Issue 01

association for the prevention of torture

The Middle East and North Africa

A Torture Free Zone

A space for torture free zone activists!

Torture is a grave violation of human dignity, deeply wounding individuals and poisoning societies. The APT supports partners who strive to create zones in which no one needs to fear torture or ill-treatment.

This e-bulletin aims at creating a space through which activists and experts can exchange ideas and opinions about how to create torture free zones and share experiences about exciting new work and difficult challenges, with a special focus on the Middle East and North Africa region.

The APT would like to warmly thank the many activists, experts and organisations that have contributed to this pilot issue.

Particular thanks go to the editor, Mervat Rishmawi, for her hard work in compiling this first issue and to the members of the Advisory Panel for their valuable comments.

We hope that reading this issue will be inspiring for you. Please do share your reactions, comments and further thoughts on how to free our societies from the scourge of torture. I wish you all the success in your anti torture work.

For reactions to this issue and suggestions and contributions to future issues, please contact the Bulletin through: editor.mena@apt.ch

Mark Thomson
Secretary General, APT

Table of Contents

Editorial 2

Never Again!

The fight against torture and ill-treatment in the Middle East and North Africa

1. Opinion Pieces

The ECtHR judgment in Abu Qatada v. UK 4

A Police Code of Conduct in Lebanon 6

The need for dedicated anti-torture legislation in Jordan

2. Recent Updates

UN Recognises the Vital Role of Legal Aid 9

Standard Minimum Rules on the Treatment of Prisoners: Time for revision? 9

Thematic focus of the report of the UN Special Rapporteur on Torture on Commissions of Inquiry 10

The UN Human Rights Council appoints a new Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence 10

3. From the Field

Towards a National Action Plan to Prevent and Abolish Torture in Tunisia 11

North Africa is opening up to transparency in places of deprivation of liberty 12

Will the Lebanese parliament pass the law establishing a National Torture Prevention Committee? 13

4. Questions & Answers

Is a slap in the face torture? 14

Can solitary confinement amount to torture or ill-treatment? 15

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Editorial

Mervat Rishmawi, *Editor*

Never Again!
The fight against torture and ill-treatment in the Middle East and North Africa

The events of the last year which have rocked many parts of the Middle East and North Africa have been momentous for all of us working on human rights in the region. What is referred to collectively as the "Arab Spring" has shown how systematic human rights violations, including torture and other forms of ill-treatment, will never be tolerated no matter how long time passes and

OPCAT Global Forum

how brutal the methods of repression are.

The preamble of the Universal Declaration of Human Rights (UDHR) proclaims that "[w]hereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". Indeed, as predicted by the UDHR over 64 years ago, systematic human rights violations, including torture and ill-treatment, were widely and systematically used as tools of oppression and tyranny by the regimes and therefore lie, in addition to desire for political, economic and social reform, at the heart of the causes of the revolutions against them. People were driven to take to the streets in protest not only to demand better standards of living, but essentially to be treated with dignity.

Important changes have been achieved in some countries. Yet, in others, massive violations still continue. One important message shared in the revolutions and demands for reform is "never again"! Never again must these violations be allowed to happen. Therefore, next steps must focus on creating mechanisms both for

dealing with the violations of the past and holding those responsible to account, and to ensure that such violations do not happen again.

At the same time as such major changes were happening, the Association for the Prevention of Torture (APT) held on 10-11 November 2011 a Global Forum to mark the fifth anniversary of the entry into force of the Optional Protocol to the UN Convention against Torture (OPCAT). The Forum was a unique occasion which for the first time brought together all OPCAT States Parties, National Preventive Mechanisms and the Subcommittee on Prevention of Torture, to take stock on the implementation of the OPCAT. The Forum considered how OPCAT is innovative in the way that it has combined and built on elements of existing treaties providing for independent visits to places of detention. The Global Forum reached agreement that torture prevention requires a holistic and long-term approach that seeks to reduce the risks of torture occurring in the future. To achieve that, torture prevention requires an inclusive approach. This means not just engaging with wider spectrum of actors including judges, parliamentarians, medical doctors, staff working in places of detention and former persons deprived of liberty, but also ensuring that the issues of vulnerable groups are mainstreamed into preventive work.

The discussion at the Forum on the Middle East and North Africa, including by a number of participants from the region, highlighted that combating torture and other forms of cruel, inhuman, or degrading treatment or punishment requires a broad approach: not just prohibiting, criminalising, investigating and punishing violations but preventing them before they occur. We all felt that torture prevention is key to ensuring that we stop violations before they happen. Our resolve was that everything must be done to ensure that violations do not take place systematically and on such a widespread scale as before.

Our recent experience in the Middle East and North Africa shows that political, social and economic stability cannot be achieved without addressing human rights violations. Indeed, prevention of torture and other forms of ill-treatment becomes not only necessary to ensure respect for human rights, but is also cost effective in saving vital human and material resources. The message is clear: no to impunity for past violations, and yes to prevention to stop future abuses.

The Global Forum gave many of us working in the region the chance to exchange ideas with each other and with international colleagues and to learn from comparative experiences. In so doing we appreciated the unique value of such an opportunity and the chance it gave us to explore ways to foster our future cooperation in the fight against torture and ill-treatment.

The idea of this Electronic Bulletin was therefore born. It is created by the APT as a space through which activists and experts can exchange ideas and opinions, share information about exciting work and techniques, stay informed of important recent developments, and discuss questions and get information on matters which enable them to do their work.

While this pilot issue of the Bulletin has been produced specifically with the aim of fostering our work in the Middle East and North Africa region, it is hoped that its contributions can be equally useful for other parts of the world. It has been developed with the generous support of many activists, experts, and organisations.

This Electronic Bulletin has four major sections: firstly, a section which contains analytical 'Opinion Pieces' on a

OPCAT Global Forum

number of themes; another sharing information 'From the Field' of successful work and techniques on the fight against torture and ill-treatment; a third section including information on 'Recent Developments' on the UN and regional mechanisms; and a final section which includes selected 'Questions and Answers' on issues of pertinent importance to the work of activists and which may contribute to developing and strengthening our fight against torture and ill-treatment.

