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Torture in the Middle East: The Law and Practice

Regional Conference Report

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Methodology

Participants were invited to the Middle East-North Africa Regional Experts Meeting on Law and Practice in Respect of Torture on the basis of their expertise and experience in litigation and advocacy on torture related issues. The participants completed a questionnaire regarding the law and practice of torture in their jurisdiction and made presentations at the meeting covering national as well as thematic issues. The meeting provided an opportunity to exchange information and experiences on litigating torture cases and advocating legal and institutional reforms.

This report builds on the presentations and discussions at the meeting, as well as the information shared by expert participants in their responses to the questionnaire that informed the content and structure of the meeting. It provides a review of laws, practices and patterns of torture, examining the availability and effectiveness of safeguards, accountability mechanisms and avenues to obtain reparation for torture in the following countries of the Middle East-North Africa region: Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia and Yemen. The Report also reflects both the systemic challenges and best practices identified by the participants in respect of key areas of concern. Throughout this report, unless otherwise indicated, 'reportedly' refers to contributions made by participants at the meeting.

Executive Summary

Across the region, torture has been prevalent for decades, serving as a key tool for authoritarian regimes to repress dissent, instil fear and maintain their grip on power; the concomitant lack of accountability for perpetrators has entrenched a culture of impunity. The recent uprisings across the region have resulted in significant changes and challenges, many of which were still unfolding at the time of writing in June 2013. The situation is therefore characterised by a high degree of volatility and uncertainty, with some regimes resisting change, such as Bahrain, some countries in the midst of conflict, such as Syria, while others are undergoing uncertain transitions, such as Egypt, Iraq, Libya, Tunisia and Yemen.

Some of the most common patterns seen in the region include torture by police and security forces as a means of extracting confessions, which is particularly prevalent in the context of suspected terrorism. This can be attributed in part to the fact that security legislation in many countries allows for extended pre-charge and pre-trial detention of suspects, which increases their vulnerability to torture. In addition, governmental responses to the uprisings have been characterised by excessive use of force against protesters by police, military and security forces, as well as armed thugs used by law enforcement. In many states where recent uprisings have occurred, hundreds and in some cases thousands of protesters were arrested and detained, in many cases without following proper arrest procedures and without charge. There are widespread and credible reports that such detainees were subjected to torture and ill treatment by security and intelligence services. In some countries where such protests have led to internal armed conflict, such as Libya and Syria, arbitrary detention and torture have been common methods of war, attributed at varying degrees to all sides to the conflict. Violence against women is prevalent in the region, and participants attributed this in part to widespread discrimination, which is reflected in law, policy and society at large. Across the region, members of marginalised groups face disproportionate and heightened vulnerability to torture and ill-treatment, including racial and ethnic minorities, members of the LGBT community, migrant workers, in particular female domestic migrant workers, and asylum seekers. Furthermore, in many countries, conditions of detention and treatment of detainees are extremely poor to the point of amounting to ill-treatment.

All of the states considered in this report have ratified international and/or regional treaties prohibiting torture, with the exception of Palestine due to its special status. Many states have legislation prohibiting torture in place. However, in the majority of states, the definition of torture included in legislation is not in line with Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), as is the case in Algeria, Bahrain, Egypt, Iraq, Jordan, Libya and Tunisia. In Yemen, the definition is missing altogether.

While most of the countries have laws limiting pre-trial detention, in a number of countries security legislation extends pre-trial detention for certain categories of suspects well beyond the exceptional measures permitted under international law. This is the case, for example, in Lebanon and Morocco. In countries such as Algeria, Egypt and Syria, such security legislation has been in force in the context of long-standing states of emergency. Many countries have legislation in place providing detainees with the right to access a lawyer and to have one present during their interrogation. However, participants noted significant discrepancies in practice and such legislation is often not fully implemented, in particular for those detained on the basis of their alleged involvement in national security-related crimes or for political detainees. The right to a medical examination for detainees is not well established, and in those countries where this exists in law, such as Algeria, Egypt, Lebanon, Morocco and Tunisia, it is routinely denied for persons suspected of national security offenses.

There is a notable lack of effective monitoring and oversight of places of detention in the countries considered. Of these countries, only Lebanon and Tunisia have ratified the Optional Protocol against Torture (OPCAT), though neither has yet established a National Preventive Mechanism (NPM) as required. Morocco is moving towards ratification, with the Lower Chamber of Parliament having adopted the OPCAT legislation in February 2013. Some countries allow visits/monitoring by the International Committee of the Red Cross (ICRC) and/or NGOs, which is, however, the exception rather than the rule. While most states have legislation in place prohibiting the use of statements obtained through torture, including Bahrain, Yemen, Jordan and Morocco, there are serious implementation problems and defendants are routinely convicted on the basis of evidence alleged to have been obtained through torture. This is particularly so for persons charged with political or national security related offences.

Impunity for torture remains a major problem and challenge across the region. Though international standards for investigation, prosecution and accountability for torture and ill-treatment have been accepted in principle by the majority of states, the number of prosecutions for torture in the region does not reflect the extent of actual cases of torture, owing to a range of factors. Investigations are frequently seen as inadequate and ultimately ineffective, and in practice have rarely led to prosecution or conviction. The lack of effective investigations has contributed to a profound lack of public confidence in the institutions responsible for holding perpetrators to account. Coupled with the lack of protection available for victims and witnesses, this has resulted in many victims refraining from making complaints about torture or ill-treatment. Where victims do complain, authorities often fail to register these complaints as torture, instead charging the suspects with lesser crimes. In many of the countries considered, amnesty laws and other legal provisions requiring Government permission to prosecute public officials effectively serve as barriers to accountability for torture.

Legal recognition of the right to reparation is not well established in the region. In most countries, however, there is no legislation explicitly providing victims of torture and ill-treatment the right to reparation. Rather, legislation establishes more general forms of reparation available for victims of any crime resulting in harm or damage. For example, in Lebanon, a victim who joins as a civil party in a criminal case may claim monetary compensation in the course of the criminal trial. In some countries, it is also possible to file civil claims for reparation separately from the criminal process. This is usually regulated by tort law and is generally applicable to any cases where an individual's rights have been violated. However, in some countries, victims' ability to file a civil suit is dependent on the determination of criminal responsibility. Countries that have experienced conflict resulting in widespread human rights violations, such as Morocco, have adopted special measures to enable victims to seek compensation. In addition, countries such as Tunisia, Egypt and Bahrain have established reparation schemes for victims of serious human rights violations, including torture and ill-treatment, committed in the context of recent popular uprisings. The right to rehabilitation as a form of reparation is virtually non-existent although some rehabilitation measures have been provided in countries such as Morocco, which followed the findings of the Equity and Reconciliation Commission in Morocco. While in many countries there are facilities to provide victims of torture and ill-treatment with rehabilitation services, the vast majority of these are NGO rather than government-led initiatives, though the provision of such services is ultimately the responsibility of states.

The many challenges identified in preventing and punishing torture in the MENA region result from broader structural problems, including weak institutions and lack of respect for the rule of law. As such, the effective tackling of impunity for torture and ensuring victims' rights requires multiple interventions by human rights lawyers and civil society, focused on individual cases and strategic litigation at the domestic, regional and international levels, as well as advocacy for wider legislative and institutional changes.

1. Practice and Patterns of Torture in 12 countries

While states in the Middle East-North Africa (MENA) region are far from homogenous, many share histories of authoritarian or dictatorial rule characterised by often-violent repression. Across the region, torture has been prevalent for decades, serving as a key tool for such regimes to repress dissent, instil fear and maintain their grip on power. The concomitant lack of accountability for perpetrators has entrenched a culture of impunity. Recent uprisings in the region have resulted in significant changes and challenges, many of which were still unfolding at the time of writing in June 2013. The situation is therefore characterised by a high degree of volatility and uncertainty, with some regimes resisting change, such as Bahrain, some in the midst of conflict, such as Syria, while others are undergoing uncertain transitions, such as Egypt, Iraq, Libya, Tunisia and Yemen. There are also several whose situation is either unique, such as Palestine (see UN General Assembly resolution 67/19, November 2012), or marked by a degree of change, though not necessarily fundamental change, such as Algeria, Jordan, Lebanon and Morocco. Nevertheless, the demonstrations have resulted in the opening of political space in countries formerly shrouded in repression, which has in turn led to greater demands for respect for human rights and dignity.[1] Despite the transition to democracy in some countries and commitments to reform in others, torture continues to be widespread across the region.

Some of the most common patterns of torture include torture by police and security forces as a means of extracting confessions, which is particularly serious in the context of suspected terrorism. In addition, the response of law enforcement and military officers to anti-government protests has included excessive use of force, often amounting to ill-treatment and torture. Where such protests have led to internal armed conflict, such as Libya and Syria, arbitrary detention and torture have commonly been employed as methods of war, varyingly attributed to all sides of the conflict. In many countries, conditions of detention and treatment are extremely poor, amounting to ill-treatment.

Another major pattern identified is the disproportionate and heightened vulnerability to torture and ill-treatment faced by members of marginalised groups such as migrants, including in particular female domestic migrant workers and those travelling through the region. In some countries, racial, religious and ethnic minorities are at heightened risk of torture, individuals from sub-Saharan African countries in Libya, Coptic Christians in Egypt and ethnic Kurds in Iraq and Syria.

