



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. This e-bulletin aims at creating a space through which activists and experts can exchange ideas, opinions and experiences about how to create torture free zones. The APT would like to warmly thank the editor, Mervat Rishmawi, the members of the Advisory Panel and the many activists, experts and organisations that have contributed.

In particular we would like to thank the authors of the opinion pieces of this issue. Prof. Heiner Bielefeld, the UN Special Rapporteur on Freedom of Religion and Belief, is sharing his thoughts about building bridges between religion and human rights. Ms. Randa Siniora, Executive Director of the Palestine Independent Commission for Human Rights provides us with insights into the Palestinian experience.

This issue includes a special file on Syria, where torture is reported to be perpetrated on a horribly large and brutal scale. We would like to express our solidarity with all the courageous Syrian human rights defenders who take enormous risks by documenting these gross human rights violations and supporting the victims and their families.

We are happy to also share good news, concerning the campaign for ratification and implementation of the OPCAT: Mauritania has ratified on 3. October 2012 and has become the 64th state party world wide, and after Lebanon and Tunisia the third state party in your region.

Please do share your reactions, comments and further thoughts on how to free our societies from the scourge of torture and do suggest topics and authors for future issues.

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](mailto:editor.mena@apt.ch)

*Mark Thomson*  
Secretary General, APT

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## Editorial



### The role of human rights defenders in the fight against torture

*Paying the price of bearing witness*

**Mervat Rishmawi**  
Editor

The attack on human rights defenders is not new to the MENA region. It is part of the heritage of the dictatorship regimes. The recent revolutions came to rise against this, among other things, and hopes were high that such practices would stop. However, it is deeply depressing that a new backlash is now witnessed in some countries where defenders are at risk again.

Human rights defenders play an essential role every day in the fight for human rights. They advocate for the implementation of human rights principles and standards; document violations; provide training and carry out awareness-raising programmes. They work on legislative reform, and take cases to national, regional and international courts, tribunals or UN mechanisms on behalf of victims to ensure redress and contribute to standard setting. They hold trainings, workshops, seminars and conferences to elaborate ideas and strategies for furthering human rights at the national, regional and international levels. Therefore, in doing so, the role of human rights defenders is indispensable for the promotion and protection of human rights.

Defenders play a vital role in the assistance of victims of human rights violations. Increasingly, NGOs visit places of detention and provide medical and legal aid, education, and other forms of humanitarian assistance. NGOs also play a very important role in the provision of rehabilitation for victims of torture, enabling them to resume their life after the damage and shock of torture or other forms of ill-treatment.

However, this work will often put them at various risks. For example, it is often found that defenders who work on documenting violations “bring this home” with themselves. They often see nightmares repeating images of torture from cases they have documented. They feel depressed because of the limits to what they can do to provide victims redress to what they have suffered, and sometimes lose sight of the short, medium and long-term nature of what they can really achieve. The picture sometimes becomes blurred, which leads to frustration.

Defenders are also at risk as they come in close contact with or are able to identify perpetrators of major violations of human rights. They are often physically attacked, or smear campaigns are launched against them. Various forms of reprisals against human rights defenders aim at intimidating them and stopping them from pursuing their human rights work.

What is particularly alarming is that these defenders are also often targeted by state officials because they are exposing human rights violations at the international level. Increasingly, defenders who have been bringing information to the attention of bodies of the UN have also been targeted by governments in an attempt to silence and intimidate them. This has led the UN Human Rights Council to hold in September 2012, during its 21st session, an unprecedented high level panel to stress on the importance of protecting human rights defenders who cooperate with the UN system. (See more discussion about this in the Recent Developments section). In response to the increased attack against human rights defenders and the risks that the nature of their work brings, several international NGOs have also developed special programmes to assist and support human rights defenders.

At the same time, the expectations of victims from the human rights movement and defenders are often huge. Within a vacuum of proper mechanisms of redress, victims and their families turn to defenders expecting resolution to their problems. However, it is often the case that defenders operate within tight budgets, repressive or inadequate legal framework, and aggressive governmental policies. They may also lack the adequate expertise and training. Without experience in managing expectations, defenders may “feel trapped”, and put themselves and victims at risk.

In recognition of the vital role that human rights defenders play, the UN adopted in 1998 what is now known as the Declaration on Human Rights Defenders. This Declaration contains specific provisions for the protection of human rights defenders, including the following<sup>1</sup>:

- “To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;

<sup>1</sup> This list is extracted from the website of the Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;
- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- To unhindered access to and communication with non-governmental and intergovernmental organizations;
- To benefit from an effective remedy;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
- To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad)."

The often frustrating nature of the work and the many risks that comes with it highlights the essential need for enabling environment within the national legislation and government practices in order to empower human rights defenders, whether individually or in NGOs, to carry out their roles without hindrance, intimidation or abuses.

### **Summary of the second issue of the Electronic Bulletin**

Issue 2 contains valuable contributions from a number of experts and activists working on human rights issues generally, or on the prevention of torture in particular.

The issue opens with an opinion piece by the UN Special Rapporteur on Freedom of Religion and Belief, in which he elaborates on how building bridges between human rights and various religious traditions is possible and useful for both sides. An Article on the work of the Palestinian Independent Commission on Human Rights, by its director, highlights methods of work that the Commission employs in relation to combating torture and ill-treatment.

Considering the situation in Syria, this Issue could not be meaningful without a special focus on Syria. A "Special File on Syria" is therefore included to highlight parts of recent reports of UN bodies, including the UN Syria

Commission of Inquiry and most recent observations by the Committee against Torture.

This is followed by the usual section in the Bulletin on "Recent Updates" on UN work, where the Human Rights Council session considering the UPR of Morocco, Tunisia, Algeria and Bahrain is discussed, as well as the report of Special Rapporteur on promotion of truth, justice, reparation and guarantees of non-recurrence. Recent updates on ratification and reporting on the Convention against torture in the MENA region is also included. This section also includes information on the Open Call for Applications - Projects to assist victims of torture in the Middle East and North Africa region.

The section "From the Field" includes information on the establishment of a new Forum to work for better conditions for prisoners in MENA; an update on prosecuting cases of torture during the Egyptian revolution; information on a workshop on prevention of torture in times of democratic transition in North Africa; and finally, but not least, an update on steps taken to create an independent body to visit and monitor places of deprivation of liberty in Tunisia.

The "Questions and Answers" section addresses two important questions: How can perpetrators of torture who have fled the country be brought to justice? and how do we, as NGOs, ensure that access to places of detention is granted on an institutional basis?

An important theme that features in this issue is reprisals against human rights defenders. This has been covered in many parts of this bulletin. The editorial is devoted to this and a special part is also included on the Human Rights Council special panel on this issue.