It is our hope that the Bulletin will become an important space of exchanging information, ideas, analyses, and opinions -not only a reactive tool, but a space for proactive and pre-emptive work. It will rely on the contributions of activists, experts and organisations committed towards fighting torture and other forms of ill-treatment.

1. Opinion Pieces

Opinion on: The ECtHR judgment in Abu Qatada v. UK

Manfred NowakFormer
UN Special Rapporteur on Torture

On 17 January 2012, the European Court of Human Rights delivered the long awaited judgment in the case of Omar Othman (Abu Qatada) v. UK. It concerns the question whether Abu Qatada, a well-known radical Jordanian Islamist, who had been sentenced in absentia in 1999 in Jordan for terrorist-related charges to life imprisonment with hard labour after having been granted asylum in the United Kingdom, and who has been considered as a threat to British national security for many years, may be extradited to Jordan on the basis of diplomatic assurances by Jordan to the effect that he will not be subjected to torture upon return. The outcome of the Strasbourg judges came as a surprise to many of us: The seven judges ruled that the Memorandum of Understanding (MoU) signed on 10 August 2005 between the Governments of the UK and Jordan contained enough assurances that Abu Qatada's forcible return to Jordan would no longer expose him to a real risk of torture or other forms of ill-treatment contrary to Article 3 of the European Convention on Human Rights (§205). At the same time, the judges found, however, that his deportation would be in violation of Article 6 of the ECHR because there was a real risk of a flagrant denial of justice, meaning that the State Security Court in Jordan would "try him in breach of one of the most fundamental norms of international criminal justice, the prohibition of the use of evidence obtained by torture" (§s 285 and 287).

The principle of non-refoulement, as we know it from Article 33 of the Geneva Refugee Convention 1951 and of Article 3 of the UN Convention against Torture 1984, is not explicitly mentioned in the ECHR. But the European Court of Human Rights, in constant jurisprudence since its 1989 landmark judgment in Soering v. UK, holds that States parties to the Convention may also violate the Convention if they expel, extradite or in any other way forcibly return a person to another country (within or outside Europe) where he or she faces a real risk of a serious violation of any of the Convention's human rights. In reality, the principle of non-refoulement was, however, only applied by the Court and similar bodies, such as the UN Human Rights Committee monitoring compliance with the International Covenant on Civil and Political Rights, in relation to the prohibition of torture, cruel, inhuman or degrading treatment or punishment, and to the death penalty. But in Soering, the Court has already stated that an issue of non-refoulement might exceptionally be raised under Article 6 ECHR by an expulsion or extradition decision in circumstances where the fugitive had suffered or risked suffering a "flagrant denial of justice" in the requesting country. Nevertheless, in the 22 years since the Soering judgment, the Court has never found that an expulsion would be in violation of the right to fair trial in Article 6 (see §260). Therefore, in this sense, the Abu Qatada decision can be regarded as another landmark judgment further developing the principle of non-refoulement. The evidence in the present case was indeed overwhelming. Abu Qatada had been already sentenced in absentia by the Jordanian State Security Court in two trials (1999 and 2000) on the basis of statements by his co-defendants, Abdul Nasser Al-Hamasher and Abu Hawsher, which were clearly extracted by brutal torture, notably falanga, applied to them by the notorious Jordanian General Intelligence Directorate (GID) in Amman. On the basis of extensive evidence in relation to the torture practices of the GID and its close cooperation with the State Security Court, which regularly bases its judgments on evidence extracted by torture in the GID, the European Court found that Abu Qatada has met the high burden of proof required to demonstrate a real risk of a flagrant denial of justice when re-tried after his forcible return to Jordan.

European Court of Human Rights in Strasbourg

In relation to the question of diplomatic assurances, the judgment is, however, disappointing. It is true that the Court has never ruled out before that diplomatic assurances with proper monitoring could, in principle, reduce the risk of torture to an extent that the deportation would no longer constitute a serious risk of torture in the receiving country (§193). On the other hand, many NGOs and experts, including the UN High Commissioner for Human Rights, the Council of Europe Commissioner for Human Rights and myself in the function as former UN Special Rapporteur on Torture, consider diplomatic assurances by States which are well-known for their practice of torture, as nothing but attempts to undermine the absolute prohibition of torture and the principle of non-refoulement. Why should a State party to the UN Convention against Torture, such as Jordan, which in gross violation of its international treaty and

customary law obligations, resorts to widespread and routine torture, all of a sudden stop its torture practices only because the UK, which has a vital interest in deporting Abu Qatada, requests it to make an exception in this particular case? In my former role as UN Special Rapporteur on Torture, I repeatedly travelled to London to convince the British Government to abstain from signing MoUs with countries like Jordan, Libya and Lebanon to this effect. But the then Home Secretary, Charles Clarke, strongly objected to my request by stating in a very blunt language that the security of the British people mattered more to him than "human rights of a few terrorists". In other words, he did not even deny that there was a continuing risk of grave human rights violations for persons which his Government, for security reasons, wished to deport to their countries of origin. He, therefore, made a balancing of interests which, in fact would be admissible under Article 33(2) of the Geneva Refugee Convention. But such a balancing of interests is not permissible in relation to the absolute prohibition of torture under Article 3 of the UN Convention against Torture and Article 3 ECHR, as both the UN Committee against Torture and the European Court of Human Rights have stressed repeatedly (e.g. Agiza v. Sweden and Saadi v. Italy).