Methods of torture described by participants include severe beatings, in particular to sensitive parts of the body such as falanga (beating the soles of the feat); electric shocks; sleep deprivation; deprivation of use of hygiene facilities; being forced to stand for long periods; suspension from wrists; sexual abuse and humiliation; threats and insults to a victim's family, in particular female family members; insults against their religion; and other forms of verbal abuse and humiliation. In some countries, methods used in recent years indicate deep-seated patterns of torture. For example, the forms of torture and ill-treatment used against demonstrators arrested in the 2011 anti-government protests in Bahrain are the same methods used against demonstrators involved in the political upheaval seen in the 1990s.[2]

[1] See K. Dalacoura, "The 2011 Uprisings in the Arab Middle East: political Change and geopolitical Implications," *International Affairs* 88:1 (January 2012), 63-79, at 71 (discussing the different democratic space emerging in various MENA countries); R. Abou-El-Fadl, "Beyond Conventional Transitional Justice: Egypt's 2011 Revolution and the lack of political will," *International Journal of Transitional Justice*, Vol. 6, No. 2 (July 2012), 318-330, at 323.

[2] *Bahrain Independent Commission of Inquiry (BICI) Report*, 23 November 2011, para. 1242. One participant from Bahrain explained that he was arbitrarily detained for four months during the 1990s, and that in his work with victims of the more recent violence he noted stark similarities between his experiences and those of his clients. See also REDRESS, *Fundamental Reform or Torture without End?* March 2013. Available at: http://www.redress.org/downloads/publications/Fundamentalreform.pdf

1.1 Torture in the context of uprisings and regime change

The recent uprisings seen in states across the region have led to the ousting of authoritarian governments in Egypt, Libya, Tunisia and Yemen. In other countries, including Algeria, Jordan and Morocco, protests resulted in commitment to reforms, though long-term and meaningful changes are yet to be seen. In Syria, anti-government protests have evolved into an armed conflict between "rebel forces" and the ruling government they seek to oust, with considerable evidence of serious violations of international human rights and international humanitarian law, including torture.[3]

Governmental responses to the uprisings have been characterised by excessive use of force by police, military and security forces, as well as armed thugs used by law enforcement agents. Such excessive force was reported in Egypt during the anti-government protests that led to the resignation of Hosni Mubarak on 11 February 2012. In April 2013, a fact-finding committee established by his successor Mohammed Morsi, to investigate abuses carried out by the military from January 2011 to June 2012[4] concluded its investigation with a report, portions of which have been leaked. According to the information available, the report documents 19 incidents in which police or military used excessive force or committed other abuses against demonstrators, including the use of live ammunition, torture and enforced disappearances.[5] Unfortunately, little difference is discernible between the official response to demonstrators before and after the fall of Mubarak. Similar patterns of abuses have been witnessed in the context of the mass protest that led to the ouster of Mohammed Morsi by the army on 3 July 2013 as well as the subsequent protests organised by Morsi's supporters and others opposed to the overthrow.

In Bahrain, anti-government demonstrations began in February 2011, calling for an end to the repressive and discriminatory policies of the minority Sunni ruling regime by the Shi'ite majority. Protestors were met with a violent crackdown by government forces, including beatings, physical assault, use of tear gas and rubber bullets, and threatening and intimidating behaviour, resulting in at least 32 deaths.[6] According to the report published by the Bahrain Independent Commission of Inquiry ('BICI Report'), "…the security services of the [Government of Bahrain] resorted to the use of unnecessary and excessive force, terror-inspiring behaviour and unnecessary damage to property."[7] Demonstrations have continued since 2011, however there has been little change in the government's response to these, despite the damning findings of the BICI report. For example, in February 2013, a teenager was shot dead by police during a peaceful demonstration in the Bahraini village of al-Daih marking the two-year anniversary of the uprisings.[8] Reforms introduced following the BICI report address some of the inadequacies in terms of custodial safeguards against torture; however the reforms do not address the fundamental issues underlying Bahrain's legacy of torture.[9]

The 2011 anti-government protests in Yemen, Tunisia and Libya were met with similar violence. In Yemen, largely peaceful demonstrators protesting the 33-year rule of former President Ali Abdullah Saleh were met with excessive use of force by security forces, which included snipers firing live

[3] Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/23/58, 4 June 2013,: www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-23-58_en.pdf
[4] For more information see the Official Webpage of the Fact-Finding Commission formed by Presidential Decree No. 10/2012.
[5] *Ibid*. Leaked portions of the report are available via the Guardian, at www.guardian.co.uk/world/interactive/2013/apr/10/egyptian-army-torture-disappearances-document.
[6] BICI Report, above n. 2, p. 220.
[7] Ibid., para. 1693.
[8] BBC News, "Teenager killed in Bahrain anniversary protests," 14 February 2013: www.bbc.co.uk/news/world-middle-east-21450053.
[9] See REDRESS and IRCT, *Bahrain: Fundamental reform or torture without end?*, April 2013, www.redress.org/downloads/publications/Fundamentalreform.pdf.

ammunition into crowds.[10] Similarly in Tunisia, protests over unemployment and the rising cost of living, and calling for the end of the regime of then-President Zine al-Abidine Ben Ali, were met with deadly violence. Security forces and police used excessive force, including beatings, tear gas, and snipers to disperse demonstrators, resulting in dozens of civilian deaths.[11]

In many states where recent uprisings have occurred, hundreds and in some cases thousands of protesters were arrested and detained, in many cases without following proper arrest procedures and were detained without charge. There are widespread and credible reports that such detainees were subjected torture and ill-treatment by security and intelligence services. According to the BICI report, more than 3000 protestors and bystanders were arrested during the protests in Bahrain in February and March 2011 alone. Many were taken to undisclosed locations and held incommunicado, during which time they were tortured by security forces. At least five persons detained died as a result of torture, and the Commission received 559 complaints of torture and ill-treatment.[12] The same happened in Egypt where hundreds of peaceful protesters were arrested or arbitrarily detained in the 25 January to 11 February 2011 demonstrations, as well as the many that have followed since the fall of the Mubarak regime.[13] There are reports of detained protesters facing ill-treatment and torture by security forces, in some cases resulting in death.[14] Hundreds of people remain missing or disappeared, and their family members have no knowledge of their fate or whereabouts.[15] According to the report of the fact-finding commission established by then-President Morsi, "The Committee found that a number of citizens died during their detention by the armed forces and that they were buried in indigent graves, as they were considered unidentified."[16]

1.2 Torture and ill-treatment in armed conflict

Torture has been a widely used tool of government repression for decades, and in several countries in the region where popular uprisings led to the onset of armed conflict, torture has featured prominently. In Syria, protesters arrested or otherwise detained during the uprisings were reportedly tortured for the purposes of intimidation and instilling fear to exert power and control.[17] In the subsequent armed conflict, state intelligence and security forces have continued to torture and ill-treat political activists and persons suspected of involvement in the uprisings and rebel movements, to obtain confessions and information about their political activity. Anti-government and opposition forces have also been implicated in heinous abuses, including torture, ill-treatment and arbitrary executions.[18] Some opposition leaders have reportedly even made statements

[10] Human Rights Watch (HRW), *World Report 2012: Yemen*: www.hrw.org/world-report-2012/world-report-2012-yemen.
[11] BBC News, "'Dozens killed' in Tunisia protests," 11 January 2011: www.bbc.co.uk/news/world-africa-12162096.
[12] Complaints of torture included blindfolding; handcuffing; enforced standing for prolonged periods; beating; punching; hitting the detainee with rubber hoses (including on the soles of the feet), cables, whips, metal, wooden planks or other objects; electrocution; sleep-deprivation; exposure to extreme temperatures; verbal abuse; threats of rape; and insulting the detainee's religious sect (Shia). See also BICI Report, above n. 2.
[13] HRW, *World Report 2012: Egypt*: www.hrw.org/world-report-2012/world-report-2012-egypt.
[14] Leaked official report, below n. 16.
[15] CNN, "Unknown fates for hundreds of Egyptians missing since revolution," 11 October 2012: http://edition.cnn.com/2012/10/10/world/africa/egypt-missing.
[16] At the time of writing, the full report had yet to be made public. Portions have been leaked to the Guardian newspaper, which are available at: www.guardian.co.uk/world/interactive/2013/apr/10/egyptian-army-torture-disappearances-document. See also Guardian, "Egypt's army took part in torture and killings during revolution, report shows,"
[17] Guardian, "Syria's Torture Machine," 13 December 2011: www.guardian.co.uk/world/2011/dec/13/syria-torture-evidence?INTCMP=SRCH.
[18] Amnesty International, "'Out of control' militias commit widespread human rights abuses a year on from uprising," 15 February 2012; BBC, "Syria opposition groups accused of human rights abuses," 20 March 2012: www.bbc.co.uk/news/world-middle-east-17445148.

condoning the use of torture on grounds that the victims, supporters of the Assad regime, are 'deserving' of such treatment.[19]

Similarly, the February 2011 anti-government protests in Libya calling for an end to the 32-year rule of former President Muammar Gaddafi quickly escalated into an armed conflict between supporters of Gaddafi and the rebel militias opposing the regime. Early on, credible reports emerged documenting widespread torture and ill-treatment by all parties to the conflict.[20] In many cases, detainees were held by government forces and militias in irregular places of detention such as schools or houses, entirely outside the scope of the law, and there have been reports that detainees in such facilities have been subjected to torture and ill-treatment.[21] Many family members of such detainees were unaware of the fate or whereabouts of their loved ones for months after they were detained, or effectively disappeared.[22] Several well-armed militia groups refused to disarm following the fall of Gaddafi, and the police and army continue to struggle to maintain law and order.[23] Most recently, senior army officials invited members of militias to join the army as a way to disband the militias.[24]

1.3 Torture and ill-treatment in criminal investigations

The use of torture to extract confessions, statements or information from suspects is a widespread problem in countries across the region, which is particularly serious for persons suspected of terrorism as set out below. In Algeria and Lebanon, persons suspected of drug-related crime have been subjected to torture and ill-treatment during interrogations by police.[25] In Jordan, the UN Special Rapporteur on Torture found that torture of criminal suspects is commonplace, finding there was "an implicit societal tolerance for a degree of violence against alleged criminal suspects and convicts. Though unspoken, there was a widespread awareness that abuse of suspects and detainees occurs and resignation that little can be done about it."[26] In Yemen, the political structure of the current and former regimes has reportedly promoted the notion that torture is a necessary and legitimate means for investigating crime.