## 1. Opinion Pieces



### Building bridges between religious traditions and modern human rights

**Prof. Heiner Bielefeldt**  
*UN Special Rapporteur on Freedom of Religion or Belief*

The question of how international human rights relate to various religious traditions has attracted increased attention in recent years. Obviously, this question is not of merely academic significance. Many human rights activists feel a profound loyalty towards their personal religious traditions and beliefs; and many religious people show a practical commitment on behalf of the implementation of international human rights. So it must be possible to somehow combine both sets of values and, moreover, create positive synergies. Indeed, this is more than just an abstract possibility, since we have quite a number of impressive examples of persons who, in credible and persuasive ways, epitomize a successful synthesis between their religious convictions and their human rights commitment.

At the same time, we are also faced with tensions, conflicts and frictions between religious traditions and human rights, which is not unique to one religion or another. Take the example of gender equality, a normative requirement enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other human rights instruments. CEDAW norms obviously collide with traditional gender roles which nonetheless continue to be backed up by many (albeit not all) religious leaders or believers. One may also think of corporal punishments which some religious believers may still consider as belonging to their religious heritage, even though they violate the prohibition of torture and cruel punishment as established in the Convention against Torture (CAT). At the same time, other religious leaders and believers feel that such practices are in profound conflict with their religious values, and they base this on a different interpretation than the one dominant in the first case. Thus, a critical reconciliation of religious traditions and modern human rights is not easy, but is possible. It constitutes a practical task which itself must be undertaken on the basis of a clear concept of human rights.

Human rights are a specifically modern response to the experience of injustice in our increasingly pluralistic

societies in which people of very different religious and non-religious orientations often live side by side. In order to address various experiences of discrimination, contempt, unfairness, neglect, exclusion and other phenomena of injustice, we have to define a common level of normative interaction which we all share across our various religious or non-religious convictions. Human rights provide for this possibility. Their underlying basic idea is universal respect: All human beings should respect one another, and the diversity of convictions (sometimes irreconcilably different convictions), religious rituals (not shared by everyone) and various ways of leading one's life (individually and in community with others) should be respected as manifestations of the universal human faculty of responsible agency. Furthermore, what is new is that this basic respect nowadays manifests itself institutionally in legally enforceable rights to freedom and equality for everyone. All human beings should be able to enjoy their equal rights to freedom of expression, freedom of assembly, freedom of religion or belief, fair trial, physical integrity, right to health, right to education etc.

In order to build bridges between human rights and religious traditions, one should bear in mind that human rights ultimately point to the dignity of every human being. Just like respect, human dignity is an indispensable keyword in the context of human rights. Indeed, both terms are closely intertwined and mutually presuppose each other. Respect for human dignity constitutes the very precondition for any normative interaction, thus having an axiomatic status in all areas of morality and law. This insight is also reflected in the first sentence of the preamble of the "mother document" of codified international human rights law, the 1948 Universal Declaration of Human Rights (UDHR) which proclaims that "recognition of the inherent dignity [...] of all members of the human family is the foundation of freedom, justice and peace in the world".

The concept of human dignity has a long history and strongly resonates within most different religious, philosophical and cultural traditions. For this concept to function as the ultimate normative reference in international human rights law, however, it is crucial to make sure that the notion of dignity is not claimed as a monopoly by any of those traditions. Proposals made during the discussions on the drafting of the UDHR to explicitly base human dignity on the Biblical idea that humanity has been "created in the image and likeness of God" – thereby simply equating human dignity with the Biblical tradition – were in fact rejected by a clear majority of delegates. This indicates the awareness that the concept of human dignity, at least in the context of international human rights, must remain open for a wide diversity of religious or philosophical readings.

Such openness does not mean emptiness, though.

Different interpretations of what human dignity may signify have the precise function of reminding us of the universalistic nature of those basic rights which all human beings have a claim to just because they are human beings. Human dignity thus represents the idea of normative universalism. Respect for human dignity at the same time receives an institutional backing in terms of legally binding rights of freedom and equality for everyone. The connection between the normative idea of human dignity and the institutionalization of international rights comes to the forefront in the preamble of the UDHR which links “the inherent dignity” of all human beings to their “equal and inalienable rights”. Article 1 of the UDHR again highlights that link by stating that “all human beings are born free and equal in dignity and rights”. In a nutshell, this most famous sentence of the UDHR represents the normative profile of the human rights approach in general.

Human rights can encourage and stimulate interpretation of religious sources. Given their liberating and egalitarian spirit, they may empower persons who previously were marginalized within some interpretations of religious traditions to undertake and publicly present their own “alternative” readings of religious sources. Again, the example of gender roles is a telling one. In many religious interpretation and traditions, woman used to have subordinate roles: The positions of clerics, preachers, imams, rabbis, gurus or priests typically were reserved to male members of the community (although there have always been exceptions to this rule). Human rights norms such as the principle of gender equality can become an incentive for or support the process of challenging such hierarchies. Whether and to which degree this actually happens, depends on the initiatives taken by persons stemming from different religious traditions.

At the same time, religious values can stimulate further commitment to human rights. For example, the prohibition of torture and ill-treatment, including of those detained or captured during war, is an important concept in many religions. This can be used to bring more people to accept these prohibitions as reflected in international human rights law, for example in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Rejection and prohibition of violence against women, which is a form of ill-treatment and torture, can also gain more commitment on the basis of religious values which support the prohibition of violence against women, and therefore reinforce such prohibition in international human rights law.

As I said earlier, building bridges between human rights and various religious traditions is not easy. Tackling this task, however, is possible and useful for both sides.



### The Role of the Independent Commission for Human Rights in combating torture in Palestine

Randa Siniora<sup>1</sup>  
*Executive Director, Palestine Independent Commission for Human Rights*

The Independent Commission for Human Rights (ICHR) as the Palestinian human rights national institution for human rights has played a significant role in preventing and combating torture in the Palestinian-controlled Territory. Based on the 1993 Paris Principles regulating the work of national human rights institutions, monitoring prisons, detention centers and the penitentiaries (places of detention), is one of the core functions of national institutions to ensure the respect and adherence of government officials to principles of human rights and the rule of law when upholding their responsibilities. International human rights instruments, especially the Convention against Torture, the International Covenant on Civil and Political Rights, and the Amended Palestinian Basic Law of 2003 has specifically prohibited torture and other forms of ill-treatment. Both the Optional Protocol to the Convention against Torture (OPCAT) and the Istanbul Protocol have specifically focused on the importance of monitoring prison facilities and detention centers by national institutions, human rights organizations and medical personnel and highlighted the importance of such monitoring as a preventive measure in combating torture and other cruel, inhuman or degrading treatment.

The important role undertaken by the ICHR as an independent National Commission is to:

<sup>2</sup>This article was prepared with the valuable contribution of two ICHR staff members: Mr. Yousef Warasneh, the Documentation and Management Information Officer; and advocate Ala' Nazzal, manager of ICHR northern regional office in Nablus.