In the Abu Qatada case, the European Court considered a wealth of evidence, including my own findings of routine torture by the GID and total impunity for torture as a result of my fact-finding mission to Jordan in June 2006 (§s 109-111). The Court concluded that "torture is perpetrated systematically by the General Intelligence Directorate, particularly against Islamist detainees. Torture is also practiced by the GID with impunity." (§191). Furthermore, the Court found it "unremarkable that the parties accept that, without assurances from the Jordanian Government, there would be a real risk of ill-treatment of the present applicant if he were returned to Jordan" (§1923). But after a thorough review of the MoU and its provisions relating to monitoring by the Jordanian NGO Adaleh, it surprisingly came to the conclusion that this MoU in fact had removed the risk of ill-treatment: "the Jordanian Government is no doubt aware that not only would ill-treatment have serious consequences for its bilateral relationship with the United Kingdom, it would also cause international outrage" (§196). Notwithstanding all warnings that Adaleh has no experience in monitoring of places of detention and that it finds itself in a very vulnerable position dependent on funding by the British Government which has a vested interest that Adaleh will not find any evidence of torture, the Court "is satisfied that, despite its limitations, the Adaleh Centre would be capable of verifying that the assurances were respected". With all due respect to the wisdom of the European Court of Human Rights, these assumptions seem to me a little naïve. When I visited the GID Headquarters in Amman after having been officially invited by the Jordanian Government with all assurances that I had the right of interviewing all detainees in private, the head of the anti-terrorism department simply denied me the right to speak in private with detainees. My strong protests to the Minister of Foreign Affairs did not change anything, because the GID was simply more powerful. How shall a small Jordanian NGO like Adaleh, without the full authority of the United Nations behind its back, ensure its right to speak in private with GID detainees? When I reported to the UN Human Rights Council about the routine practice of torture in the GID and other detention facilities of Jordan, the Council did not even adopt a resolution urging the Government of Jordan to stop its practices of torture. On what experience does the European Court of Human Rights base its assumption that the torture of only one further individual, Abu Qatada, would "cause international outrage". Only because the British Government received a diplomatic assurance from the Jordanian Government that the GID would make an exception in his case in order to facilitate the deportation of this most wanted individual?

When I recently met the British Foreign Secretary Ken Clarke in Vienna shortly after the delivery of the Abu Qatada judgment, he left no doubt that the British Government considers this judgment as a victory despite the fact that Abu Qatada is still prevented from being deported. He assumed that another diplomatic assurance from the Jordanian Government to the effect that the State Security Court would not base any future judgment against Abu Qatada on any evidence which has been extracted by torture would have to be sufficient to get the green light from Strasbourg for the deportation of Abu Qatada. I am afraid that his assumption is right because such a diplomatic assurance would be much easier to monitor than any assurance that torture would not be applied in the future. Unfortunately, the Abu Qatada judgment will not only lead to the deportation of this particular individual, it will encourage the British and other governments that were already in the past in favour of diplomatic assurances from torture countries to further develop more professional MoUs, similar to the British-Jordanian one. In most countries, rich governments will find local NGOs willing to monitor detention facilities if they are adequately paid. But the absolute prohibition of torture and the principle of non-refoulement will be further undermined by this unfortunate practice.

A Police Code of Conduct in Lebanon

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The revolts that are rocking the Arab region can be understood as a popular cry for respect of the inherent dignity of every individual, for governance systems that respect and protect that dignity in the laws, policies and practices of all organs of government. One of the first steps in that direction is the absolute prohibition and active prevention of torture and all forms of cruel and degrading treatment.

Experience has shown, however, that the mere ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has not been enough to stop this practice. Specific measures and steps are needed to create the necessary safeguards against its occurrence. This is why the international community also promulgated the Optional Protocol to the Convention against Torture, which establishes national prevention mechanisms to provide a much-needed daily oversight procedure.

Security sector reform is a complementary approach. People are most at risk of torture and other forms of ill treatment during the first period of detention and interrogation. Law enforcement agencies are a main line of contact between the individual and the State. They hold a monopoly on the use of legitimate force, and are too easily subject to the risk of abusing this power. Thus, there is an intrinsic tension between the responsibility to maintain public order on the one hand, and the obligation of absolute respect for the person on the other, whether that person is a national of the country or not and given the presumption that everyone is innocent until proven guilty in a court of law.

The development of codes of conduct for law enforcement officials, therefore, constitutes an important mechanism to ensure a healthy relationship between State power and the individual, and in the direction of the absolute prohibition of torture and ill treatment. This was the approach taken in Lebanon by the Middle East Regional Office of the U.N. High commissioner for Human Rights over the past few years, culminating in the launching of a Code of Conduct for Members of the Internal Security Forces (ISF) on 12 January 2012.

The Code of Conduct, the result of a collaborative project to integrate human rights into the work of the ISF, was based on a combination of national law, Lebanese commitments under international human rights treaties – including the Convention Against Torture and the Optional Protocol, ratified by Lebanon in 2008 – and on general international legal standards such as the U.N. Code of Conduct for Law Enforcement Officials. The Code was the outcome of broad consultation with civil society actors, international organizations such as OHCHR and the Northern Ireland Cooperation Organization, and was published and disseminated to about 35,000 members of the ISF and openly shared with society at large.

While the development and launching of the Code of Conduct was a success, it was only a first step, and further steps are needed to see the results on the ground. As a start, discussions are under way with the ISF academy for a review of the teaching curriculum to ensure the inclusion of the Code, and of human rights standards generally, in the education of all new recruits as well as the continuing education of officers of the ISF at all levels.

Concurrently, OHCHR has agreed with the Human Rights Directorate at the ISF to undertake a broad review of the latter's internal regulations and policies, procedures, administrative guidelines and accountability mechanisms related to the mandate of the ISF and the conduct of its officers. This too would be a collaborative process, relying on focus groups within the ISF, visits to offices and premises, interviews with staff of all ranks to learn of difficulties they face and listen to their own suggestions. The gender dimension of law enforcement and issues specific to newly-recruited female members of the ISF also constitute an important focus of the project.

The findings would be presented in a final report that will include recommendations on how to close the gaps between the laws and norms as summarized in the Code of Conduct and the practices and daily needs of the ISF. The overall aim is to evaluate and help strengthen the ISF to provide effective police services based on democratic principles, human rights, and ethical behaviour.