1.4 Torture in context of counter-terrorism

In many countries in the region, persons suspected of terrorism-related offences are at significantly heightened risk of torture. This can be attributed in part to the fact that security legislation in many countries allows for extended pre-charge and pre-trial detention of terrorism suspects, which increases their vulnerability to torture. This is compounded by the fact that in most cases, counter-terrorism legislation is vague, making it possible for virtually anyone to be arrested on suspicion of terrorism. Such broad definitions are highly problematic as they risk violating the principle of legality and being applied to conduct that is not sufficiently serious to be punished as terrorist activities. Furthermore, they are prone to lead to the selective application of the law, which can result in crackdowns on human rights defenders, activists, journalists or dissidents. For example, in Algeria,

[19] HRW, "Syria: End Opposition use of torture, executions," 17 September 2012: www.hrw.org/news/2012/09/17/syria-end-opposition-use-torture-executions.
[20] Amnesty International, "Both sides in Libya conflict must protect detainees from torture," 25 August 2011: www.amnesty.org/en/news-and-updates/both-sides-libya-conflict-must-protect-detainees-torture-2011-08-25.
[21] HRW, *2013 World Report: Libya*, 31 January 2013.
[22] Human Rights Council, *Report of the International Commission of Inquiry on Libya*, UN Doc. A/HRC/19/68, 8 March 2012: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf.
[23] New York Times, "Violence against Libyan protesters threatens to undercut power of militias," 9 June 2013.
[24] Reuters, "Libya: Militias are asked to join army," 11 June 2013.
[25] ACAT, *A World of Torture (Annual Report 2013*: http://unmondetortionnaire.com/IMG/pdf/Rapport_Torture_2013_en.pdf, p. 165.
[26] *Report of Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment: Mission to Jordan*, UN Doc. A/HRC/4/33/Add.3, 5 January 2007, para. 27.

there are reports that persons have been arrested on suspicion of terrorism simply for their contact with human rights defenders.[27]

In several countries, emergency laws have been in place, with serious implications for human rights. The states of emergency in several countries in the region did not appear to meet the requirements established in international law to justify the imposition and/or maintenance of a state of emergency.[28] In practice, the resort to emergency laws facilitated serious human rights violations, including routine torture and ill-treatment of persons arrested on alleged national security offenses. In Algeria, Egypt and Syria, long-standing states of emergency were lifted 2011 in response to anti-government uprisings, which were in part motivated by popular discontent with the repressive regimes in place in those countries.[29] Conversely, in Bahrain, the king imposed a three-month state of emergency in March 2011 following the on-set of the anti-government uprisings.[30] Though this was lifted in June 2011, many individuals remain in prison on charges brought against them during the state of emergency, at a time when they were subjected to torture and ill-treatment, as documented by the BICI.[31]

1.5 Gender-based violence and failure to protect

The prevalence of violence against women in the region has been attributed in part to widespread discrimination, which is reflected in law, policy and many areas of society. For example, a number of countries, including Lebanon, Syria, Jordan and Bahrain, still have legislation in place, which allows a perpetrator of rape to avoid criminal liability for the crime by marrying the victim. In some countries, perpetrators of certain crimes against women can receive reduced sentences if they were motivated by "honour" which is considered a mitigating factor in a number of judicial systems, for example in Algeria, Jordan and Syria.[32] In Algeria, there are reports of rapists marrying victims so as to avoid liability for their crime, only to divorce them days after the marriage. Even where such legislation has been repealed, for example in Palestine, there have reportedly been cases in which the judiciary have continued to apply "honour" as a mitigating factor.

Women have also been subjected to torture and ill-treatment in the course of the uprisings seen across the region in recent years. For example, during the January-February 2011 demonstrations in Egypt, thousands of protesters were arrested including many women who were forcibly subjected to humiliating and degrading "virginity tests" while in detention. Seven victims of these unlawful tests filed a case against Dr Ahmed Adel, an army doctor involved, before the Cairo Administrative Court, which determined in December 2011 that the tests were illegal. Immediately after the decision was rendered it was announced that Dr Adel would be tried in the military court. In March 2012, he was acquitted of public indecency and disobeying military orders, with the judge finding that there were

[27] ACAT, Annual Report 2011, above n. 25, p. 161.

[28] International Covenant on Civil and Political Rights, Article 4(1): "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

[29] In January 2013, Egyptian President Morsi declared a state of emergency in the cities of Port Said, Suez and Ismalia following violent clashes. See: Reuters, "Egypt's leader declares state of emergency after clashes," 27 January 2013.

[30] BICI Report, above n. 2, p. 139.

[31] REDRESS and IRCT, *Bahrain*, above n. 9 p. 2.

[32] In Egypt, Article 17 of the Penal Code provides for judicial discretion to reduce sentences in certain circumstances, which is often used in cases of 'honour killings.' Penal Code of 1937, Law No. 58 (1937: http://track.unodc.org/LegalLibrary/LegalResources/Egypt/Laws/Egypt The Penal Code Law 1937.pdf. See also Centre for Egyptian Women Legal Assistance, "'Crimes of Honour' as Violence Against Women in Egypt," in S. Hossein, L. Welchman (eds.), *'Honour': Crimes, Paradigms and Violence Against Women*, (Zed Books: New York, 2005) 137-159. Articles 252 of the Lebanese Penal Code also provide for reduced sentences in cases of 'honour killings.' Penal Code of 1963, Legislative Decree No. 340(1943).

inconsistencies in the witness testimonies. The verdict was heavily criticised by civil society groups, who highlighted the lack of independence of the military court as a major obstacle to justice.[33] The late-June 2013 protests in Egypt have also seen dozens of cases of sexual harassment and violence against female protesters.[34]

In the conflicts in Libya and Syria, rape and other forms of sexual violence against women has been rampant. According to a recent report, one of the primary reasons cited by female Syrian refugees for fleeing the country is rape or fear of rape.[35] In Libya, there are reports that a campaign of sexual violence was part of the Gaddafi regime's efforts to maintain control over Misrata, resulting in hundreds of rapes.[36] Given that chastity is highly valued and expected of women and girls in such societies, there is a considerable reluctance among victims of rape to report such crimes.[37] Furthermore, women whose experiences have become known to others have faced stigmatisation and humiliation, and in some countries, including Syria, have even been murdered in so-called 'honour' killings by their family members.[38]

Violence against women in the form of domestic or family violence is also prevalent across the region, and it is estimated that reported cases represent only a fraction of the number of incidents of domestic violence. The widespread underreporting can be attributed in large part to the inadequate response of law enforcement officials, who in many states reportedly consider domestic violence a family affair in which they are reluctant to get involved. Furthermore, in several countries, domestic violence carries minimal penalties for perpetrators. In Bahrain, for example, a man convicted of beating his wife is normally charged with a fine not exceeding US $50, which sends a clear message that such violence is not considered serious.[39] The lack of adequate protection for women from domestic or sexual violence, and the widespread lack of accountability for such crimes, reflects the widespread discrimination faced by women across the region.

1.6 Torture and ill-treatment of persons belonging to marginalised groups

Across the region, migrant workers have been targeted for abuse. Female domestic migrant workers, who in many cases have faced violence and sexual abuse at the hands of their employers. Female domestic workers are particularly vulnerable to abuse and in many cases face significant difficulties in making complaints due to restrictions of their movement and communications imposed by their employers. Furthermore, many do not speak the local language, are unaware of available avenues for protection and recourse, and afraid to risk jeopardising their precarious migrant status. The recently implemented death sentence of a Sri Lankan domestic worker in Saudi Arabia highlights this vulnerability. Razina Nafeek received the death sentence for allegedly killing a baby she was caring for as a domestic worker in Saudi Arabia when she was 17 years old.[40] There were reportedly serious

[33] The Guardian, "Egyptian army doctor cleared over 'virginity tests' on women activists," 11 March 2012: www.guardian.co.uk/world/2012/mar/11/egypt-doctor-cleared-virginity-tests.
[34] HRW, "Egypt: Epidemic of Sexual Violence," 3 July 2013: www.hrw.org/news/2013/07/03/egypt-epidemic-sexual-violence.
[35] International Rescue Committee, *Syria: A regional crisis*, January 2013: www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf.
[36] BBC, "Libya: 'Forced to rape in Misrata,'" 23 May 2011: www.bbc.co.uk/news/world-africa-13502715; Physicians for Human Rights, "ICC to investigate rape in Misrata using doctors' testimonies and hospital records," 24 April 2012: http://physiciansforhumanrights.org/blog/icc-to-investigate-rape-in-misrata-using-doctors-testimonies-and-hospital-records-1.html.
[37] MM Haj-Yahia, "Attitudes of Arab women toward different patterns of coping with wife abuse," *Journal of Interpersonal Violence,* Vol. 17, No. 7 (July 2002), pp. 721-745.
[38] Women's International League for Peace and Freedom, "Statement: 'Honour crimes' in Syria," 6 November 2012: www.wilpfinternational.org/statement-honour-crimes-in-syria/.
[39] Contribution by Regional Expert Meeting participant from Bahrain.
[40] HRW, "Saudi Arabia: Halt execution of Sri Lankan migrant worker," 8 January 2013: www.hrw.org/news/2013/01/08/saudi-arabia-halt-execution-sri-lankan-migrant-worker.

problems regarding Nafeek's access to a lawyer and competent interpreters during her trial, yet the sentence was upheld and carried out in January 2013.[41] As the protection for migrant workers in countries across the MENA region is weak, there is an urgent need for this to be strengthened. The 2012 adoption of the Domestic Workers Convention (International Labour Organization, No. 189), which sets out basic rights and principles regarding domestic workers, and requires states to take specific measures aimed at protecting domestic workers from abuse, is a positive step forward in this regard, however it is too soon to assess its effectiveness.[42] One positive civil society initiative from Lebanon is the hotline and website established by the Nassim Centre for Human Rights for domestic workers to complain about abuse and for persons to report suspected abuse. One participant described several cases in which domestic workers had been removed from abusive situations as a result of contacting the hotline, however in most cases no charges were brought against the perpetrators, reportedly owing to their high social status.