- Monitor all acts of the Palestinian National Authority (PNA) and its institutions and assess their compliance with the international standards and norms which they have complied with unilaterally and on voluntary basis.
- Necessarily improve all the national legislation in accordance with universal human rights and ensure that Palestinian legislation and policies are in compliance with international human rights principles. Monitor and document violations of human rights and intervene with relevant authorities to put an end to those violations. Also regularly report on patterns of human rights violations.
- Conduct fact-finding initiatives and investigate serious violations of human rights such as cases of death in detention and serious allegations of torture and other ill-treatment.
- Receive and handle complaints from victims of human rights violations, including cases of physical abuse, torture and ill-treatment and follow up on complaints with the relevant authorities.
- Use all means of mediation and intervention including in some cases of judicial intervention, especially in cases of allegations of torture, deaths in detention or any other violations of human rights that are of great interest to the Palestinian public.
- Spread the culture of human rights through education and training, especially to government officials and security.

Since its initiation eighteen years ago, ICHR has given special attention towards developing mechanisms to combat torture, and has used various means to ensure that preventive measures against all acts of torture and ill-treatment are undertaken. ICHR has taken a firm position against this practice and continuously called on the Palestinian President and Palestinian Officials to officially and publicly condemn torture and take serious measures, including pressing criminal charges against government officials who commit acts of torture. ICHR has firmly reiterated its position that acts of torture must not be tolerated in all circumstances and that the crime of torture entails individual responsibility upon all those officials who order, practice or show complicity with such acts. Under international criminal law, crimes of torture do not fall with the passage of time and have no statute of limitation in which the “civil and criminal” lawsuits against those who have committed them can be brought before national courts and International Criminal Court at all times.

The occurrence of numerous cases of torture and ill-treatment inside Palestinian places of detention should

be noted, whether in the West Bank or in the Gaza Strip, in which many citizens died. No punitive action or deterrent measures against those who committed or caused the occurrence of such crimes or against those who remained silent were taken. Since the internal political divide and the taking over of the “ Hamas ” government in the Gaza Strip, ICHR has witnessed a notable increase in registered and documented allegations of torture by security agencies in both the West Bank and the Gaza Governments. ICHR has documented those cases, and intervened with the relevant authorities.

Upon interventions by ICHR, echoed by NGOs, the Palestinian President gave instructions to all security agencies in the West Bank to refrain from practicing torture, and has openly announced that criminal charges will be brought against all those government officials who commit such crimes in accordance with relevant Palestinian legislation. Those instructions to security agencies by the highest political level led to a noticeable decrease in cases of torture documented by ICHR for a short while, especially by the Palestinian Preventive Security and the Palestinian General Intelligence (the two main bodies most often found to be involved in cases of torture and other ill-treatment). But only after a short while, ICHR witnessed a gradual reoccurrence of the practice of torture and ill-treatment by the two security agencies. This could be attributed to the lack of sufficient actual subsequent deterring measures taken in reported cases, and the absence of criminal charges brought against those allegedly involved in such crimes.

ICHR is currently taking a number of measures and methods of interventions which serve as constant activities for combating torture through the focus on preventive measures. The most important issues we work on include:

1. Developing internal systematic tools and procedures for ICHR to investigate all allegations of torture, document as well as publish the results of the procedures of investigations to the Palestinian public.
2. Conducting regular monthly visits to all places of detention in the West Bank and the Gaza Strip, to monitor conditions inside all those facilities and ensure that proper legal procedures have been followed and that prisoners were not subjected to any form of ill-treatment and/or torture. ICHR monthly conducts around 65 such visits in the West Bank and another 30 such visits in the Gaza Strip.
3. Establish the right of the ICHR to conduct un-announced visits to prisons, detention centers and penitentiaries. ICHR is in the process of signing a Memorandum of Understanding with the Chief Palestinian Police, in order to give ICHR the right to

periodical and non-periodical visits which includes announced and on-the-spot visits, as well as enhance the cooperation with the Palestinian Civil Police (PCP) in three directions; conducting regular and un-announced visits, provide ICHR with access to documents and adopted procedures by the PCP in investigating allegations of torture, and the cooperation between PCP and ICHR in conducting training and capacity building to Palestinian government officials.

4. Enhance the role of other human rights and civil society organizations to access places of detention, and allow medical institutions and medical personnel to access prison facilities in accordance with the Istanbul Protocol and the OPCAT.
5. Issue fact-finding reports about cases of death in detention during interrogation in detention centers, expose such incidents by various means including the media, and call on the Palestinian authorities to press charges against those officials who are suspected of committing the crime of torture and punish them with penalties proportionate to the seriousness of the crime.
6. Demand the PNA and the PLC committees, to necessarily work on passing a law to prevent and criminalize torture and ill-treatment inside all Palestinian places of detention. A number of recommendations have been adopted in this regard. Some have been implemented but there are still some recommendations that the Commission is struggling to activate.
7. Ensure that clinical medical examination is carried out for all detained persons at the moment they enter the detention or investigation centers by doctors affiliated to the Ministry of Health and not by the military medical services or by the military doctors affiliated with the Security Services as is currently the case.
8. Activate internal control and inspection mechanisms by the public prosecutor, the judiciary, the PLC, the Ministry of Justice, the Ministry of the Interior, as provided by applicable legislation, throughout the Palestinian places of detention, and verify the integrity of all actions taken, in order to prevent the occurrence of any abuses inside these centers.
9. The PNA should work on combating torture and ill-treatment inside the Palestinian detention and investigation centers and not invoke any exceptional or emergency circumstances to justify torture, no matter what the circumstances are.
10. Provide guarantees of fair trial through the

presentation of all civilian detainees to civilian prosecutors and civil judiciary rather than the military justice system, and stop the practice of arresting of civilians at the disposal of the military justice as stipulated in the relevant Palestinian laws and the Palestinian Higher Court of Justice's decisions in the past three years.

11. Any decision issued by the Palestinian judiciary, whether civilian or military, must not be immunized in its elementary stages, to ensure progression and to provide all means of appeal and cassation to those affected by those decisions and judgments.
12. Re-open the files of past torture cases again, use all the evidences to convict the perpetrators of the crime, and decide on the appropriate punishment against the perpetrators in order to prevent the occurrence of crimes of torture.

Despite all the efforts and the achievements of ICHR in combating torture, we still find that the Palestinian accountability procedures against perpetrators of unlawful killings, torture and ill-treatment, or against the violations of prisoners' and detainees' rights were so far ineffective. The current justice system is still unable to adequately hold the perpetrators of violations responsible for torture or ill-treatment that has taken place, leading to the creation of a culture of impunity. The lack of clarity and absence of transparency and responsiveness to victims' complaints leads to the conclusion that the follow-up mechanisms by the authorities for reported complaints and violations are inadequate thus far.



## 2. Special File on Syria



Flag of Syria

Prepared by  
**Mervat Rishmawi**  
*Human Rights Consultant*

Torture and other forms of cruel, inhumane and degrading treatment in Syria is not a new phenomenon starting with the revolution some 18 months ago. This practice has been well documented by many NGOs and UN mechanisms and concern about this has frequently been raised with the Syrian authorities. It can even be argued that this practice and the impunity that perpetrators enjoy are among the triggers of the revolution. Political activists, human right defenders, journalists, bloggers were among the main target for this.