Finally, the importance of broad consultation with civil society and with all stakeholders at all levels cannot be under-estimated. The very legitimacy of the work and the potential for its success depend on this collective

effort. Yet, even with all systems in place and processes are working as planned, daily monitoring and the watchdog function of non-governmental organizations will continue to be crucial.

The need for dedicated anti-torture legislation in Jordan

Mizan Law Group for Human Rights, Jordan

Jordan's accession to the convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT), reflects the Kingdom's recognition of the growing significance of human rights and its desire to both prevent torture and hold perpetrators thereof accountable. The fact that the kingdom did not make reservations when acceding to CAT reinforces this. Significantly, they are not among the state parties which declared they did not recognize the jurisdiction of the committee against torture (the Committee) according to article 20 to consider reliable information that torture is being systematically practiced in the territory of state parties, to obtain and consider information in a confidential procedure and issue a summary of its findings in its annual report (however, Jordan is yet to accept the jurisdiction of the Committee, according to Article 22, to consider individual complaints.) Despite this, a comprehensive review of Jordanian law reveals that significant deficiencies remain, which would be most effectively remedied by the adoption of a comprehensive, domestic anti-torture law.

Jordan has taken some steps to fulfil the Convention's requirement that all acts of torture be criminalized in its domestic law, including: 1) the amendment of the constitution in 2011 by adding a new article (N°8 which prohibits torture in detention facilities. Unfortunately, experts are divided as to whether the reference to 'torture' prohibits all forms of torture and ill-treatment. Additionally the article does not prohibit torture in places outside of detention facilities, nor does it mention redress for victims of torture as recommended in Mizan's letter to the royal committee to draft the constitution). 2) The amendment of the penal code in 2007 to designate torture a criminal act. While this was a positive step, the amendment to the penal code that criminalizes torture does not do so in a manner fully consistent with article 4 of the convention and it's defective in several aspects. Firstly, the opening clause of article 208 provides for the criminalization of torture and the punishment of those who perpetrate it only when the perpetrator's intention is to obtain a confession or information relevant to a crime. Article 208 also includes the disconcerting phrase "any type of torture impermissible according to the law". This phrase is troubling because it implies the existence or instances of torture that are permitted by law, in clear contravention with the Convention. Moreover, not only are the sanctions provided for those found guilty of torture pursuant to article 208 are manifestly inadequate and not proportionate to the seriousness of the crime of torture (torture is a minor offence punishable by imprisonment for a period of 6 months to a maximum of 3 years, which only becomes a crime if it causes death), but there is also no provision in the penal code or the penal procedures law that excludes the crime of torture from general or special amnesty or prescription.

Clearly, then, radical amendments to article 208 are necessary to bring Jordan into conformity with its obligations under the Convention. However, Mizans's position is that seeking the adoption of a comprehensive anti-torture law is a more effective means of remedying existing deficiencies regarding the implementation of the prohibition against torture and other forms of ill-treatment in the Jordanian legal system.

This position is supported by the following justification:

1. Any benefits gained from the process of drafting and lobbying for amendments to strengthen article 208 would be severely compromised by other pieces of domestic Jordanian legislation that also undermine the prohibition against torture and other forms of ill-treatment. Research undertaken by the National Centre for Human Rights indicates that at least 18 laws, apart from the Penal Code, require amendment in order for Jordan to fully comply with its obligations under CAT. In Mizan's long experience of involvement in the law reform process, efforts can more effectively be employed in drafting and lobbying for one comprehensive anti-torture law than in seeking amendments to more than 18 separate pieces of legislation.

2. A number of countries have taken the step of drafting and adopting specific legislative instruments regarding the prohibition of torture and other forms of ill treatment. These include:

- Brazil: Law on the crimes of torture and other provisions of 1997 (Law N°9.455, 7 April 1997)
- India: Prevention of Torture Bill 2010
- Ireland: Criminal Justice (United Nations Convention against Torture) Act of 2000 (Act N°11, 2000)
- Madagascar: Law against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (Law N°2008 – 008 0f 25 June 2008)
- Mexico: Federal Law to Prevent and Sanction Torture of 21 December 1991
- New Zealand: Crimes of Torture Act of 1989 (Act N°106, 12 November 1989)
- Philippines: Anti-Torture Act of 2009 (Republic Act N°9745, 10 November 2009)
- Sri Lanka: Torture Act 1994

3. As noted above, the publication of CAT in the Official Gazette rendered it applicable in litigation before Jordanian courts. Despite this, members of the judiciary have been slow to embrace the Convention. The enactment of new legislation, specifically devoted to the prohibition and eradication of torture, gives greater impetus to judges to better ensure an appropriate response to allegations of torture and other forms of ill-treatment, and support the facilitation of fair trials in related cases. Therefore, while amendments to existing laws could produce the same outcome as the adoption of a new law in theory, in practice the latter option offers far greater potential for effective implementation of legal prohibitions against torture and ill-treatment than the former.

4. Meaningful implementation of Jordan's obligations under CAT requires not only judicial readiness to punish torture and ill-treatment but also the appropriate supporting mechanisms envisaged by the Conventions' drafters. For example, Art. 3 of CAT prohibit the return of persons to another State where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. In Jordan there are currently no measures for considering whether persons facing deportation are at risk of torture in the country of return, or mechanisms of independent investigation. The administrative tribunal that decides the deportation issue does not take into account Jordan's obligations under CAT or torture-related issues more generally. The enactment of a comprehensive anti-torture law is also needed to facilitate the importation of international standards into the Jordanian litigation environment. This need is highlighted by the fact that, internationally, civil claims based on prior acts of torture remain possible even after the alleged perpetrator had been acquitted on related criminal charges, or these have been dismissed. Currently in Jordan, civil claims cannot succeed in matters that have already been the subject of criminal proceedings that did not result in a guilty verdict. This unfairly restricts torture victims' right to redress as outlined in the Convention, especially because of the difficulty of meeting the burden of proof in criminal cases when State authorities are uncooperative.