During the conflict in Libya, African migrant workers from several countries including Mali, Chad, Sudan and Niger were targeted by rebel forces, allegedly because they were thought to be foreign mercenaries fighting on behalf of pro-Gaddafi forces, though the targeting of sub-Saharan Africans appears to have been largely motivated by racism.[43] Hundreds were injured in attacks by militias and detained in appalling conditions where they also faced torture and ill-treatment.[44]

Asylum seekers and migrants attempting to travel to Europe from North Africa have also faced significant abuse and human rights violations in their journeys. For example, Morocco, which in some parts is only 14 kilometres from Europe, sees passage of large numbers of African migrants seeking to access Europe. Such migrants are often subject to assaults and violence from law enforcement officials, as well as civilians, reflecting the pervasive discriminatory attitudes towards them. Defending the rights of migrants abused in this way and seeking accountability of perpetrators makes up a large part of the work of human rights NGOs in Morocco who provide them with legal assistance.

Across the region, ethnic and religious minorities have been targets of sectarian violence. For example, in Syria, ethnic Kurds have been targeted for torture and ill-treatment, including in the ongoing civil war. The Committee Against Torture (CAT) has expressed deep concern regarding the numerous reports of torture, ill-treatment, death in custody and incommunicado detention of people belonging to the Kurdish minority, in particular political activists of Kurdish origin.[45] Prior to the uprisings, there were also reports of Kurdish conscripts who have been killed while serving their mandatory military service, whose bodies bore signs indicating they had been tortured.[46]

In some countries, persons suspected of engaging in "immoral" activities, such as sex workers, members of the LGBT community and drug users, have been subjected to ill-treatment and torture. For example, in Lebanon, there are reports of such persons facing arbitrary arrest, because the

[41] Ibid.
[42] International Labour Office, Convention No. 189: Decent Work for Domestic Workers, 16 June 2011. For more information, see: www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_208561.pdf.
[43] Speaking about the targeted violence against sub-Saharan Africans in the Libyan uprisings, Human Rights Watch researcher Peter Bouckaert stated, "It really is racist violence against all dark-skinned people. This situation for Africans in Tripoli is dire." Washington Post, "In Libya, the peril of being black," 10 September 2011. See also The Guardian, "Libya's spectacular revolution has been disgraced by racism," 30 August 2011.
[44] Amnesty International, "Both sides in Libya conflict must protect detainees from torture," 25 August 2011; CNN, "Chad's migrant workers pay price for Libya conflict," 18 April 2012: http://edition.cnn.com/2012/04/18/business/chad-libya-economy-oil.
[45] CAT, *Concluding Observations: Syria,* UN Doc. CAT/C/SYR/CO/1, 25 May 2010, para. 8.
[46] Ibid.

authorities suspect such so-called "immorality" - and subsequent ill-treatment and torture at the hands of police.[47]

1.7 Conditions of detention

Across the MENA region, conditions of detention are extremely poor, giving rise to serious concerns of ill-treatment of detainees. For example, in Algeria, conditions of detention at certain facilities fall far short of basic international standards—severe overcrowding is an ongoing problem, which also impacts negatively on the air quality in prisons due to insufficient ventilation, as well as unsanitary hygiene facilities.[48] In some countries, conditions of detention for political prisoners or those held on suspicion of terrorism-related offences, are particularly bad. For example, persons detained in Bahrain in connection with the February 2011 uprisings reported being held in detention centres with no access to drinking water, or washing and toilet facilities. Similarly, in Syria, political detainees have reported being held in appalling conditions. For example, Hanadi Zahlout who was arrested by the Political Security Intelligence in August 2011 reported being held for 50 days in a 2 metre by 1 metre cell full of insects with no furniture, forcing her to sleep on the floor. She was also prevented from having any contact with the outside world, and did not see the sun or breathe fresh air for the first month of her detention.[49]

In addition to problems relating to the conditions of detention, in some countries there is a long-standing practice of holding certain categories of detainees in undisclosed or secret detention facilities. This has been reported in Algeria, Bahrain, Lebanon, Libya and Syria. In Lebanon, one participant reported that some political coalitions or alliances have unlawfully and arbitrarily detained individuals in undisclosed locations such as private apartments where torture takes place. In Libya, as discussed in further detail in chapter 4, thousands remain in detention following the 2011 uprisings and subsequent armed conflict. Almost half of those are detained by non-state armed groups in undisclosed locations, including private houses. This unlawful deprivation of liberty, entirely outside of any judicial or criminal system, puts these detainees at serious risk of torture. The government has not yet disarmed or demobilised the many armed groups who played a key role in the uprisings, and as a result has yet to establish control and rule of law in all parts of the country.

In Algeria, the use of secret places of detention is effectively provided for in law, as explained in chapter 4. There have been numerous reports of persons, in particular those detained on suspicion of terrorism, being held at unknown locations. This is most prevalent for persons detained by the Directorate of Intelligence (DRS). For example, a number of Algerians detained by the United States at Guantanamo Bay were effectively disappeared for several weeks when they were returned to Algeria in July 2008. Abderrahmane Houari and Mustafa Hamlily were the first men to be transferred from Guantanamo Bay to Algeria after more than six years of detention. Immediately upon returning to Algeria, they were arrested at the airport by DRS officials and held incommunicado in an unknown location for two weeks.[50] Their families had been expecting their arrival after being notified by their lawyers, but had no knowledge of their whereabouts during that period. Both men were eventually released and permitted to return to their family homes.

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[47] HRW, "*It's Part of the Job": Ill-treatment and torture of Vulnerable Groups in Lebanese Police Stations*, 26 June 2013.
[48] International Committee of the Red Cross, *2011 Annual Report*, p. 93: www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-algeria.pdf.
[49] Alkarama, *Crimes Against Humanity in Syria: Systematic Torture to Quell Public Dissent (Submission to CAT)*, April 2012, p. 13.
[50] Center for Constitutional Rights, "Ex-Guantanamo detainees effectively disappeared after transfer to Algeria nearly two weeks ago," 11 July 2008: http://ccrjustice.org/newsroom/press-releases/ex-guant%C3%A1namo-detainees-effectively-disappeared-after-transfer-algeria-nearl.

2. Legal Framework

2.1 International law on the prohibition of torture

The main regional and international instruments relating to torture are:

- International Covenant on Civil and Political Rights 1966;
- Optional Protocol to the International Covenant on Civil and Political Rights 1966;
- African Charter on Human and Peoples' Rights 1981;
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984;
- Rome Statute to the International Criminal Court 1998;
- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002;
- Arab Charter of Human Rights 2004.

Excluding the special situation of Palestine, all of the states considered are a party to the International Covenant on Civil and Political Rights (ICCPR), and all excluding Syria are party to CAT. However, the vast majority of them have not yet recognised the competence of relevant UN treaty bodies to consider individual complaints. Only Algeria, Libya and Tunisia have ratified the Optional Protocol to the ICCPR. Similarly, only Algeria, Morocco and Tunisia have recognised the competence of the Committee Against Torture to consider individual complaints. The inability to bring individual petitions before these Committees poses a serious obstacle to the full realisation of the rights under the ICCPR and the CAT. Furthermore, Jordan and Tunisia are the only countries in the region to ratify the Rome Statute of the International Criminal Court.

Algeria, Egypt, Libya and Tunisia have ratified the African Charter on Human and Peoples' Rights. In addition, Algeria, Libya and Tunisia have also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. Egypt has signed but not yet ratified the Protocol. Morocco is not party to any instruments under the African Human Rights System, having withdrawn from the then Organisation of African Unity (OAU) in 1984 following this body's recognition of the Sahrawi Arab Democratic Republic ('Western Sahara').

Of the 12 states considered in this report, all except for three have ratified the Arab Charter of Human Rights. Egypt, Morocco and Tunisia have signed, but not ratified the Charter. Palestine, not being a fully recognised state under international law, is unable to sign international treaties and covenants; however, as a Member of the Arab League, it also ratified the Arab Charter of Human Rights in 2007. It should be noted that the Arab Charter of Human Rights, which entered into force in 2008, is largely considered a dead letter instrument and has been criticised for lowering international human rights standards.[51] The Arab Committee for Human Rights, which was established in 2009 to monitor compliance with the Arab Charter by reviewing state reports, is seemingly ineffective as its members, mostly former government officials, do not exercise the requisite independence and are not human rights experts. This is reflected in the work of the body which is criticised for prolonged delays in its reporting on state party compliance. One participant described how the Committee has delayed issuing its report on the situation on human rights in

[51] See Amnesty International, "Middle East and North Africa: Re-drafting the Arab Charter on Human Rights: Building for a Better Future," 11 March 2004; M. Rishmawi, "The Revised Arab Charter on Human Rights: A Step Forward?" *Human Rights Law Review* Vol. 5, No. 2 (2005), pp. 361-376; and M. Rishmawi, "The Arab Charter and the League of Arab States: An Update," *Human Rights Law Review* Vol. 10, No. 1 (2010), pp. 169-178.

Bahrain, despite the well-documented systematic and widespread violations carried out there in the wake of the February 2011 uprisings. The Committee has also been criticised for lack of transparency and for failing to adequately engage with civil society in its work.[52]

2.2 Status of international treaties in domestic law

International law requires states to adhere to their treaty obligations in good faith. States retain a measure of discretion as to how to best implement their obligations, unless the adoption of legislation is specifically prescribed, as is the case under Articles 4 and 5 of the CAT. Across the region, the system of incorporation differs with states following monist (direct incorporation with primacy of international law), dualist (implementing legislation needed), mixed conceptions, or no clarity on the status of international law in the domestic legal order.