It is impossible to reflect here all what has been documented and said about torture and ill-treatment in Syria, simply because there is far too much to say. The review here focusses only on concerns raised in the last 2-3 months. These echo similar concerns raised previously during the revolution.

This special file aims to give a glimpse of what Syrian human rights defenders would like us to see and work on in order to support them in their struggle.

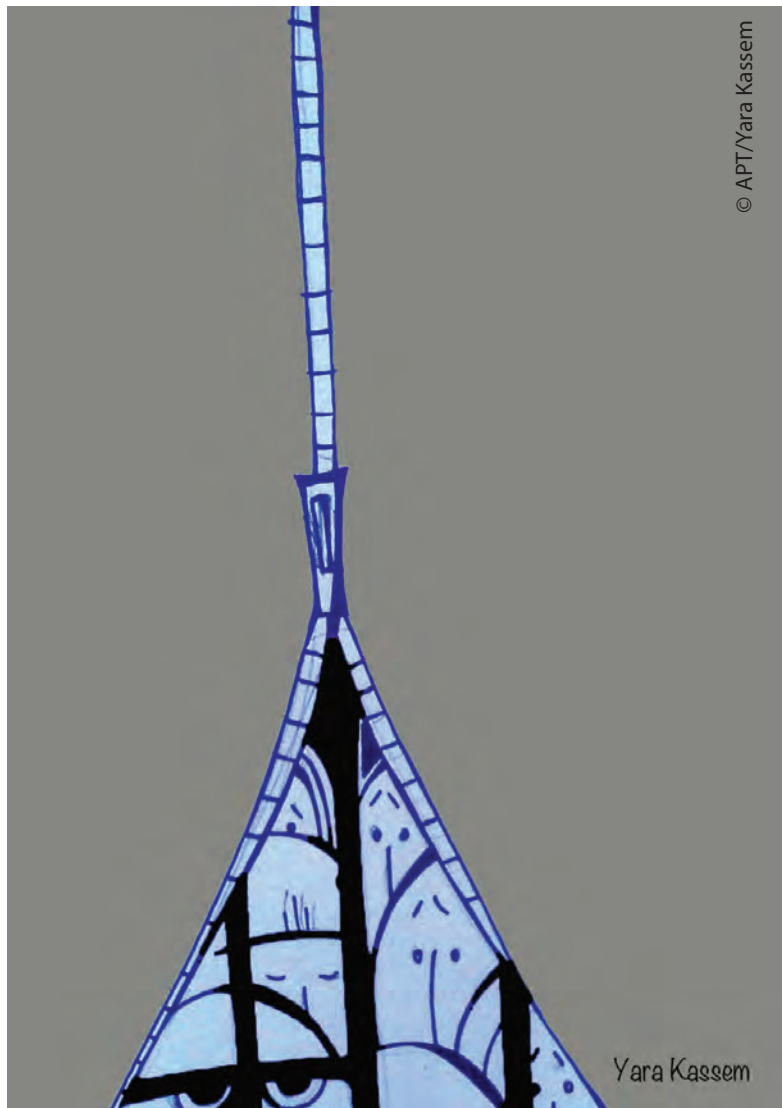
### The Special Commission of Inquiry

Report of the independent international commission of inquiry on the Syrian Arab Republic  
 (A/HRC/21/50, 16 August 2012)

The Commission of Inquiry on Syria presented to the 21<sup>st</sup> Session of the Human Rights Council its latest report on the situation in Syria. The Commission has collected what it called "an extraordinary body of evidence" and "a

second confidential list of individuals and units believed to be responsible for violations" which it said it would place in the custody of the UN Human Rights Office for future investigations by national or international justice mechanisms.

The Commission clarifies that both international human rights and humanitarian law now apply to the situation in Syria.



Yara Kassem

© APT/Yara Kassem

The latest report confirmed that Government forces and the Government backed militia, known as Shabbiha, have committed crimes against humanity, war crimes and gross human rights violations. These crimes included murder, summary execution, torture, arbitrary arrest and detention, sexual violence, violations of children's rights, pillaging and destruction of civilian objects- including hospitals and schools. It also found that Government forces and Shabbiha members were responsible for the killings in Al-Houla. The Commission confirmed its previous finding that violations were committed pursuant to State policy in large scale operations.

In specific relation to torture and ill-treatment, the Commission reported that persons interviewed had

been held in official detention centres or sometimes detained initially in unofficial facilities, such as civilian houses. Persons have also reported being beaten or assaulted during house searches or at checkpoints. The Commission affirms that reported methods of torture were consistent across the country. These included various methods of beating and electric shocks applied to sensitive parts of the body, including the genitals. Some have reported having lost consciousness during interrogation. Many stress positions, including what are known in Arabic as Falaqa, Shabih, and Doulab, as well as other abuse and humiliation techniques were used. The majority of detainees described being held in small, overcrowded dirty cells, as well as having inadequate food and water.

The commission found reasonable grounds to believe that rape and sexual assault were perpetrated against men, women and children by Government forces and Shabbiha members. Rape and sexual assault were also part of torture in official and unofficial detention centres.

The Commission's report concludes that torture was inflicted to punish, to humiliate or to extract information. The Commission adds that it found "reasonable grounds to believe that torture was perpetrated as part of a widespread attack directed against civilians by Government forces and Shabbiha who had knowledge of the attack. It concludes that torture as a crime against humanity and as a war crime was committed by Government forces and Shabbiha members." (paras 85 of Commission Report). The Commission also found that cruel, inhuman or degrading treatment was also committed.

The Commission also found reasonable grounds to believe that torture and other forms of ill-treatment were committed by anti-Government armed groups during interrogation of captured members of Government forces and the Shabbiha. It determined that severe pain was inflicted to punish, to humiliate or to extract information. The Commission concluded however that the acts of torture were not committed as part of either a widespread or systematic attack on a civilian population; therefore, they do not constitute crimes against humanity, but may be prosecutable as war crimes.

This report confirms many previous reports and statements by the Office of the High Commissioner for Human Rights, and concerns raised by various international human rights NGOs including Amnesty International and Human Rights Watch.

## The Committee against Torture

CAT/C/SYR/CO/1/Add.2, 29 June 2012

On 23 November 2011, the Committee against Torture asked Syria to submit a special report on measures taken to ensure that all its obligations under the Convention were fully implemented and expressed its deep concern about what it referred to as "numerous, consistent and substantiated reports from reliable sources about widespread violations to the provisions of the Convention by the authorities of the Syrian Arab Republic." According to the Committee, such reports include torture and ill-treatment, including of children; widespread or systematic attacks against the civilian population, including killing of peaceful demonstrators and the excessive use of force against them; extrajudicial, summary or arbitrary executions; arbitrary detentions; enforced and involuntary disappearances; and persecution of human rights defenders and activists.