5. Finally, during Mizan's involvement in the preparation of torture related cases for litigation, there has been substantial debate among lawyers regarding the best approach to be taken in the drafting of court documents and the content that should be included. So far, a number of issues remain unresolved, including:

- Whether it is possible to sue the Public Security Directorate (PSD)directly, as an institution, rather than individual offices/office bearers
- Whether there is a mechanism in Jordanian domestic law that lawyers can use to compel the production of medical reports that could provide evidence of torture
- How we can ensure that witnesses to torture or other ill-treatment, who are also detainees, are secure from witness tampering and guarantee witness protection (including both promises of beneficial treatment while detained and threats/intimidation)
- Whether the burden of proof remains on PSD to prove that torture did not take place in civil, as well as criminal trials
- How we can file criminal cases against police before ordinary courts, not before the Police Court, which is a special court where judges and prosecutors are mostly police and so it lacks independence.

In short, far reaching changes to the administration of justice in Jordan are consequent upon efforts to implement Jordan's obligations under CAT. These can best be supported by a comprehensive anti-torture law that not only prohibits torture and other forms of ill-treatment but also provides the ancillary procedures necessary to give this prohibition substance.

In its campaign and in order to adopt anti-torture law in Jordan; Mizan has published a study relating to the justifications and legal system in Jordan and proposed articles of the law, which was submitted to the governments. Additionally, discussions have taken place through roundtables organized by Mizan, and covered

by national media, attended by representatives of the government, ministries and others. The participants discussed the recommendations of CAT, a proposal for an anti-torture law and the European Court of Human Rights decision in Abu Qatada. Mizan expects to engage in discussions with the National Centre for Human Rights in the future regarding the proposed anti-torture law.

2. Recent Updates

UN Recognises the Vital Role of Legal Aid

This information extracted from text by Kersty McCourt posted on Open Society Foundations on 27 April 27, 2012 available on http://blog.soros.org/2012/04/un-recognizes-the-vital-role-of-legal-aid/

UN member states have agreed that legal aid schemes are not just optional; they should be a basic part of any country's justice system. The UN Commission on Crime Prevention and Criminal Justice adopted on 27 April 2012 at its 21st Session in Vienna a ground-breaking resolution on "access to legal aid in criminal justice systems". The resolution adopts a set of "Principles and Guidelines" designed to ensure that access to legal information, advice and assistance is available to all through the provision of legal aid—thus realising rights for the poor and marginalised and entrenching one of the key building blocks of a fair, humane and efficient criminal justice system.

This is the first international instrument on legal aid. It brings us a step closer to ensuring universal access to human rights—which would remain illusory if they are only accessible to those with financial means.

The genesis of this resolution was the 2004 Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa. In 2007 ECOSOC called on the United Nations Office on Drugs and Crime to develop a global instrument. Since 2009 groups of experts, from all continents, including the Open Society Justice Initiative, have gathered several times in Vienna to draw together best practices and develop a draft that was reviewed by the Member States in 2011. The result is a practical document that traces the criminal justice system from the pre-trial to post-trial stage and highlights a number of important components:

- Prompt access to legal aid at all stages of the criminal justice process.
- The involvement of a diversity of legal aid providers including lawyers, university legal clinicians and paralegals.
- The development of a nationwide legal aid system that is sufficiently staffed and resourced.

It is therefore aimed to help states design and implement innovative, comprehensive and sustainable systems.

The resolution was sponsored by Cameroon, Canada, Croatia, Chile, Denmark (for the European Union), Georgia, Germany, Israel, Mexico, Namibia, Nigeria, Norway, the Philippines, Saudi Arabia, South Africa (for the African Group) and the United States of America and the negotiations spearheaded by Georgia and South Africa—highlighting their steadfast commitment to legal aid, both through their national systems and through efforts, such as this, to exchange and improve standards at the international level.

The significance of this new resolution lies partially in the fact that in many countries there are literally one to two hundred lawyers for populations of over ten million people, and there are blockages both to training additional lawyers and to ensuring support and backup from qualified paralegals. Legal aid is not only important as a human right and as the foundation of a fair trial. Effective legal aid schemes produce significant positive outcomes both for individuals and for the wider society by improving the performance of criminal justice personnel. They lead to more rational and effective decision-making, and increase accountability and respect for the rule of law.

Standard Minimum Rules on the Treatment of Prisoners: Time for revision?

In April 2012, over one hundred State delegations meet in Vienna to consider plans to review the Standard

Minimum Rules for the Treatment of Prisoners.

The Standard Minimum Rules, approved by the UN in 1957, are a historic text which remains a critical benchmark for the treatment of detainees around the world.

States are now closely examining the Standard Minimum Rules, both to share good practices on their application, and to consider whether the text should now be revised to reflect recent advances in detention practices and correctional science.

The APT is one of several civil society organisations which are following this review closely, and has lobbied States to encourage better implementation of the Standard Minimum Rules in two ways. Firstly, through the adoption of operational guidelines which would give practitioners practical advice on the concrete steps they must take to fulfil each Rule; and secondly, by the introduction of an independent monitoring mechanism, so that improved practices may be recommended and changes made to better apply the Rules: "National Preventive Mechanisms are key to promoting better implementation of the UN Standard Minimum Rules and other relevant UN standards in practice. Making a real difference to conditions of detention for detainees is the ultimate purpose of this seminal set of standards, and the APT continues to support all efforts aimed at this objective" said Matthew Sands, Legal Adviser at the APT.

Please see the APT position paper, Respect for the UN Standard Minimum Rules through effective implementation for further details, available on http://apt.ch/region/unlegal/APT_Position_SMRs_Respect_through_effective_implementation0412.pdf

Thematic focus of the report of the UN Special Rapporteur on Torture on Commissions of Inquiry

The thematic focus of the report of the UN Special Rapporteur on Torture for the nineteenth session of the Human Rights Council was on commissions of inquiry. These are independent investigative commissions created in response to human rights violations including, but not limited to, torture, genocide, extrajudicial killings, disappearances and incidents involving multiple or high-profile killings. The Rapporteur notes that most commissions of inquiry are established at the initiative of national Government authorities, and they may include in their composition national and international experts. In his report, the Rapporteur defines commissions of inquiry to mean national commissions of inquiry and truth commissions, as well as investigations undertaken by national human rights institutions.