In Bahrain,[53] treaties enter domestic law once they have been ratified or acceded to, and published in the Official Gazette. In some states, such as Algeria,[54] Jordan[55] and Lebanon,[56] binding international treaties are considered to automatically form part of the domestic legal order and to take precedence over domestic law upon ratification by the President and the Parliament, and publication in the Official Gazette.

In Egypt, Article 145 of the 2012 Constitution outlines the process for ratification of international treaties (signed by the President and ratified by the upper and lower houses of Parliament, with a two-thirds majority). However this provision also states that "[n]o international treaty that contradicts the provisions of this Constitution shall be signed."[57] In Libya, the 1969 Constitution stipulated that new laws that have been ratified and published in the Official Journal are in effect from the time of publication.[58] According to the Libyan state party report to CAT in 1999, international laws published in the Official Journal "acquire binding force and take legal precedence over the provisions of domestic legislation."[59] Following the overthrow of the Gaddafi regime in 2011, a Constitutional Declaration was adopted in August 2011, setting out key principles for governance until the adoption of a permanent Constitution. It specifies that the state has an obligation to respect human rights and basic freedoms, and includes a commitment to joining international and regional human rights instruments; however it does not clarify the status of international norms at the domestic level. At the time of writing, the Constitution-building process in Libya was ongoing. Similarly, the Constitution-drafting process in Tunisia was in progress at the time of writing. Article 21 of the draft Constitution states that "[i]nternational conventions duly ratified by the parliament have a status superior to the laws and inferior to the constitution."[60]

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[52] Ibid.
[53] Article 37 of the Constitution of Bahrain 2002.
[54] Article 132 of the Constitution of Algeria 1989.
[55] Article 93 of the Constitution of Jordan 1952; Jordan Court of Cassation, Ruling No. 936/1993 of 13 November 1993 and Ruling No. 3695/2003 of 29 February 2004.
[56] Article 2(2) of Lebanon's Criminal Procedure Code 2001; Article 16 of the Constitution of Lebanon 1926.
[57] Rights included in the 2012 Constitution are: the right to dignity (Art 31), freedom from arbitrary arrest (article 35), humane treatment in detention (Art 36), freedom from deportation (Art 42), freedom of thought (Art 45), freedom of the press (articles 48 and 49), right to assembly (Arts 50-52), prohibition on immunities (Art 75), and compensation for violation of the rights included in the Constitution (Art 80).
[58] Articles 18, 23 and 34 of the Constitution of Libya 1969.
[59] *Report of Libyan Arab Jamahiriya to the UN Committee Against Torture*, UN Doc. CAT/C/44/Add.3, January 1999.
[60] Draft Constitution of the Tunisian Republic (2012), English translation available at: www.wilsoncenter.org/islamists/article/english-translation-the-tunisian-draft-constitution. However, there is concern that the draft Constitution does not include robust protection of human rights, creating the possibility that, if adopted, it will undermine implementation of international human rights treaties to which Tunisia is a party. See Human Rights Watch, Tunisia: Revise the Draft Constitution, 13 May 2013: www.hrw.org/news/2013/05/13/tunisia-revise-draft-constitution.

In other states, such as Morocco, Yemen and Iraq, the status of international law at the national level is unclear. In Morocco, Article 19 of the 2011 Constitution commits to upholding "international conventions and pacts duly ratified by Morocco," however the reference to the supremacy of international law over domestic legislation contained in the preamble is unclear. Experts have criticised the new Constitution for failing to clearly set out that international law supersedes domestic law, where any conflict arises.[61] Similarly, in Yemen, there is no legislation that clarifies the relationship between the two. However, Article 6 of the Constitution provides that, "The Republic of Yemen confirms its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and Principles of international Law which are generally recognised." In Iraq, Article 8 of the 2005 Constitution states that "Iraq shall […] respect its international obligations," and sets out the process by which international treaties are ratified,[62] however it does not clarify the status of international law at the domestic level.

2.3 Application of international law by domestic courts

Though many states in the region have ratified the core human rights treaties, the implementation of international obligations at the domestic level remains largely superficial in practice. This is the case even in those states where such obligations have direct effect, as in Jordan. Domestic courts in the region only exceptionally consider international law, and overall, international human rights norms are not fully integrated into judicial processes and decisions. Participants attributed this to judges' lack of knowledge of and familiarity with human rights law and its capacity for domestic application, but also to a lack of willingness. One participant noted that across the region, there are many judges who accept that torture is a necessary component of protecting the state from perceived national security threats broadly defined. One of the consequences of this is that victims in the region lack confidence in domestic justice systems. Another participant noted that judges across the region do not receive adequate training on international law in general, and human rights law in particular. In Yemen, there is no record of national courts making reference to international law and norms in any domestic judicial decisions.[63]

2.4 Jurisdiction over torture committed abroad

The main bases for extraterritorial jurisdiction for torture in the region, i.e. the possibility to prosecute suspects for torture committed outside of a state's territory, are active personality jurisdiction (based on the nationality of the suspected perpetrator) and passive personality jurisdiction (based on the nationality of the victim). Legislation providing for universal jurisdiction, which is not linked to the place where the offence was committed, the nationality of the suspect, the victim, or to the harm caused to the forum state's national interests, is less common.

Of the states considered, Algeria,[64] Jordan,[65] Morocco,[66] Iraq,[67] and Tunisia[68] have in place legislation providing for universal jurisdiction over the crime of torture.[69] In Lebanon[70] and Syria,[71] torture is not

[61] M. Madani, D. Maghraoui and S. Zerhouni, *The 2011 Moroccan Constitution: A Critical Analysis*, Institute for Democracy and Electoral Assistance, 2012: www.idea.int/publications/the_2011_moroccan_constitution/loader.cfm?csModule=security/getfile&pageid=56782, p. 23.
[62] Articles 61, 73, 80 and 110 of the Constitution of Iraq 2005.
[63] Sisters Arab Forum for Human Rights, *The Status of Torture in Yemen (Report Submitted to CAT),* October 2009, p. 7: www2.ohchr.org/english/bodies/cat/docs/ngos/SAF_Yemen43.pdf.
[64] Articles 582-584 of Algeria's Criminal Procedure Code 2007.
[65] Articles 10(1) and 10(4) of Jordan's Criminal Code 1960.
[66] Article 10 of Morocco's Criminal Code 1962.
[67] Article 10 of Iraq's Criminal Code 1969.
[68] Tunisia has taken the position that the principle of universal jurisdiction has been incorporated into domestic law as a result of Article 32 of the Constitution which provides that agreements approved or ratified by the President have greater authority than national laws, and universal jurisdiction is part of the UNCAT as well as the Geneva Conventions, to which

a separately defined offense, however national law provides for extraterritorial jurisdiction over ordinary crimes such as rape, murder, physical assault or abduction. In other words, which could cover acts amounting to torture.[72]

In practice, however, there have been virtually no prosecutions for torture under extraterritorial jurisdiction provisions in countries in the region. This poses a serious obstacle for accountability for torture. As was pointed out by one participating expert, such extraterritorial prosecutions are necessary to ensure that perpetrators do not benefit from safe havens effectively shielding them from prosecution.

Tunisia is a state party. See Report sent to UN Secretary-General on the scope and application of universal jurisdiction, 16 June 2010: www.un.org/en/ga/sixth/65/ScopeAppUniJuri_StatesComments/Tunisia_E.pdf.

[69] Amnesty International, *Universal Jurisdiction: A preliminary survey of legislation around the world*, October 2011: www.amnesty.org/fr/library/asset/IOR53/004/2011/en/d997366e-65bf-4d80-9022-fcb8fe284c9d/ior530042011en.pdf.

[70] Articles 20, 21, 23 of Lebanon's Criminal Code 1999.

[71] Articles 20, 21, 23 of Syria's Criminal Code 1953.

[72] Amnesty International, *Universal Jurisdiction*, above n. 69.

3. Prevention of Torture

3.1 Pre-trial detention and judicial control

Legal limits to the length of pre-charge and pre-trial detention are an important safeguard as detainees are highly vulnerable to torture and ill-treatment during this period. The CAT has routinely emphasised the importance of limiting pre-trial detention as an Article 2 UNCAT obligation.[73] While most of the countries considered have legislation limiting pre-trial detention, security laws provide for extensions well beyond the exceptional measures permitted under international law.

For example, in Morocco, suspects can be held in police custody (*garde à vue*) for a maximum of 48 hours.[74] However, the 2003 Counter-Terrorism Act No. 03-03 allows for this period to be extended for up to 12 days for terrorism suspects.[75] While arbitrary detention is generally prohibited in Lebanon,[76] Security Law no. 359 of 2001, amending the Criminal Procedure Code, allows persons suspected of national security offenses to be held in police custody for an initial 48 hours, which can be renewed once.[77] The maximum period of detention for those facing trial for the most serious offenses is six months.[78] However, this limit does not apply to cases involving crimes against state security or terrorism, with suspects being kept in detention for months or even years pending trial. For example, Tarek Rabaa, a telecommunications engineer in Lebanon arrested on suspicion of providing information to Israeli intelligence officials, has been detained since July 2010.[79] He was tortured in detention and forced to sign a "confession," which forms the basis for his trial before the Military Court in Beirut, ongoing since February 2011. While his defence counsels alleged that he was tortured and have submitted a forensic medical report, the Military Court has refused to consider the evidence.[80] Similarly, four Lebanese military officers suspected of involvement in the assassination of Rafik Al-Hariri were detained for three years and eight months before being released without charge.[81]

In some countries, security legislation allowing for extended pre-trial and pre-charge detention has been adopted in the context of long-standing states of emergency. The rationale for such laws is to facilitate state responses to situations considered a "threat to the life of a nation."[82] Under international law, the right of states to declare a state of emergency is subject to several limitations: the threat must be genuine; states may only derogate from certain rights, such as the right to liberty and security (but not habeas corpus); and any such derogation must be necessary and proportionate

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[73] For example, see CAT, *Concluding Observations: Kazakhstan*, UN Doc. A/56/44/(SUPP), 17 May 2001; CAT, *Concluding Observations: Cameroon*, UN Doc. CAT/C/CR/31/6, 5 February 2004; CAT, *Concluding Observations: Uzbekistan*, UN Doc. CAT/C/CR/27/7, 6 June 2002; CAT, *Concluding Observations: Japan*, CAT/C/JPN/CO/1, 3 August 2007.