UN Flag

Syria refused to cooperate with the Committee to provide the requested report, and argued that the Committee does not have the authority to request such report. In fact, on 20 February 2012, the Government stated that it would inform the Committee about the measures it had taken in its next periodic report, which was due in 2014. However, and in the light of this, the Committee against Torture considered the implementation of the Convention in Syria on the basis of available information, in the absence of the special report requested by the Committee. It adopted on 30 May 2012 its concluding observations. The Committee expressed its deep concern at "consistent, credible, documented and corroborated allegations about the existence of widespread and systematic violations of the provisions of the Convention against the civilian population of the Syrian Arab Republic committed by the authorities of the State party and by militias (e.g. shabiha) acting at the instigation or with the consent or acquiescence of the authorities of

the State party” (para 18). The Committee particularly drew attention to, among other things, the widespread use of torture and cruel and inhuman treatment of detainees, individuals suspected of having participated in demonstrations, journalists, web bloggers, defectors of security forces, persons wounded or injured, women and children; and to the habitual use of torture and cruel and inhuman treatment as a tool, which appears to be deliberate and part of State’s policy, to instil fear and to intimidate and terrorize civilian population. The Committee was also alarmed by the extensive reports of sexual violence committed by public officers, including against male detainees and children. The Committee listed in its report 19 such types of violations that were of concern and ended the report with a number of recommendations, requesting that a follow up report is sent by the authorities by 31 August 2012.

A number of NGOs, including al-Karama and the International Commission of Jurists made submissions to the Committee bringing more information to its attention. These NGO submissions, in addition to others by several UN documents and submissions made by UN bodies including the UN High Commission for Refugees (UNHCR) formed the basis for the consideration of the situation by the Committee. For more information see <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

### Human Rights Council and Special procedures of the Council

The UN Human Rights Council has considered the situation in Syria through a number of special sessions as well as in its regular sessions. Mandate holders of special procedures of the Council (Special Rapporteurs, Working Groups, etc) have also engaged with the situation in Syria, both by issuing joint statements and by addressing the situation through dealing with specific cases or situations, including by issuing Urgent Appeals.

Human Rights Council convened four Special Sessions to consider the human rights situation in Syria (April 2011, August 2011, December 2011, and June 2012). Regular sessions of the Council have also considered the situation in Syria particularly when carrying out the interactive dialogue with the Commission of Inquiry into the situation in Syria. A resolution is adopted in each session in which, among other things, the Council strongly condemned the widespread, systematic and gross violations of human rights, acts of violence, on-going atrocities and indiscriminate targeting of civilians by the Syrian authorities, and the Government-controlled militia the “Shabbiha” committed against the Syrian people.

During the regular sessions of the Council, the report of the Commission of Inquiry as well as other reports including by the UN Secretary General and OHCHR are discussed. The Council listens to statements by governments, as well as national, regional and international NGOs.

In June 2012, the Human Rights Council convened its fourth special session on Syria. During that, the Council heard statements from governments, the High Commissioner on Human Rights, and from NGOs. All Special Procedures mandate-holders of the United Nations Human Rights Council also addressed the Council. In this statement, the mandate holders “condemn in the strongest possible terms the series of attacks on residential areas, in particular the recent massacres of civilians in the village of El-Houleh reportedly involving Government forces and militias... [and are] shocked at the death of numerous young children.” The statement condemns the indiscriminate and disproportionate use of artillery and tank shelling against residential areas; the death of numerous young children; reprisals carried out against protestors, political and human rights activists, or persons suspected of anti-Government activities; arbitrary arrest and detention; interference with and even deliberate destruction preventing access to adequate food, water and in particular medical care and assistance. The statement concludes that all available information indicates that “crimes against humanity, and possibly other crimes under international law have been committed in Syria.” For further information see <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12211&LangID=E>

Various Special Procedures have issued similar statement at each special session, and through press statements and communications, whether jointly or individually, condemning the attacks against the civilian population and calling for an end to the violence from all parties.



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### 3. Recent Updates

This section focusses on major UN documents and information in the human rights system which has direct connection to the issues of torture and ill-treatment.

#### Human Rights Council, 21st Regular session

##### The Universal Periodic Review

The Human Rights Council's Universal Periodic Review started its second cycle in May 2012. Bahrain, Tunisia, Morocco, Algeria were among countries reviewed during that session. A number of recommendations were presented. Tunisia, Algeria, Morocco and Bahrain accepted many of those and rejected some. What was clear from the outcome is that these states in accepting some recommendations and rejecting many important others, very often stated that their national legislation or practices pertaining to human rights concerns, for example arrest and detention, fair trials, freedom of expression, freedom of assembly and association, are consistent with international human rights standards. This argument was accepted by some states, while others demanded that further steps are taken.



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During the Review, APT has made statements on Morocco, Algeria and Tunisia. During the Review, the APT congratulated Morocco for progress made in strengthening torture prevention and advancing towards OPCAT ratification, while encouraging the State to ratify before the end of the year. The APT also congratulated Tunisia for the ratification of OPCAT and progress made in establishing a National Preventive Mechanism, stressing the requirements for this mechanism to be completely independent and empowered to access all places of deprivation of liberty at all times. Speaking on Algeria, the APT drew attention to the fact that during the visit of the UN High-Commissioner for Human Rights to the country

the same week, the State has shown interest to ratify the OPCAT as well as the Disappearance Convention.

Following the adoption of the UPR outcome recommendations, and the commitment of Bahrain to examine OPCAT ratification, APT urged Bahrain to proceed swiftly with the examination, hoping for a positive decision as soon as possible. The APT has been calling upon Bahrain to ratify the OPCAT for several years, including in the context of the Bahrain Independent Commission of Inquiry process, which itself recommended the ratification of the OPCAT. The APT further called upon Bahrain to immediately release all detained human rights defenders and investigate all allegations of torture and death in custody and bring the perpetrators to justice.

A number of activists and NGOs, particularly from these countries, in addition to regional and international organisations participated in the debates presenting oral statements.

##### Intimidation and reprisal against human rights defenders

At the start of the session adopting the report and outcome of the dialogue for Bahrain, the Chairperson of the Council expressed concern over reports of intimidation and smear campaigns against human rights defenders from Bahrain who participated in the review. Her statement triggered strong reactions by various Arab states claiming that the Council does not have procedures to discuss this issue within the periodic review.

As a result of this, the Human Rights Council held at the start of its 21st session in September 2012 a "Panel discussion on the issue of intimidation or reprisal against individuals and groups who cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights". The Panel Discussion commenced with an opening statement by Mr. Ban Ki-moon, United Nations Secretary-General, who stressed the responsibility of States to protect human rights defenders and said that, when they failed to do so, the United Nations had to stand up and speak out. In her opening statement, Ms. Navi Pillay, High Commissioner for Human Rights, said that it is regrettable that a discussion on reprisals had to take place in the first place. In the various statements and panel presentations, it was stressed that the Council had the responsibility to ensure that all individuals participating in its meetings and cooperating with it remained secure.

##### Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

The first annual report submitted to the Human Rights

Council by the first Special Rapporteur of this new mechanism was presented to the Council. In this report, the Rapporteur stresses the need for a comprehensive approach to address gross violations of human rights and serious violations of international humanitarian law. Such approach must combine the elements of truth-seeking, justice initiatives, reparations and guarantees of non-recurrence in a complementary and mutually reinforcing manner. The Rapporteur underscored that transitional justice is not the name for a distinct form of justice, but of a strategy for achieving justice for redressing massive violations in times of transition. Therefore, redress for violations cannot be achieved without truth, justice, reparations and guarantees of non-recurrence. Importantly, the Rapporteur stressed the importance of putting victims at the centre of the process. "The recognition of victims as individuals and holders of rights is essential in any attempts to redress massive human rights violations and prevent their recurrence. Reconciliation cannot constitute a new burden placed on the shoulders of those who have already been victimized", he said.

For full report, please see

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf)

## Convention against Torture

Report of Qatar: In its 49th session on 29 October to 23 November 2012, the Committee against Torture will consider the second periodic report of Qatar. The report and list of issues are available on <http://www2.ohchr.org/english/bodies/cat/cats49.htm>

Report of Tunisia: Tunisia has submitted its third periodic report to the Committee against Torture. It will be considered in future session. The dates are not announced yet. The report is available on <http://www2.ohchr.org/english/bodies/cat/future.htm>

The United Arab Emirates has ratified the Convention against Torture on 19 July 2012.

General Comment on Article 14: the Committee against Torture has been preparing a draft General Comment on Article 14 of the Convention, which explains and clarifies the obligations of States parties under article 14 which require states parties to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." No clear dates are available on whether further discussion of the draft will take

place, or otherwise when will the Committee adopt the General Comment.

## UN Voluntary Fund for Victims of Torture



Open Call for Applications - Projects to assist victims of torture in the Middle East and North Africa region

With a view to responding to the needs of victims of torture and their family members across the Middle East and North Africa region, the United Nations Voluntary Fund for Victims of Torture launched an Open Call for Applications in May 2012, by which it accepts inter-sessional exceptional requests for funding for grants that will be used to assist victims of torture in the Middle East and North Africa. The Open Call is open until 15 October 2012, and its extension is subject to availability of funding.

Grants are awarded on a competitive basis to channels of assistance, already established or to be established, providing rehabilitation services to victims, who have been tortured in the context of recent events across the region and/or to victims who in the past did not have the possibility to receive assistance. The Open Call is restricted to organizations and other channels of assistance (i.e. teams of medical doctors, psychologists, lawyers, etc.) located in the Middle East and North Africa region (and neighbouring countries). Projects aiming to provide training for professionals (doctors, psychologists, lawyers, etc.) that would be providing direct assistance to victims of torture in the region (and neighbouring countries) may also be considered.

As a rule, grants will not exceed US\$30,000 and will cover projects for a period, renewable, of maximum 12 months. Co-funding from other donors is not required. As a rule, applications may be received in English, French or Spanish. An electronic copy of the application should be sent by e-mail to [unvfvf@ohchr.org](mailto:unvfvf@ohchr.org). The application duly dated and signed can also be sent by fax or post: UN Voluntary Fund for Victims of Torture, CH-1211, Geneva 10, Switzerland.

For additional information on the application procedure, kindly refer to the webpage of the Fund <http://www.ohchr.org/EN/Issues/Pages/TortureFundMain.aspx>

## 4. From the Field

### New activists' forum to work for better conditions for prisoners in MENA

Giorgio Caracciolo  
*Programme Co-ordinator*  
 and  
 Sune Buch Segal  
*Middle East Specialist*

Cells so overcrowded that prisoners can only sleep on their side. Damp mattresses filled with bedbugs. Endless days with no opportunities for meaningful activities. Family visits without physical contact. Dreadful food. Frequent violence.



That is what life is like for most prisoners held in many places of detention in the MENA region.

From 2-5 July 2012, at the initiative of Danish NGO Rehabilitation and Research Centre for Torture Victims (RCT) and the Lebanese NGO Restart Centre for Rehabilitation of Victims of Violence and Torture, some thirty human rights defenders met in Tripoli, Lebanon, to exchange experiences and ideas on how activists and NGOs can help improve prison conditions in MENA. Experts from the APT and the Bulgarian Helsinki Committee, in addition from RCT in Denmark, engaged in the discussion and shared experiences with the group.

During four days participants from Lebanon, Libya, Tunisia, Egypt, Morocco, Palestine, and Jordan discussed questions such as: What strategies can be used to obtain authorisation to inspect prisons? What are the success stories in MENA and are they replicable? What are the key focal elements to be taken into account when inspecting a prison? How to collect useful information without putting prisoners at risk? Etc.

Discussions did not remain at the theoretical level. In

addition to exchanging knowledge and experiences, the group visited four prisons in Tripoli (Lebanon), including the city's largest jail (which has an official capacity of approx. 400 prisoners but currently houses 650). The visits emphasised the importance of independent scrutiny of prison conditions. In addition to encountering a range of the above-mentioned problems, the prisons were characterised by a system of so-called shawish – an arrangement common to the MENA region whereby certain prisoners are selected to monitor and control other prisoners. In return, the shawish receives special privileges, such as the right to move freely around the prison outside their cells. Needless to say, such a system blatantly violates the UN Standard Minimum Rules for the Treatment of Prisoners as it discriminates between prisoners, and entails a high risk of corruption.

At the conclusion of four days of intense activity, the participants – who had had little or no contact prior to the meeting – decided to continue and consolidate the network that had emerged as a result of this initial meeting in Tripoli. It was agreed to put emphasis on practical steps forward rather than building a formalised network structure from the outset with all what this would entail in terms of bureaucratic challenges.

In a joint statement - the "Tripoli Declaration" - the newly formed group stresses the importance of governments giving independent organisations and individuals access to perform regular, unannounced visits to prisons and other places of detention. It also calls on the region's governments to ratify and effectively implement the Optional Protocol to the Convention against Torture. And not least, it expresses its dedication to creating strong regional co-operation among NGOs and activists with the aim of ending violations of prisoners' rights.

The group is due to meet again in November 2012, most likely in Jordan. It is envisaged that the regional network will continue for the coming years as a regular forum for exchange and professional dialogue. In its first phase, the establishment of the network is supported by the Danish Government.

### Prosecuting cases of torture during the Egyptian revolution

Sally Sami  
*Egyptian human rights activist*

While reports of ill-treatment and torture were documented by human rights organizations during the 18 days of the Egyptian revolution, no cases were brought to court. The only cases brought to court were related to the violence used by the police forces in front of police stations killing hundreds of protesters. Cases

were brought with regards most of police stations in Egypt. Unfortunately, however, all – with the exception of one case – were found innocent on the basis of self – defense. The only case in which police officers were found guilty for using violence against protesters was that regarding Hada'ek el Kobba (in north Cairo) police station. Even then, police officers accused of using excessive force leading to the killing of civilians were sentenced to one year suspended.

However, as the post revolution days unfolded, Egypt has witnessed a continuation of the abuses that the youth of the country revolted against. Military police continued to use violence and torture civilians arrested either while in protest or randomly as a result of crimes committed. The most striking of these abuses were the case of Samira Ibrahim who was submitted to a forced virginity test during detention and that of Essam Atta who died as a result of torture in prison.