In his report, the Special Rapporteur provides guidance to deepen our understanding on when such commissions should be created by States in response to patterns or practices of torture and other forms of ill-treatment.

He notes that, where possible, national commissions of inquiry ought to be pursued before the establishment of an international commission. The Special Rapporteur analyses the complementary role that commissions may play, but stresses that such Commissions do not relieve States of their legal obligations to investigate and prosecute torture and other forms of ill-treatment, and to provide effective remedies to victims of past violations, including reparation for harm suffered and to prevent its reoccurrence. Commissions of inquiry should in fact be conceived of as a means to fulfil such obligations most effectively.

The Rapporteur identifies a number of key factors in establishing a fair, effective and thorough commission of inquiry: resources; choice between international and national; composition; mandate, powers and attributions; methodology; evaluation of evidence; relationship with prosecutions; and the report.

For further details, see Report of the Special Rapporteur on torture, A/HRC/19/61, 18 January 2012, available on http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-61_en.pdf

The UN Human Rights Council appoints a new Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

The UN Human Rights Council, in its eighteenth session, considered the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147 of 16 December 2005) among other normative frameworks. It therefore decided to appoint a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

Accordingly, this new special procedure will deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law. The resolution establishing the mandate of the Special Rapporteur emphasizes "the importance of a comprehensive approach incorporating the full range of judicial and non-judicial measures, including, among others, individual prosecutions, reparations, truth-seeking, institutional reform, vetting

of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law".

The Special Rapporteur is mandated, among other things, to provide technical assistance or advisory services; gather relevant information and study trends on national situations, including on the normative framework, on national practices and experiences, such as truth and reconciliation commissions and other mechanisms; make recommendations concerning, inter alia, judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights and serious violations of international humanitarian law; and conduct country visits. Importantly, the Special Rapporteur is asked to make recommendations on ways to achieve a systematic and coherent approach specifically by integrating a gender perspective and a victim-centred approach throughout the work of the mandate.

For further information see Human Rights Council Resolution 18/07 (A/HRC/18/L.22), 26 September 2011, available on http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/18/L.22

3. From the Field

Towards a National Action Plan to Prevent and Abolish Torture in Tunisia

Gabriele Reiter
Project Coordinator, Organisation Mondiale Contre la Torture (OMCT)

In his recent report assessing the situation in Tunisia, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, emphasises that Tunisia has to come to terms with its "legacy of torture" and "prevailing impunity" by establishing solid safeguards against torture through constitutional, legislative and administrative reforms. In addition, OMCT's high-level mission visiting Tunisia in May 2011 recommended the development and adoption of a "firm plan of action and a policy of zero tolerance to any incident of torture, or cruel, inhuman or degrading treatment."

Following the inauguration of the National Constituent Assembly and the appointment of a new government, OMCT organised a national consultation in Tunis on necessary legislative and institutional reforms (8-10 February 2012). The meeting brought together members of the Constituent Assembly, representatives from governmental institutions as well as from civil society and international experts to discuss necessary reforms in order to prevent and abolish torture and ill-treatment in the future. The overall objective was to identify and develop common ground on issues related to legislative, judicial and security sector reforms, on ensuring accountability and a culture of respect for human rights in light of the application of the UN Convention against Torture and its Optional Protocol. The event was accompanied by a strong media presence and coverage.

Participants at the national consultation engaged in a constructive and forward-looking dialogue. They recognised that torture and other cruel, inhuman or degrading treatment or punishment were systematic and widespread in the past but equally stated that such practices have not stopped with the revolution (though not as a systematic state policy). There was an overall agreement and a perceptible political will for the need to develop a coherent response to counter torture and ill-treatment in Tunisia and to create an environment that can prevent torture and ill-treatment in the future.

Participatory and wide-ranging discussions during and after the national consultation led to an extensive and consolidated set of recommendations that could serve as the basis for a comprehensive national strategy or action plan against torture and ill-treatment. This roadmap ("*feuille de route*") is currently being presented to all relevant ministries in order to solicit support for their application. The given political momentum could allow for these recommendations to turn into a national plan of action with concrete activities, tangible timelines, indicated budgetary implications and shared responsibilities. To that end, OMCT together with the Tunisian Government and its Tunisian partner organisation OCTT (Organisation Contre la Torture en Tunisie) organised a joint side event "Towards an action plan to prevent torture and ill treatment in Tunisia" in

the framework of the UN Human Rights Council in early March 2012. Tunisia is among the countries that are going to be examined in this year's cycle of the Universal Periodic Review. This, it is felt, will give the discussion and efforts on prohibition and prevention of torture and ill-treatment an additional impetus.

OMCT remains committed to support these efforts on the policy level as well as to provide a platform for exchange and engages with its partners in the follow-up to specific recommendations such as the establishment of a national prevention mechanism (NPM) in Tunisia as requested until the end of July 2012 by the ratification of OPCAT. Beyond that OMCT carries out trainings for professionals, especially on the application of international standards; carries out activities to raise awareness on the relevance of dealing with torture and the promotion of human rights; and aims at providing access to legal justice for victims of torture and ill treatment.

Please find the recommendations of the national consultation at: http://www.omct.org/fr/reports-and-publications/tunisia/2012/04/d21730/ and visit OMCT Tunis on facebook at: http://www.facebook.com/pages/OMCT-Tunis/281098398642249

North Africa is opening up to transparency in places of deprivation of liberty

Esther Schaufelberger
MENA Programme Officer, APT

Tunisia, Morocco and Mauritania are making progress towards the creation of national mechanisms for the prevention of torture. The three North African States are advancing towards the ratification and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT), a UN treaty that creates a system of preventive visits to places of deprivation of liberty. Tunisia has ratified the treaty in July 2011, while the governments of Morocco and Mauritania have decided to do so in September 2011 and April 2012 respectively.