[74] Article 68 of the Morocco Criminal Procedure Code 1959.

[75] US Department of State, *2012 Human Rights Report: Morocco*: www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper; International Commission of Jurists, *Torture in Morocco: Submission to CAT*, 31 October 2011, p. 6.

[76] Article 376 of Lebanon's Criminal Code 1999.

[77] Article 32 of Lebanon's Criminal Procedure Code 2002.

[78] Ibid., Article 108.

[79] OMCT, "Lebanon: Promptly investigate torture and arbitrary detention allegations in the case of Mr. Tarek Rabaa," 8 November 2011: www.omct.org/urgent-campaigns/urgent-interventions/lebanon/2011/11/d21495/.

[80] Alkarama, "Lebanon: Two weeks of hunger strike for Mr. Tarek Rabaa," 15 May 2013: http://en.alkarama.org/index.php?option=com_content&view=Article&id=1082:lebanon-two-weeks-of-hunger-strike-for-mr-tarek-rabaa&catid=26:communiqu&Itemid=131.

[81] Special Tribunal for Lebanon, "Prosecutor informs pre-trial judge he does not oppose release of four detainees in the Hariri case," 29 April 2009: www.stl-tsl.org/en/media/press-releases/prosecutor-informs-pre-trial-judge-he-does-not-oppose-release-of-four-detainees-in-the-hariri-case.

[82] See ICCPR, Article 4(1): "time of public emergency which threatens the life of the nation;" ECHR, Article 15(1): "war or other public emergency threatening the life of the nation;" ACHR, Article 27(1): "war, public danger, or other emergency that threatens the independence or security of a State Party."

to counter the threat identified.[83] States of emergency are exceptional, and their duration should therefore be limited to the situation that gives rise to the emergency. However in some countries, emergency laws were until recently a quasi-permanent feature, existing in Syria from 1963 to 2011, in Egypt from 1967 to 2012,[84] and in Algeria from 1992 to 2011, and along with them myriad legal loopholes allowing for prolonged pre-charge and pre-trial detention of certain categories of suspects.

In Syria, the broad and vague provisions of the State of Emergency Act of December 1962 made it possible for security and intelligence services, known as the *mukhabarat*,[85] to arbitrarily detain virtually anyone without charge or trial for extended periods.[86] While the state of emergency was lifted in April 2011, new legislation was adopted under Decree No. 55 of 21 April 2011 which makes it possible for suspects to be held for up to 7 days, renewable by a Public Prosecutor for up to 60 days. However in many cases these limits are simply ignored by authorities. Consequently, periods of pre-charge and pre-trial detention have been significantly longer than is accepted under international law, lasting for months or longer. Detainees have been held incommunicado, denied access to their families or lawyers, and there are credible reports of hundreds if not thousands of persons who have been tortured, in many cases leading to deaths in custody.[87] As a result of the ongoing civil war in Syria, the dramatic rise in the number of political detainees in Syria has also led to security forces detaining individuals outside of regular detention facilities, such as military bases, schools and hospitals.[88] There are also reports that Syrian opposition groups fighting the regime have arbitrarily detained regime supporters in informal detention facilities, entirely outside of the protection of the law, where they have faced torture and ill-treatment, in some cases resulting in death.[89]

In Egypt, Articles 36 and 131 of the Criminal Procedure Code provide that any arrested person must be brought before a public prosecutor within 24 hours of detention, and the prosecutor is required to either order their release or extend the detention within another 24 hours. However, under Article 3(1) of the former emergency law in Egypt, Law No. 162 of 1958, criminal suspects and "persons who are dangerous to public security and order" could be arrested and detained, even if no criminal act was in preparation or had been committed. Effectively, this law allowed for preventive or administrative detention of individuals considered a national security threat, without charge or trial.[90] According to the Special Rapporteur on Counter-Terrorism, "thousands of persons might have

[83] A public emergency has been defined as "an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population, or the whole population of the area to which the declaration applies and constitutes a threat to the organised life of the community of which the state is composed." See International Law Association, Paris Minimum Standards of Human Rights Norms in a State of Emergency (1984), section A.1(b): www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/ParisMinimumStandards.pdfFor the extent of derogation during an emergency see Human Rights Committee, *General Comment 29: States of Emergency*, UN Doc. CCPR/C/21/Rev.11, 31 August 2001.

[84] The emergency law in Egypt (Law No. 162 of 1958) lapsed on 31 May 2012; A new state of emergency was declared in August 2013.

[85] 'Mukhabarat' refers collectively to the Department of Military Intelligence; the Political Security Directorate; the General Intelligence Directorate; and the Air Force Intelligence Directorate.

[86] Article 4 of the State of Emergency Act of December 1962 provides that the Military Governor can impose, through oral or written orders, "restrictions on the rights of the people to the freedom of assembly, residence, transport, and movement, and to arrest suspected people or those threatening public security on a temporary basis, and to authorise investigations of persons and places at any time, and to allow any person to perform any task." See Section 4.3 of this report for a larger discussion on emergency legislation and the role of military tribunals.

[87] According to Human Rights Watch, there were 865 deaths in custody in Syria in 2012. See HRW, *2013 World Report: Syria*, 31 January 2013.

[88] Alkarama, *Crimes Against Humanity in Syria: Systematic torture to Quell Public Dissent*, 20 April 2012, para. 41.

[89] HRW, "Syria: End opposition use of torture, executions," 17 September 2012: www.hrw.org/news/2012/09/17/syria-end-opposition-use-torture-executions.

[90] REDRESS, *Reparation for Torture: A Survey of Law and Practice in Thirty Selected Countries (Egypt)*, April 2003 www.redress.org/downloads/country-reports/Egypt.pdf.

been detained at a certain point of time under Article 3(1) of the Emergency Law."[91] Furthermore, the emergency law lacked any definition of what constitutes a threat to national security, resulting in its broad application to arrest and detain virtually anyone. In practice, it was used by the former Mubarak regime to crackdown on dissidents and perceived opposition members. The law remained in force after the toppling of the regime in February 2011, and thousands of protesters were arrested and subsequently tried before military tribunals. In May 2012, the Emergency Law lapsed and was not renewed, and in the subsequent months all administrative detainees held under the law were reportedly released.[92]

In Algeria, Article 51 of the Criminal Procedure Code limits the period of *garde à vue* to 48 hours. However, this can be extended for up to 12 days with the written authorisation of the prosecutor's office in cases of suspected terrorists. Furthermore, the amended Criminal Procedure Code provides for pre-trial detention up to four months, which can be extended five times by the examining magistrate for up to four months each time for persons under investigation for terrorism-related offences.[93] While the above means that a suspect may spend up to 24 months in pre-trial detention, which is already excessive, individuals charged with terrorism-related offenses have been detained for significantly longer periods and, in many cases, in undisclosed locations. For example, Amari Saifi, the suspected ringleader of the 2003 kidnappings of 32 European tourists in Algeria, was detained in 2004 on suspicion of terrorism and held in an undisclosed location for six years until he was brought before a judge in 2011.[94] In another case, Malek Medjnoune and Abdelhakim Chenoui were held in pre-trial detention for 11 years on suspicion of involvement in the murder of Algerian singer Loubnes Matoub.[95] Both were eventually sentenced to 12 years' imprisonment in a one-day trial that was heavily criticised for being unfair and were released in 2012 as the time spent in pre-trial detention was applied to their sentences.[96] Under the 19-year state of emergency in Algeria, detention in secret locations was provided for by law.[97] On the same day that the state of emergency was lifted in February 2011, in response to popular uprisings, Decree No. 11-02 was issued amending the Penal Code to allow judges to detain pre-trial suspects in a "protected residence". As the decree does not specify the types of detention facilities that fall within the provision, the measure provides no safeguard against authorities detaining persons in undisclosed locations beyond the scope of judicial review, putting such detainees at serious risk of torture and ill-treatment.