The virginity test case: human rights organizations in Egypt brought forward two cases on behalf of Samira Ibrahim. An administrative case was raised before the Supreme Administrative Court/ State Council in July 2011 against the head of the Supreme Council of Armed Forces (SCAF), the Military Prosecutor, and head of the Central Military area, demanding an end to virginity tests arguing that they are illegal procedures and entail ill-treatment, which Samira Ibrahim was victim to after her arrest in March 2011. Despite the denial before the court of military personnel of this practice, the court chose to refer to an Amnesty International report in which a conversation between a SCAF member and AI Secretary General was documented in which the SCAF member admit to the practice of virginity tests and justifies such practice to provide evidence against any claims of rape during detention. The court also refused any justifications made by the military. The court ruled in December 2011 that such practices are in violation to the Constitutional Declaration and international human rights law, referring particularly to articles 7 (prohibition of torture and ill-treatment) and 10 (humane treatment of persons deprived of their liberty) of the International Covenant for Civil and Political Rights which Egypt had ratified. At the same time, a case was brought before the military court in which the doctor who executed the tests was put on trial. The court proceedings started in January 2012 and in February the court found the doctor innocent of the crime, only recognizing the Military's statement denying that such ill-treatment was committed and despite all evidence otherwise.

The case of Essam Atta: Essam Atta was killed on 27 October 2011 after Tora prison guards forced a hose into Atta's anus and flooded his intestines with a mixture of water and soap in search for what they have believed to be hidden drugs. The prosecutor decided that there was no sufficient reason to go to court for lack of

evidence. The forensic report by state doctors stated he



had died of a drug overdose in his stomach. However, one of Atta's inmates in prison who had submitted a statement during the investigations, when released sought Atta's family and lawyers. He wanted to change his statement. He said that during the investigation he feared his safety as he was still in detention and was forced to make his statement before the head of the prison. He documented his statement. This statement in addition to a forensic assessment report questioning the viability of the official report issued following Atta's death have provided enough reason for Atta's lawyers to bring the case again to court. The case now is pending investigation at the public prosecutor's office.



## Creating an independent body to visit and monitor places of deprivation of liberty in Tunisia

Gabriele Reiter

*Head of the OMCT Office in Tunisia*

and

Mondher Cherni

*Secretary General of the Tunisian Organisation against Torture*

The Republic of Tunisia has ratified the Optional Protocol to the UN Convention against Torture (OPCAT) at the end of June 2011. Article 17 calls upon Tunisia to “designate or establish [...] one or several independent national preventive mechanisms for the prevention of torture at the domestic level”, at the latest one year after the ratification of OPCAT. Within the specific context of Tunisia, much of the general political attention within this timeframe went to the election of a National Constituent Assembly and the formation of a government. One of the recommendations stemming from the national consultation on necessary reforms to prevent and eradicate torture and ill-treatment in Tunisia in February 2012 was to invest in the swift implementation of OPCAT and the establishment of a Tunisian National Prevention Mechanism (NPM) to visit and monitor places where persons are deprived of their liberty.

In March 2012, the World Organisation against Torture (OMCT), the Association for the Prevention of Torture (APT) and the Tunisian Organisation Against Torture (OCTT) organised a workshop to discuss the creation of an NPM with representatives from civil society and government. Participants came to an agreement that a new and independent institution should be established and that a smaller working group should continue discussing its format and mandate. This event prepared the ground for more profound discussions within governmental ranks and among human rights experts. Upon the invitation of OMCT and APT, a small group of Tunisian human rights experts met for a working

day with Suzanne Jabbour, Vice-President of the UN Subcommittee on Prevention of Torture, which oversees the implementation of the OPCAT, who accompanied the debate as a resource person. The report of the discussion of this working group was shared with all relevant ministries.

The Tunisian Ministry for Human Rights and Transitional Justice (MHRTJ) quickly took the lead and invited civil society organisations for a consultation on this topic on 19 May 2012. In order to advance with the development of a draft law establishing the Tunisian NPM, a multi-disciplinary drafting committee of 10 persons was appointed. The drafting committee was comprised of technical experts from the ministries of Justice, Interior, Defence and Foreign Affairs as well as four human rights experts from civil society and one “victim” representative. The drafting committee was presided by the MHRTJ and resumed its work in a motivated, professional and consensus-based manner. At a press conference on 10 August 2012, the drafting committee announced that it had accomplished its work and that it had submitted the draft law for inter-governmental consultation. Consequently, the draft law on the establishment of an NPM was adopted by the Ministerial Council and is currently on its way to the National Constituent Assembly for discussion and adoption.

The process of developing this draft law has to



be commended. It was by and large a joint multi-disciplinary effort recognising and incorporating views from different stakeholders. The MHRTJ is ready to host a round table discussion inviting representatives from civil society organisations to share their views and comments regarding the draft law with representatives of the National Constituent Assembly before the final adoption of the draft law. The proposed draft law is believed to be comprehensive as well as to comply with international standards. Interested parties should take the opportunity to engage with and lobby the NCA’s sub-commission on rights and liberties to adopt the law after comprehensive consultation as well as to enshrine the NPM as an independent institution in the new Tunisian Constitution.



## Workshop on prevention of torture in times of democratic transition in North Africa

Esther Schaufelberger  
 MENA Programme Officer, APT

Torture can be reduced drastically. The task is not an easy one, but together we can achieve it.

This was the positive message summing up the spirit of the North Africa workshop on torture prevention in times of democratic transition that took place on 9 – 10 June 2012 in Rabat, Morocco, organized by the Inter-ministerial Delegation for Human Rights of the government of Morocco, the UN Office of the High Commissioner for Human Rights and the APT. The meeting was attended by around 60 participants from Egypt, Tunisia, Libya, Algeria, Mauritania and Morocco. The majority of participants were government officials, in addition to representatives of National Human Rights Institutions and NGOs. The discussion in the workshop was facilitated by a number of UN and other experts.

“The taboos and denials surrounding torture and other ill-treatment have been dispelled. None of us need any longer fear to confront the challenge of eradicating torture alone,” APT’s Secretary General Mark Thomson said in his introductory remarks. By fitting this workshop into their busy schedules, the officials, the civil society actors and the UN experts demonstrated their commitment to join forces against the horrible practice of torture. The meeting benefited from the attendance of UN experts representing not less than four key UN human rights bodies with specific expertise on torture prevention in times of transition: Mr. Juan Mendez; UN Special Rapporteur on Torture; Mr. Pablo de Greiff, UN Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence; Ms. Essaida Belmir, Vice-President of the Committee against Torture and Ms. Suzanna Jabbour, Vice-President of the Subcommittee for the Prevention of Torture.