The fact that the three States have engaged in this process demonstrates an increasing awareness about and trust in the preventive approach embodied by this innovative treaty.

The OPCAT is the first international instrument which seeks to prevent torture and other forms of ill-treatment through the establishment of a system of regular visits to places of detention carried out by independent international and national bodies. These international and national bodies work together to conduct regular visits to all places of detention in all States Parties without exception and make recommendations to the authorities to establish effective measures to prevent torture and ill-treatments and to improve the conditions of detention of all persons deprived of liberty. At the international level, the OPCAT creates a new international preventive body, called the UN Subcommittee for the Prevention of Torture. At the national level, States Parties make the commitment to create or designate National Preventive Mechanisms (NPMs) within one year of ratification of the OPCAT.

Tunisia has ratified the treaty in July 2011 and will now have to establish its National Preventive Mechanism. Civil society organizations have started to reflect on the institutional nature and appropriate composition of the mechanism, through a national consultation on torture prevention in February 2012 and a roundtable discussion on the establishment of a prevention mechanism in March. The February consultation was organized by the World Organization against Torture (OMCT), the Tunisian Organizations against Torture (OCCT) the Tunisian Human Rights League (LTDH) and the National Council for Liberties in Tunisia (CNLT). There was an agreement in this consultation that the establishment of the national preventive mechanism must be treated as a priority. A second roundtable, organized by the OMCT and OCCT jointly with the APT, focused therefore on how to proceed to establish such a mechanism. Participants in these discussions highlighted that the mechanism must be independent in law and in practice, headed by competent and credible personalities and supported by a multidisciplinary team of dedicated staff. They advocated for a strong legal basis enshrined in the constitution and for further examination of the different options by a group of experts (see the press release of OMCT on http://www.omct.org/fr/statements/tunisia/2012/03/d21713/).

Representatives from concerned Ministries have also participated in these meetings and started reflecting on NPM establishment from their side.

Mauritania has signed the OPCAT in September 2011, but has not yet ratified it. However, the Council of Ministers has approved a law allowing for the ratification of the OPCAT on 22 March 2012. Further progress towards ratification and implementation was made at the end of March, during a week in which key national stakeholders focused their attention on torture prevention: The Committee for the Prevention of Torture in Africa (CPTA), a mechanism of the African Commission for Human and People's Rights (ACHPR), undertook a promotional visit to Mauritania from 26 – 31 March. The CPTA delegation was received by the President of the Republic and held talks with other officials of the executive, legislative, and judicial branches and representatives of civil society, in order to promote measures to prohibit and prevent torture and rehabilitate victims in reference to the Guidelines on the Prohibition and Prevention of Torture in Africa (Robben Island Guidelines see http://www.achpr.org/english/_info/rig_the%20guideline.htm

The delegation was led by Commissioner Dupe Atoki, President of the ACHPR and the CPTA and also included Jean-Baptiste Niyizurugero, CPTA Vice President and who is Head of the Africa Program of the APT. The Delegation of the CPTA, inter alia, encouraged Mauritania to take measures to criminalize torture without delay, to fight against impunity, and to accelerate the ratification process and implementation of the OPCAT. See http://www.achpr.org/english/Press%20Release/Press%20release_mission_mauritania.pdf

The ratification of the OPCAT and the criminalisation of torture were also the main themes of a conference that the National Human Rights Commission of Mauritania and the APT organised jointly on 28 and 29 March 2012 in Nouakchott, with the participation of the Office of the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross and in which the CPTA participated as well. During the rich discussion, participants from various state institutions and civil society stressed the importance to criminalise torture in law and practice and to establish an independent mechanism for monitoring places of deprivation of liberty.

As a next step, the parliament of Mauritania will need to approve the ratification, as well as starting the process for enacting needed legislation.

In Morocco, the Council of Ministers, chaired by King Mohammed VI, approved OPCAT ratification on 9th of September 2011, following a Council of Government approval on 26 of May. This decision comes after years of preparatory work, in particular by the National Council for Human Rights (CNDH) and a platform of NGOs established by the Organisation Marocaine des droits humains (OMDH), in collaboration and consultation with the APT. Through ratifying the OPCAT, Morocco will implement a further recommendation of its Truth and Reconciliation Commission. Opening all places of detention to independent scrutiny, the key obligation under the OPCAT, figured among the recommendations on guarantees of non-repetition of the final report of Morocco's Truth and Reconciliation Commission issued in 2005 (seehttp://www.ier.ma/?lang=en). As of April 2012, this decision has not been translated into an official ratification, which means that the State has not yet officially deposited the instrument of ratification at the Legal Office of the UN in New York.

Will the Lebanese parliament pass the law establishing a National Torture Prevention Committee?

Esther Schaufelberger
MENA Programme Officer, APT

Lebanon has agreed to opening police stations, prisons and places of detention to independent scrutiny by ratifying the Optional Protocol to the UN Convention against Torture (OPCAT) in December 2008. OPCAT State parties have to establish one or several national independent oversight bodies empowered to visit all places in which persons are deprived of their liberty and make recommendations concerning practices, laws and regulations in with regard to preventing torture and ill-treatment. The so-called National Preventive Mechanism (NPM) has to be established within one year of ratification of OPCAT.

By April 2012, Lebanon has not established its NPM yet. But Lebanese actors have not been idle. A group of dedicated organizations and individuals from civil society, parliament and state administrations have met regularly since 2009 to discuss how to create such a National Preventive Mechanism adapted to the Lebanese context and have involved international organizations such as the Office of the High Commissioner for Human Rights (OHCHR), the International Committee of the

Red Cross (ICRC), the Subcommittee for the Prevention of Torture (SPT) and the APT. At the time of writing this article, the Human Rights Committee of the Lebanese Parliament is looking into a draft law establishing such a mechanism as part of a broader human rights institution. The law has been introduced in September 2011 by Members of Parliament Mr. Michel Moussa and Mr. Ghassan Moukheiber.