In some countries, legal limits to detention are simply ignored by authorities in cases relating to perceived national security threats, including political opposition. For example, in Bahrain, the legal limit to police custody is 48 hours.[98] However, in practice detention can last for weeks, as highlighted in the BICI report: "The Government of Bahrain concealed or withheld from detainees and/or their families information about the detained persons' whereabouts for periods ranging from days to

[91] *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Mission to Egypt*, UN Doc. A/HRC/13/37/Add.2, 14 October 2009.
[92] Al Jazeera, "Egypt's infamous emergency law expires," 31 May 2012www.aljazeera.com/news/middleeast/2012/05/201253113402173246O.html.
[93] Individuals accused of acts qualified as "transnational crimes" can actually be detained for more than 44 months in total under Art 15 *bis* of the Criminal Procedure Code, which provides for up to 11 extensions by the examining magistrate. See Articles 125-1 and 125bis of the Criminal Procedure Code of 1966, as amended. Available in French at: www.droit.mjustice.dz/legisl_fr_de_06_au_juil_08/code_proc_penale_avec_mod_06.pdf
[94] HRW, "Algeria: Long delays tainting terrorism trials," 18 June 2012: www.hrw.org/news/2012/06/18/algeria-long-delays-tainting-terrorism-trials.
[95] Alkarama, "Algeria: After 12 years imprisonment, Malik Medjnoun begins hunger strike," 25 June 2010: http://en.alkarama.org/index.php?option=com_content&view=Article&id=546:algeria-after-12-years-imprisonment-malik-medjnoun-begins-hunger-strike&catid=18:press-releases&Itemid=77.
[96] HRW, "Algeria: Long delays tainting terrorism trials," above n. 96.
[97] Article 5 of the Presidential Decree No. 92-44 of 9 February 1992: "The minister of interior and local government may decide to place in a security facility, in a specified place, any adult individual whose activity is determined to be dangerous for the public order, public security, or the proper operation of public services."
[98] Article 6 of Bahrain's Criminal Procedure Code.

weeks."[99] In Tunisia, Article 13bis of the Criminal Procedure Code limits the period of police custody to 3 days, with one extension for a similar duration.[100] However, under the former Ben Ali regime, this law was reportedly largely ignored in cases of terrorism suspects who were routinely held in secret detention facilities prior to any formal registration of their arrest—effectively removing them from the scope of legal protection. The Special Rapporteurs on Torture and on Human Rights while Countering Terrorism have both expressed concern about this practice, which saw dozens of terrorism suspects tortured into making confessions while held in secret detention facilities, even before their detention was officially acknowledged.[101] Similarly, in Yemen, legislation requires that persons arrested on suspicion of crime must be brought before a judge within 24 hours of arrest,[102] and the law prohibits detention for over seven days without a court order. However in practice, prolonged arbitrary detention is common, in particular for terrorism suspects who have reportedly been detained, in some cases, for up to four years without charge or trial. CAT has expressed concern about long periods of incommunicado detention, as well as widespread reports of arbitrary arrest and detention in Yemen.[103]

In several countries, legal limits to pre-trial and pre-charge detention are simply inadequate as a safeguard against torture. For example, in Jordan, Article 110 of the Criminal Procedure Code requires that all persons arrested by the judicial police be brought before the public prosecutor within 24 hours, and Article 114 gives the prosecutor the right to detain the person for a renewable period of 15 days before charging, up to a maximum of six months. The situation in Iraq[104] and Palestine[105] is largely the same.

3.2 Irregular administrative detention

In Jordan the Crime and Prevention Law 1954, empowers administrative provincial governors to legally detain persons suspected of committing crimes or deemed "a danger to society" and hold them indefinitely without charge or trial. There are reportedly 11,345 persons under this administrative detention system, which is entirely outside the scope of any judicial oversight, putting detainees of this kind at heightened risk of torture and ill-treatment.[106]

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[99] BICI Report, above n. 2, para. 1304.

[100] *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Tunisia,* UN Doc. A/HRC/19/61/Add.1, 2 February 2012, para. 18.

[101] See Ibid., para. 20. According to the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, "During the period of secret detention on the premises of the Ministry of the Interior, practices of torture were not the exception, but the rule, in total disregard not only for the international human rights obligations that Tunisia had undertaken, but also for the Articles of the Constitution of Tunisia and the provisions of ordinary laws safeguarding against such practices." See *Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism: Mission to Tunisia*, UN Doc. A/HRC/20/14/Add.1, 14 March 2012: www.ohchr.org/EN/Issues/Terrorism/Pages/Visits.aspx.

[102] Article 76 of Yemen's Criminal Procedure Code.

[103] CAT, *Concluding Observations: Yemen*, UN Doc. CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para. 13.

[104] Article 123 of Iraq's Criminal Procedure Code (provides that a suspect must be brought before an investigative judge within 24 hours of arrest) and Article 109 of the Code (allows for renewal of detention for a period of 15 days at each separate judicial hearing, for a maximum of six months for the most serious offenses. Such an extension cannot exceed a quarter of the maximum possible sentence for the alleged offense).

[105] Civil Palestinian Penal Law 2001 allows for detention of suspects by police for up to 24 hours before they must be brought before the general prosecutor, who can extend the detention for an additional 48 hours before presenting him before a civil judge. The prosecutor can also request an extension of the pre-charge detention for an additional 15 days of "investigative detention" which can be renewed for a total of six months.

[106] According to information made available to The Jordan Times by the Jordanian National Centre for Human Rights. See: The Jordan Times, "Experts call for regulating pre-trial detention to curb torture," 27 June 2013: http://jordantimes.com/experts-call-for-regulating-pre-trial-detention-to-curb-torture .

Human rights bodies have repeatedly highlighted the link between the use of administrative detention and torture and have urged states to limit to an absolute minimum the use of such detention. In the words of the Special Rapporteur on torture:

> Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention.[107]

In Libya, where thousands of persons remain in custody following the ousting of Gaddafi and the subsequent violence that ensued, the situation regarding the rights of detainees is particularly dire. Thousands of suspected or real Gaddafi supporters that have refused to disarm continue to be arbitrarily detained by non-state militia groups across the country.[108] Such detainees are held in a variety of irregular places of detention, including homes and schools, for extended periods. Many have been tortured. The Ministry of Justice and the Ministry of Defence also continue to hold thousands of detainees arrested during the course of the armed conflict.

3.3 Limited access to a lawyer

Detainees' right to promptly access a lawyer is a fundamental safeguard against torture and ill-treatment. The point at which detainees may access this safeguard and the level of protection provided as a result varies. Many countries in the region have legislation in place providing detainees with the right to access a lawyer and to have one present during their interrogation. However, participants noted significant discrepancies. Such legislation is not fully implemented for all detainees, particularly those detained in relation to national security-related or political offences. In Bahrain, Article 61 of the Criminal Procedure Code provides detainees with the right to access a lawyer.[109] However, lawyers for persons detained in connection with the recent uprisings recounted that in practice they are impeded by Bahraini authorities in their attempts to meet with their clients. The Bahrain Independent Commission of Inquiry also found that many persons detained in the wake of the February 2011 uprisings and the violence that ensued were denied access to legal representation, in some cases for up to two months, following their apprehension. Some detainees were reportedly denied their right to meet with a lawyer until the day of their trial.[110] The experience of Abdulhadi al-Khawaja, a prominent human rights activist in Bahrain, which is described in more detail in section 4.3, is illustrative. Al-Khawaja was arrested for his role in the uprisings, and subsequently detained incommunicado for several weeks before he was allowed to meet with a lawyer.[111] Another well-known rights activist, Ebrahim Shareef, endured the same.[112] Both have allegedly being tortured by Bahraini law enforcement and intelligence officials while in custody.

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[107] *Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38*, UN doc. E/CN.4/2003/68, 17 December 2002.
[108] UN Security Council, "Security Council Press Statement on Libya," 20 June 2013. See also: HRW, *2013 World Report: Libya*, 31 January 2013; International Crisis Group, *Trial by Error: Justice in Post-Qadhafi Libya*, 17 April 2013.
[109] Article 61 of Bahrain's Criminal Procedure Code.
[110] BICI Report, above n. 2, para. 1195. "Numerous detainees at Al Qurain and Juw Prisons stated that they were detained for approximately two to three months without being allowed contact with a lawyer. When they did eventually meet with their lawyer, it was only for a few minutes and often not in private."
[111] Amnesty International, *Bahrain: "Freedom has a price" – Two years after Bahrain's uprising*, February 2013: www.amnesty.org.uk/uploads/documents/doc_23012.pdf, p. 8.
[112] Ibid.

In Yemen, the right to a lawyer for persons deprived of their liberty is enshrined in Article 48(b) of the Constitution, as well as in the Criminal Procedure Code.[113] However this right has reportedly not been applied to persons detained on suspicion of terrorism or related offenses.[114] Similarly, in Egypt, though detainees' right to a lawyer is enshrined in Article 35 of the Constitution, this is often ignored by detaining authorities, particularly the security services, compounded by the use of incommunicado detention, which has continued to take place after the fall of Morsi.[115] In the recent case of Egyptian journalist Mohamed Sabry, detained for trespassing military property in January 2013, no arrest warrant was issued and he was denied access to a lawyer during initial interrogation, when he was also blindfolded.[116] In Lebanon, Article 47 of the Criminal Procedure Code provides persons in police custody the right to contact and meet an advocate of their choosing. However participants noted that in practice, this right is denied to persons arrested on suspicion of terrorism or other national security offenses. Tarek Rabaa (whose case is raised at the beginning of this section), was detained for 32 days before he was allowed to meet with a lawyer.[117]

In Iraq,[118] legislation provides detainees the right to a lawyer. However, for many persons arrested on suspicion of terrorism, this right is not capable of being realised. Many lawyers are reluctant to represent and defend individuals accused of such crimes for fear of reprisals. This follows a campaign of violence against lawyers.[119]

Where security legislation permits extended periods of pre-charge detention, this is often accompanied by limitations to detainees' right to access a lawyer and receive medical examinations. For example, following the 2003 amendment to the Moroccan Criminal Procedure Code,[120] persons arrested on suspicion of terrorism could be denied access to a lawyer for up to 48 hours from the first renewal of the initial police custody (*garde a vue*). In practice, terror suspects can be in police custody up to 6 days before they are able to communicate with a lawyer.[121] Similarly, in Algeria, detainees are not guaranteed the right to access a lawyer during police custody, which results in many detainees appearing before a magistrate without a lawyer to represent them.[122] For terrorism suspects, who can be kept in extended police custody, this can mean years of detention without access to a lawyer, as was the case for Amari Saifi,[123] who was detained for 6 years in an undisclosed location without access to a lawyer.

