, rape with fingers and sharp objects, and a clear definition for both sexual harassment and sexual assault. Furthermore, the Ministry of Interior needs to be restructured, since its members commit these crimes themselves, and a clear vetting process needs to take place to ensure that no person linked to such crimes remains in a position of power. Those responsible must be brought to justice and punishment proportionate to the gravity of their crimes must be imposed. A clear plan for ending impunity must be adopted. Hospitals need to be furnished with rape kits, and its professional members need to be trained on how to deal with survivors. Schools and universities need to have a wide-ranging awareness raising campaign on crimes of sexual violence, and the Forensic Medicine Authority needs to deal with survivors with dignity and respect.

In order for these measures to exist, a real and genuine conversation needs to take place between the national machinery, including the National Council for Women, and civil society institutions such as feminist groups and organisations, politicians and other important actors to formulate clear steps and policies that target combating violence against women in both private and public spheres, mainstreaming of a gender perspective in these measures and policies, in addition to a

political will to hold perpetrators accountable, and establish truth committees that offer recognition and redress for survivors.

Highlighting the role of judges and lawyers here is very important. The shortcoming in the definition of rape in the Egyptian penal code, and the lack of a definition for sexual assault, leads to judges' inability to legally issue verdicts that would achieve the shaming needed in these crimes, and prosecutors always state that in cases of mob-sexual assault and gang rape, evidence is not present due to the fact of having several unknown perpetrators, in addition to the absence of rape kits in Egyptian hospitals as stated above. Laws in the Egyptian penal code are extremely patriarchal and traditional in nature, which makes it very difficult for survivors to hold their perpetrators accountable. An example of the lack of due legal process is present in the joint case submitted to the prosecution of 7 cases of mob-sexual assault and gang rapes that took place in November 2012 and January 2013, where the files of the case were not found, and when lawyers from feminist organizations tried to identify the stage at which the case was at, information was never revealed by the prosecution [[click here](#) for a report including information about the cases].

Accountability needs to be achieved. Whether this will happen or not is not a question of luxury or leisure anymore. Such measures are direly needed to save a society that systematically turns a blind eye to the violation and torture of women of all ages, one that is falling apart, and a long-term planning and implementation of such a strategy is the only procedure that could merely start mending the severe and brutal wounds suffered by its women.

Defense lawyer before the Israeli military judiciary

Advocate Khaled Quzmar

Legal Advisor

Defence for Children International-Palestine Section

1. Introduction

Since the beginning of the Israeli occupation of the Palestinian territories, Palestinian children have been exposed to various forms of injustices and violations of their rights at the hands of the Israeli occupation forces. Indeed, all of the established rights of the child have been thus violated, including the rights to life, health, education, and freedom. From the beginning of the Second Intifada in September 2000 until now, over 1,400 Palestinian children have been killed by the Israeli occupation and settler forces, and tens of thousands have been injured. In addition, the arrest of over 8,000 children has been documented, and the rights of these children have been violated, including through their exposure to all manner of torture and ill-treatment and their being denied a fair trial, with no consideration being given to their special status and rights as children.



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Whatever the reasons behind their arrests, all children should receive humane treatment which preserves their dignity and reinforces respect for children as the holders of human rights and fundamental freedoms. In theory, numerous international standards and treaties protect children, and the Israeli occupier state is party to a number of these, such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Despite the fact that Palestinian

children are arrested by the occupying authorities on political grounds and under the pretext that they are resisting the occupation and “threatening the security of the occupying state” – which means that these children have not violated the law but rather are activists exercising their right to participation and expression – they are treated as criminals and terrorists. The treatment they receive is in violation of the principles of international humanitarian law and international human rights law.



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The Palestinian children who are arrested by the Israeli occupation forces vary in age, yet those 12 years old and older are referred to trial and subjected to various forms of torture. Their suffering begins at the moment of their arrest and continues until their release. In many cases these children remain marked by their experiences in detention, with the psychological effects of torture and ill-treatment affecting children long after their release including during interrogation, trial, and the serving of sentences.

2. Detention period

Arrests are often carried out after midnight (between 1 a.m. and 3 a.m.). After the house is surrounded by a large number of heavily armed soldiers, stun grenades are at times used and teargas thrown into the house. At this point, megaphones are used to demand that residents exit the home with their hands and clothing raised. The house is then raided and children pulled from their beds, their hands bound and eyes blindfolded. The detained children are then taken to one of the Israeli occupation’s military interrogation centers. While being transported to these centres, detained children are often made to sit on the floor of the vehicle between the soldiers’ legs, and many times

they are beaten, kicked, cursed, and insulted with obscene language.



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3. Interrogation

As soon as detained children arrive at the interrogation centre, interrogations begin in Hebrew or very broken Arabic. These interrogations take place without the presence of a lawyer or guardian; according to the Israeli military orders in effect in military tribunals, children can be denied access to a lawyer for up to three months. This isolates children from the outside world, adds to their fears about what will happen to them, and keeps them from accessing necessary legal counsel and proper protection during this period.