If the law is adopted in Parliament, Lebanon will establish a National Human Rights Commission that incorporates a National Preventive Mechanism, named the "Torture Prevention Committee". Lebanon is one of the countries in the region that so far does not have a National Human Rights Institution and Lebanese actors have - after some reflection and debate – opted for creating the national preventive mechanism as an integral, but autonomous entity within a new National Human Rights Institution. The Torture Prevention Committee will be entitled to conduct periodic and ad-hoc visits, without prior notice or permission, to all places of deprivation of liberty, conduct interviews in private with detainees of their choice and request any information from authorities. The committee will also receive individual complaints and be entitled to request information on the findings and decisions of the judicial and disciplinary authorities regarding complaints about torture and other forms of ill-treatment. The drafters of the law have aimed at ensuring the autonomy of the Torture Prevention Committee from the National Human Rights Institution by doting it with a separate budget and specialized staff, ensuring that it will administer its own programme and publish its own annual report.

The draft law foresees a National Human Rights Commission composed of 14 members, five of which form the Torture Prevention Committee. The members would be appointed by the Council of Ministers, out of a list of persons of high moral quality and diverse competences and experiences, proposed by unions, professional associations, the Supreme Judicial Council, the Lebanese Red Cross, the Universities and civil society. The law specifies that the Torture Prevention Committee will include at least one lawyer, one doctor and specialists on the treatment of persons deprived of liberty. All members will serve in their individual capacities for a mandate of 5 years that is not renewable.

The process leading to this draft law has been launched initially by civil society organizations, in particular by the member organizations of the NGO working group against torture, who have established a list of recommendations concerning the torture prevention mechanism in early 2009. Encouraged by the NGOs to initiate an official process, the Ministry of Justice has mandated a drafting committee by decree to propose a draft law by September 2009. This draft law has then again undergone a series of consultations and amendments before taking the current shape. The election of Suzanna Jabbour, director of the Lebanese NGO "Restart centre" as member and vice president of the UN SPT in 2011 has also helped to boost the process.

The APT encourages all actors to continue advocating for the adoption of the law and the establishment of an efficient National Preventive Mechanism for Lebanon.

4. Questions & Answers

Is a slap in the face torture?

Matthew Sands
Legal Advisor, APT

Where a state agent, such as a police officer, slaps a person in the face, typically in the context of detention or interrogation, it is clearly a repugnant abuse of authority. It demonstrates control over the detainee, who in a typical situation is unable to fight back. The detainee is powerless. The slap would therefore be a deliberate demonstration that the detainee is entirely at the mercy of the agent.

The international crime of torture requires a subjective understanding of the pain inflicted on the detainee, and at the national level, many States have argued that the severity of pain is an important element to the offence. Some might argue that a slap is not so serious, and does not even hurt so much. But a slap in the face is not just a physical injury. A slap in the face is an insult. It causes mental anxiety and anger. A slap in the face is particularly offensive for cultural and religious reasons that are not related to the physical pain. It is also possible that a slap in the face causes severe pain for a child, an old person, a person with health problems, or indeed for anyone when used repeatedly.

International law directs that even where acts of abuse do not rise to the level of severity of torture, but still cause serious mental or physical pain, they should still be recognised as other forms of prohibited ill-treatment. Both torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited in international law. There is no excuse, nor any justification, that an agent may use to excuse such force. All abuse must be investigated and punished.

A slap may or may not be torture. It will depend on the circumstances of each case. But the obligation of each State to prevent both torture and other ill-treatment requires that any slap in the face must be prohibited and punished as a gross abuse to the dignity of each person. The UN Committee against Torture has observed that ill-treatment of persons deprived of their liberty frequently facilitates torture. Therefore, even in circumstances where a slap in the face is not torture in itself, it reflects an attitude which undermines the dignity of the detainee, which threatens to destroy their humanity. It must be condemned, prohibited and punished.

Can solitary confinement amount to torture or ill-treatment?

Marcellene Hearn
Legal Advisor, APT

What is solitary confinement?

Solitary confinement means different things in different detention systems. The Special Rapporteur on Torture defined solitary confinement in a report to the United Nations General Assembly, which focused on solitary confinement, stating that it is "the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day". A similar definition appears in the Istanbul Statement on the Use and Effects of Solitary Confinement.

What is the link between solitary confinement and the prevention of torture?

First, when persons deprived of their liberty are isolated and limits are placed on their contacts with the outside world, the risk that torture will occur is increased.

Second, solitary confinement, itself, can amount to torture or cruel, inhuman or degrading treatment or punishment.

The Special Rapporteur has stressed that "solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible."

Is solitary confinement prohibited in international law?

All solitary confinement is not barred, but international law places important limits on the practice.

First, solitary confinement that amounts to cruel, inhuman or degrading treatment or punishment (CIDT) or torture is prohibited just like other forms of CIDT and torture. In his report the Special Rapporteur sets out his view that in order to determine whether solitary confinement amounts to torture or CIDT, "all relevant circumstances" including the "purpose of the application of solitary confinement, the conditions, length and effects of the treatment" and "the subjective conditions of each victim that make him or her more or less vulnerable to the effects" must be taken into consideration. He also states that the solitary confinement of children, persons with mental disabilities, and prolonged solitary confinement (which he defines as more than 15 days) constitute CIDT or torture.

Second, procedural safeguards must be in place when solitary confinement is applied. The Special Rapporteur lists a number of safeguards in his report including the right to know the reasons for placement in solitary confinement, an opportunity to challenge the placement through both an administrative process and the courts, access to legal counsel, and medical monitoring.

For more information and specific recommendations, please refer to the Special Rapporteur's report (UN Doc. A/66/268) at http://www.un.org/Docs/journal/asp/ws.asp?m=A/66/268 and the Istanbul Statement, which is appended to UN Doc. A/63/175 at http://www.unhcr.org/refworld/pdfid/48db99e82.pdf

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