The discussions and debates were frank and showed that torture prevention is a main preoccupation in the region. Several participants paid tribute to the victims of torture in their countries of origin. Participants agreed on the necessity of comprehensive strategies that combine measures addressing past violations and rebuilding trustworthy institutions for the future. No isolated measures alone are enough. For example, participants said that it is primordial to enshrine the absolute prohibition of torture and safeguards against torture into new constitutions. But they also stressed that constitutional guarantees alone are not sufficient. Organic laws are needed to activate these rights, for example through criminalizing torture and



© APT, Pablo de Greiff, Special Rapporteur on transitional justice

guaranteeing the right to legal counsel, medical care and family notification. Most importantly, the laws need to be implemented. Participants discussed, among other issues, how independent National Preventive Mechanisms can monitor the degree to which legal standards for the prevention of torture are applied in the everyday reality of police stations and prisons.

The workshop participants were particularly interested to study comparative examples about what can be done to prevent torture and to address the heavy legacies of torture. The experience of the Moroccan Equity and Reconciliation Commission or the current transitional justice debate in Tunisia, facilitated by the Tunisian Ministry of Human Rights and Transitional Justice, triggered a lot of interest. Practical experiences of the French and the Maldivian National Preventive Mechanism were also studied with enthusiasm.

The proceedings of the workshop will be published in Arabic, English and French and will be available through the APT website.

## 5. Questions and Answers

### How can perpetrators of torture who have fled the country be brought to justice?

Claire Marty  
UN & Legal Programme, APT

In general countries exercise criminal jurisdiction over crimes that occur in their territory (known as territorial jurisdiction), and/or over crimes that were committed by or against their nationals outside their territory (known as active/passive personality jurisdiction).



There is often a gap when a perpetrator of torture leaves the country where he or she committed the crime and travels to another country.

The United Nations Convention against Torture (UNCAT) addresses this gap by requiring State parties to establish jurisdiction over persons found in their territory who are alleged to have committed torture abroad and to either extradite the person for prosecution by another State or to submit the case for prosecution (see Articles 5-7).

The duty to extradite or prosecute has been illustrated recently by the case brought before the International Court of Justice (ICJ) concerning Mr. Hissène Habré, former President of Chad, against whom complaints have been made by Chadian nationals residing in Chad to Dakar jurisdiction for crimes against humanity and torture. Mr. Habré is currently in exile in Senegal, and since 2005 Belgian authorities asked several times for his extradition to prosecute him after Chadians or Belgium-Chadian nationals residing in Belgium filed complaints against him for serious violation of international humanitarian law, crimes of torture and the crime of genocide. The Senegalese authorities refused the

requests. The question has also been addressed through a judgment of the ICJ on the "question relating to the obligation to prosecute or extradite" relating to the same case. The Court stated that "the extradition is an option offered to the State by the Convention [against Torture], whereas prosecution is an international obligation under the Convention." The Court concluded that "by failing to submit the case of Mr. Habré to its competent authorities for the purpose of prosecution, [Senegal] has breached its obligation under Article 7, paragraph 1 of the UNCAT"; and "finds that the Republic of Senegal must, without further delay, submit the case of Mr. Habré to its competent authorities for the purpose of prosecution, if it does not extradite him."

In the same judgment, the ICJ stated that the UNCAT "brings together 150 States which have committed themselves to prosecuting suspects in particular on the basis of universal jurisdiction."

The principle of universal jurisdiction is a principle of international law that allows a national court to prosecute individuals for international crimes committed anywhere in the world, even though neither the offender nor the victims are linked by nationality to the prosecuting state.

In addition to UNCAT, other treaties directly provide for or have been interpreted to provide for universal jurisdiction over war crimes, enforced disappearance, and genocide. Moreover, some sources say that the right of states to exercise universal jurisdiction over certain international crimes such as war crimes is customary international law.

One example of a case involving the exercise of universal jurisdiction for a crime other than torture, is the trial in Norway of Mr. Sadi Bugingo, a Rwandan national, who is alleged to have been involved in the genocide in Rwanda in 1994, which will begin on the 25th of September 2012. Many States (but not all) expressly require the presence of the suspect on their territory to start a criminal proceeding.

States also need to have criminalized the offence in their national criminal legislation and established the jurisdiction over the crime. These provisions are an obligation for State parties to the UNCAT (Articles 4-5) and according to many international treaties for the combating of international crimes. Therefore, NGOs can contribute to spread the practice of universal jurisdiction by lobbying in favor of amending national criminal legislation in order to get the necessary legal tools to prosecute these offences.

The goal shall be the same for all, that the terrible nature of international crimes gives the right to States to take action on behalf of humanity and thus fight impunity.

## As NGOs, how do we ensure that access to places of detention is granted on an institutional basis?

Jean-Sébastien Blanc  
Detention Monitoring Advisor, APT

Unlike National Preventive Mechanisms (NPM) created in the wake of ratification of the Optional Protocol to the Convention against Torture, or National Human Rights Institutions (NHRI), NGOs cannot rely on an international treaty that would guarantee their regular access to places of detention. Also, it is the case in the vast majority of countries that national legislation also does not guarantee this access to NGOs.

Interestingly, the practice of visits by civil society organizations can vary from one region to another. For example, following the fall of the Berlin Wall, many NGOs from countries located east of the “Iron Curtain” managed to have access to places of detention. Thanks to the wind of change shaking the entire region, this lobbying proved efficient and the practice of civil society organizations accessing places of detention is now more established in Eastern than in Western Europe. Without comparing the collapse of the Soviet Union with the “Arab Spring”, such sea changes can provide opportunities to reinvent the established order and step into the breach.

There is unfortunately no golden rule on how to gain access, but there are several strategies that NGOs may consider following, especially if they are looking for a sustainable access rather than one-off visits. For example, NGOs operating as service providers (whether offering legal advice, education or humanitarian assistance) may be able to broaden their mandate with the passing of time and include the monitoring of the human rights situation thanks to the relation of trust they will have established with the authorities.

Whatever the strategy chosen, the best way to ensure the sustainability of the visits is to agree on a Memorandum of Understanding (MoU) with the authorities, directly with the director of the place to be visited, or with higher



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authorities, such as the head of the Prison Services or the Ministry of Justice or Interior, depending on who has the responsibility over places of detention. The higher the authority, the stronger the mandate, but in any case such formal agreements will provide a consolidated basis for the visits and clarify the legal responsibilities of each party.

NGOs will need to reflect thoroughly upon what they mean by access and weigh up the pros and cons of being granted a limited access only. The type of places to be visited should be clearly spelled out (police installations? Prisons? Psychiatric institutions? Centers where migrants are detained?, etc.), but the same goes for the modalities. In order to carry out effective visits, access should ideally include the ability to tour the entire premises, the freedom to speak in private with detainees, the freedom to choose the place and the person to interview, and ideally to visit without prior notice.

Independently of the path followed by the NGOs, it is key to make use of any relevant leverage, such as allies in a particular Ministry or Office. At the international level, NGOs can benefit from instruments like the Universal Periodic Review of the Human Rights Council or visits by special procedures mandate holders such as the Special Rapporteur on Torture. Developing sound arguments and privileging a non-confrontational approach are essential to gain the necessary trust without which it is very unlikely that a sustainable access will be granted to any NGO.

### The Middle East and North Africa: **A Torture-Free Zone.**

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