4. Trial

At some point during the first 4-8 days following their arrest, children are brought before a military judge to extend the period of detention. It should be noted that lawyers are not given notice to attend these sessions, even though lawyers are permitted to attend the court sessions if no decision is issued by Israeli intelligence prohibiting a detainee from meeting with a lawyer. The trial thus begins, and the military tribunal may extend the period of detention for up to six months before charges must be brought against the detained child. The Israeli military courts function based on military orders, the most prominent of which is Military Order 132 regarding the trial of children. Some of the most important points to note with regards to this order are as follows:

- The order discusses military courts – not civilian courts – when referring to trials of children;

- None of the international standards to ensure a fair trial are upheld;
- The child's age is determined based on the date on which the sentence is pronounced, rather than the date on which the act for which the child is being tried was committed;
- The military order directly refers to penalties for children without mentioning reform, rehabilitation, or other alternatives to criminal penalties;
- The military order refers to implemented prison sentences as the first penal procedure for children.



5. Detention conditions

During the pretrial detention period or while serving prison sentences, detained children are denied most of the rights guaranteed to them in international law and even under Israeli law itself. The most prominent such instances are as follows:

- Denial of the right to education
- Depriving children of visits as a form of blackmail or punishment (most children who are detained for less than six months are denied any visits from their families before being released)
- Denial of the right to medical treatment, in addition to a policy of medical neglect
- Deprivation of communication with the outside world (family visits, mail, phone calls)
- The use of corporal punishment

6. Working as a defense lawyer before the Israeli military court system

As a result of my extensive experience working within the Israeli military court system as a defense

lawyer for Palestinian detainees, I am able to summarise the experience, and indeed suffering, of such lawyers in the following ways:

Lawyers work with the firm conviction that Palestinian detainees have the right to resist the occupation. Dealing with such military tribunals (which are not permissible under international law, as it prohibits the trial of civilians before military courts), concedes legitimacy to these courts.

Lawyers are unable to practise law in a military court because their role is reduced to that of a mere intermediary between the interests of the detainee and the Israeli military prosecution.

The fact that this court system is based upon military orders and designed for the punishment of Palestinians means that it has become impossible to achieve any justice for Palestinians before the Israeli military court system.

The other source of lawyers' suffering is that, with time, they begin to feel that they become part of the system, as there is a massive gap between what a lawyer can practically do or achieve before the military court system and the expectations of detained children. This has negative psychological effects on lawyers, leaving them with feelings of discouragement and guilt – despite all of their efforts.

Any challenge to the Israeli military court system brought by lawyers before the courts – such as referring to international human rights law or even to the Fourth Geneva Convention – results in the detained child paying the price while in prison. The military courts do not recognise international law in their proceedings, and thus the case is delayed and often results in more severe sentences designed to deter similar challenges.

The military courts are located within the occupied Palestinian territories. They have jurisdiction only over Palestinians, not the settlers living in the same areas. This means that if a settler were to bring a complaint against a Palestinian, a military court would have jurisdiction over the matter, whereas if a Palestinian were to bring a complaint against a settler, an Israeli civilian court would have jurisdiction over the matter (if the complaint were

to be accepted at all). We thus face a judicial system that practices racial discrimination in the fullest sense of the term.

Despite all of the aforementioned issues, such lawyers continue to play an essential role in defending – as far as possible – the rights of detained Palestinian children and reducing their suffering while in detention.

7. Conclusions

Even as the occupying state does not accept the Fourth Geneva Convention's applicability within the occupied Palestinian territories, it exploits the Convention by arbitrarily implementing some of the Convention's provisions to justify its own violations of international humanitarian law. This behaviour requires that a firm stance be taken by the international community in order to compel the occupying state to provide protection to children under its occupation.



Violations committed against detained children require that the occupying authorities carry out serious, independent, and impartial investigations into each case in which a violation was committed, hold those responsible to account, and compensate the victims. In reality, the opposite is what occurs. The international community must therefore take on the responsibility of forming a special criminal tribunal to try Israeli war criminals.

The current United Nations system lacks a mechanism for implementation, and as such its work is limited to reporting. The professional efforts of the United Nations teams are thus wasted, which in effect condones the violations committed by these criminals.

The vast majority of cases of detained Palestinian children fall under the classification of arbitrary arrest and violate children's rights to expression and participation.

Violations of the rights of detained children – such as arbitrary arrest, torture, and ill-treatment – are considered grave violations of the Fourth Geneva Convention and thus fall under the classification of war crimes and crimes against humanity which require international accountability.

Finally, as a lawyer who has followed the cases of detained children for many years, I am able to assert that the practice of torture and ill-treatment of Palestinian children is a widespread phenomenon which affects nearly every child who is detained. Solitary confinement, sleep deprivation, binding of the hands and blindfolding, threats, intimidation, and beatings are commonly used, in addition to the psychological pressure exerted on children by interrogators with the goal of obtaining confessions from them in the least amount of time possible. Children may also be denied access to lawyers for up to three months, and all of this is considered "legal" according to the Israeli military orders which are in effect.

4. Relevant Publications

APT Publications on the role of lawyers in torture prevention in Arabic



[“Torture in International Law: A guide to jurisprudence”](#)

Geneva APT / CEJIL, **2008** - 198 p.

Language versions: Arabic, English, French, Spanish



[“Legal Safeguards to Prevent Torture - The Right of Access to Lawyers for Persons Deprived of Liberty”](#)

Geneva APT, 2010, 18 p.

Language versions: Albanian, Arabic, Armenian, English, French, Georgian, Portuguese, Russian, Spanish



[“The role of lawyers in the prevention of torture”](#) – an APT legal Briefing paper

Geneva APT, 2008, 10 p.

Language versions: English, French

Recent APT publications in Arabic



[“Monitoring Police Custody - A practical guide”](#)

Geneva: APT, **2013** – 180 p.

Language versions: Arabic, English, French, Portuguese, Russian, Spanish

Monitoring Police Custody is an indispensable tool for any person or organisation carrying out monitoring visits to police stations. It takes a

concrete approach to torture prevention practice and methodology, which also makes it useful for NGOs, police academies, universities, policy makers and others with an interest in police and human rights issues. Contents:

- The powers of the police and how these may interfere with human rights.
- Visits to police stations: a methodology on preparation, conduct and follow-up.
- International standards related to police powers and police custody.



[“Preventing Torture: An Operational Guide for National Human Rights Institutions”](#) and accompanying **CD Rom** (subtitles in Arabic, English or French)

APT / APF / OHCHR, **2010** – 116 p., 30 cm

Language versions: Arabic, English, French, Spanish, Russian

The NHRI Guide, published in cooperation with the Asia Pacific Forum for National Human Rights Institutions (APF) and the Office of the UN High Commissioner for Human Rights (OHCHR), is now available in Arabic. It is a practical tool designed to strengthen the capacity of NHRIs to engage in torture prevention in their countries. The first part provides the legal context for torture prevention. The second part outlines the practical steps that NHRIs can undertake to prevent torture, illustrated with examples of good practices.



The Guide is complemented by a CD Rom which will be available with Arabic subtitles soon.

* APT publications can be downloaded for free from our website: www.apr.ch/publications

5. Questions and Answers

The correlation between legal aid and prevention of torture

The right to access a lawyer is an important safeguard against torture and ill-treatment. What happens if the detainee is not able to appoint a lawyer? Is there a correlation between legal aid, a system of public defence and prevention of torture? The Fifth annual report of the Subcommittee on Prevention of Torture has addressed the issue in its annual report in 2012. The following is a direct extract from the report, CAT/C/48/3, 19 March 2012, For full report, [click here](#)

“77. The right of access to a lawyer from the outset of detention is an important safeguard to prevent torture and other cruel, inhuman and degrading treatment or punishment. This right goes beyond the provision of legal aid solely for the purpose of building up a technical defence. Indeed, the presence of a lawyer at the police station may not only deter the police from inflicting torture or other cruel, inhuman and degrading treatment or punishment, but is also key to assisting in the exercise of rights, including access to complaints mechanisms, for those deprived of their liberty.

78. Effective protection of the right to counsel requires the existence of a legal assistance model, whatever this model might be, to ensure the performance of defence counsels in an independent, free and technically qualified manner. For the realisation of the right to counsel there should be a legal framework which allows for public or ex officio defence – whether provided by public officials or by lawyers working pro bono – with functional independence and budgetary autonomy to guarantee free legal assistance for all detainees who require it from the time of their arrest in a timely, effective and comprehensive manner. In addition, the existence of an organizational framework which ensures effective equality of

arms between the public defender (be it State, pro bono or mixed), the Public Prosecutor and the police force is essential.

79. Budget and staff constraints directly affect the public defence system as they generate an excessive workload that is not compatible with the effective defence of the interests of persons deprived of their liberty. This was observed repeatedly in the countries visited by the Subcommittee, through numerous interviews both with detainees and officials from various State organisations and civil society, and through information collected and verified during these visits.

80. Defence lawyers should visit their clients in detention periodically to obtain information concerning the status of their cases and to conduct confidential interviews to determine both their detention conditions and their treatment. They must play an active role in the protection of the rights of detainees. The lawyer is a key player – along with judges and prosecutors – in the execution of writs of habeas corpus.

81. Many victims of torture and other cruel, inhuman and degrading treatment or punishment are unwilling to report ill-treatment suffered for fear of reprisals. This can put lawyers in a difficult situation as they cannot commence legal action without the consent of their clients. In this regard, a centralized national database of allegations and incidents of torture and ill-treatment, including anonymous, confidential information obtained under professional confidentiality, is recommended. Such a register would be a source of useful information that could point to situations where urgent action is required, and could also assist in the development and adoption of preventive measures. The NPM and other such bodies vested with authority to deal with prevention of and complaints concerning torture and ill-treatment should also have access to such a national register of allegations and incidents of torture and ill-treatment.

82 The relationship of public defence lawyers to the NPM should be one of complementarity and coordination. Both actors, institutionally relevant in the prevention of torture and ill-treatment, should follow up on the various recommendations, share work programmes and plan their work on common issues, in particular to avoid reprisals after monitoring visits.”

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