In Jordan, Article 63 of the Criminal Procedure Code provides suspects with the right to remain silent unless a lawyer is present. However Articles 66(2) and 64 of the same law empower prosecutors to interrogate detainees without a lawyer in exceptional cases.[124] This is despite the fact under Article

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[113] Article 181 of Yemen's Criminal Procedure Code.
[114] See FIDH, Yemen: In the Name of National Security: *www.fidh.org/IMG/pdf/Yemen.pdf*.
[115] Alkarama, "Egypt: WGAD finds detention of minors Kamal and Othman arbitrary," 15 February 2012: http://en.alkarama.org/index.php?option=com_content&view=Article&id=857:egypt-wgad-finds-detention-of-minors-kamal-and-othman-arbitrary&catid=22:communiqu&Itemid=101.
[116] Amnesty International, "Egyptian journalist facing military trial must be released," 7 January 2013: www.amnesty.org/en/news/egyptian-blogger-facing-military-trial-must-be-released-2013-01-07/.
[117] See also OMCT, "Lebanon: Promptly investigate torture and arbitrary detention allegations in the case of Mr. Tarek Rabaa," 8 November 2011: www.omct.org/urgent-campaigns/urgent-interventions/lebanon/2011/11/d21495/.
[118] Article 123 of Iraq's Criminal Procedure Code.
[119] Amnesty international, *New Order, Same Abuses: Unlawful detentions and torture in Iraq,* September 2010. See also Agence France-Presse, "Attack on Shiites and lawyers kill 21", 8 August 2012.
[120] Law No. 03-03 (Law to Combat Terror) adopted in June 2003.
[121] International Commission of Jurists, *Submission to the Committee Against Torture on the Examination of the Fourth Periodic Report of the Kingdom of Morocco*, November 2011, p. 6: www2.ohchr.org/english/bodies/cat/docs/ngos/ICJ-CAT47-Morocco.pdf.
[122] Alkarama, *Torture remains a common practice in Algeria*, April 2008: www2.ohchr.org/english/bodies/cat/docs/ngos/ReportAlkarama_CAT4apr08.pdf.
[123] See Ibid., at p. 24.
[124] *Report of the Special Rapporteur on torture: Jordan,* above n. 26.

66(1) of the Jordanian Criminal Procedure Code the prosecutor can ban contact between the detained suspect and anyone other than his lawyer.[125]

In Syria, suspects must follow a complicated process to access legal advice while in detention. They must provide their lawyer with a *wakala* or power of attorney, for which they must pay a fee, and which must be signed by the suspect in the presence of his lawyer and a representative of the Bar Association. This impedes access to a lawyer. Political detainees held incommunicado are unable to initiate the process. In cases where political detainees have been able to obtain legal counsel, restrictive detention they are subjected to under security or intelligence agencies means that effective legal representation is virtually non-existent.

3.4 Right to medical examination

The right to regular health checks and to a medical examination for detainees, which constitutes another important safeguard against torture, is not well established in the region. In Iraq, Bahrain, Jordan and Yemen, there is no enabling legislation. In Jordan, Article 66(1) of the Criminal Procedure Code allows the public prosecutor to ban contact with a detainee for renewable periods of up to 10 days at a time, which includes medical staff.[126] According to the UN Special Rapporteur on Torture, following his mission to Jordan in 2006, "[d]isregard for basic safeguards for detainees, such as notification for reasons of arrest, prompt access to lawyers and families, let alone any serious medical examinations, is reportedly common."[127]

In several other countries, including Tunisia,[128] Morocco,[129] Algeria,[130] Egypt[131] and Lebanon,[132] legislation provides detainees the right to a medical examination. However, participants explained that in practice this safeguard is routinely denied to terrorism or national security suspects. In Egypt, according to reports from former detainees, administrative detainees arrested prior to the anti-government uprisings of 2011 were routinely denied adequate medical care as a means of discrimination as well as to "show them that they were at the mercy of the SSI [State Security Investigations] officer who was posted in the prison for the surveillance of political prisoners, as well as administrative detainees." [133] In addition, in some countries, including Tunisia, medical examinations are reported to be ineffective due to the lack of independence of medical staff, which has resulted in cases of covered up evidence of violence or torture, both in the pre-uprising period, as well as during and after.[134]

3.5 Monitoring bodies

Independent monitoring bodies play a fundamental role in examining places of detention to ensure detainees' rights are respected. The importance of such monitoring for effective torture prevention is reflected in the Optional Protocol to the Convention Against Torture (OPCAT), which entered into force in 2006, and allows for independent monitoring by the UN Sub-Committee on Prevention of

[125] Ibid.
[126] Jordan Criminal Procedure Code, Article 66(1): "The public prosecutor may decide to prevent contacting the detained defendant for a renewable period not exceeding ten days."
[127] *Report of Special Rapporteur on torture: Jordan,* above n. 26, para. 31.
[128] Article 13bis of Tunisia's Criminal Procedure Code.
[129] Article 89 of Morocco's Criminal Procedure Code.
[130] Article 51 (1) of Algeria's Criminal Procedure Code.
[131] Article 33 of Egypt's Law on Prisons 1956.
[132] Articles 32 and 47(4) of Lebanon's Criminal Procedure Code.
[133] Amnesty International, "Time for Justice: Egypt's Corrosive System of Detention," April 2011.
[134] ACAT, *Vous Avez dit Justice? Etude du phenomene tortionnaire en Tunisie,* June 2012.

Torture. OPCAT also requires a National Preventive Mechanism (NPM) to be established at the domestic level, mandated "to regularly examine the treatment of the persons deprived of their liberty in places of detention [...], with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment."[135] Of all the countries in the MENA region, only Lebanon and Tunisia have ratified OPCAT, though neither has yet established a NPM as required. Morocco is moving towards ratification, with the Lower Chamber of Parliament having adopted the OPCAT bill in February 2013.[136]

Despite the limited OPCAT ratification in the region, there are arrangements in some countries for oversight of places of detention. For example, in Algeria, the International Committee for the Red Cross (ICRC) and the National Consultative Commission for the Promotion and Protection of Human Rights carry out visits to some places of detention. However, they do not have access to detention facilities of the intelligence services (DRS) and the findings of their visits are confidential and shared only with the government.[137] In Bahrain, on the recommendation of the BICI report, draft legislation is under consideration to establish the National Foundation for Human Rights as the country's national human rights body, which would be mandated to oversee places of detention,[138] though at the time of writing in June 2013, no progress had been made in this regard. A memorandum of understanding has also been signed between the government and the ICRC to monitor some places of detention.[139] Furthermore, as part of the reforms undertaken in light of the BICI recommendations, the Supreme Judicial Council of Bahrain issued a decree, ordering members of the judiciary and public prosecution to undertake detention monitoring visits. This is a matter of concern in light of widespread reports that these institutions lack independence and impartiality.[140] While there have been reforms, these are too limited to ensure meaningful change.[141] In Morocco, oversight of places of detention is under the purview of the Public Prosecution, as well as members of the judiciary and the Advisory Council on Human Rights and provincial councils.[142] NGOs have been denied access to places of detention.

In all these countries, reports highlight that certain categories of suspects, such as terrorism suspects, are detained in secret facilities beyond the scope of monitoring bodies.[143] In Jordan, two public bodies are tasked with monitoring places of detention: the National Centre for Human Rights (NCHR) and the Grievances and Human Rights Office of the Public Security Department, alongside the ICRC. While the National Centre for Human Rights, Jordan's national human rights institution, has received an 'A' for compliance with the Paris Principles,[144] participants were critical of the body due to its ineffectiveness, which some attributed to the lack of adequate knowledge, experience and motivation of staff.

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[135] Article 19 OPCAT.
[136] APT, "Morocco: OPCAT Ratification," www.apt.ch/en/opcat_pages/opcat-ratification-44/.
[137] For more information about the ICRC's work in Algeria, see: ICRC, *2013 Annual Report (Events of 2012): Algeria*, May 2013: www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-algeria.pdf.
[138] See website of the National Commission Assigned to Follow-up Recommendations of the Bahrain Independent Commission of Inquiry, www.biciactions.bh/wps/portal/BICI.
[139] ICRC, "Bahrain: ICRC to start visiting detainees," 8 November 2011: www.icrc.org/eng/resources/documents/news-release/2011/bahrain-news-2011-12-08.htm.
[140] BICI Follow-up Report, November 2012, para. 85: http://iaa.bh/downloads/bici_nov2012_en.pdf. See also Ministry of Interior, 'BICI Implementation', 1 December 2012, www.policemc.gov.bh/en/BICI_Report.aspx.
[141] See, eg. FIDH, 'Bahrain: Silencing Dissent', September 2012, pp. 26-7: www.fidh.org/IMG/pdf/rapbahrain595a.pdf; HRW, 'Bahrain: Vital Reform Commitments Unmet', 28 March 2012, www.hrw.org/news/2012/03/28/bahrain-vital-reform-commitments-unmet; REDRESS and IRCT, *Bahrain*, above n. 9.
[142] "Independent Monitoring of Human Rights in Places of Detention," *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, Vol. 19, Supp. 1 (2009).
[143] CAT, *Concluding Observations: Morocco*, UN Doc. CAT/C/MAR/CO/4, para. 14.
[144] Paris Principles on National Institutions for the Promotion and Protection of Human Rights, UN General Assembly Resolution 48/134 of 1993.

In Yemen, as has been pointed out with concern by a number of UN treaty bodies,[145] there is no independent institute mandated to monitor places of detention or monitor human rights in general. The law enables the public prosecutor to visit places of detention, but this is not effective oversight, given reports that cases of ill-treatment were brought to the attention of the prosecutor but no action was taken. In Libya, as mentioned above, large numbers of detainees are held in irregular detention. While the ICRC has been very active in monitoring places of detention,[146] there are dozens of facilities that are entirely outside the scope of any external oversight or monitoring.

3.6 Evidence obtained through torture

The inadmissibility of statements obtained through torture in legal proceedings is a key safeguard and deterrent, as recognised in Article 15 of UNCAT. One of the primary, but not exclusive, motivations for the use of torture in the region is to obtain confessions from criminal suspects. While most of the states considered have legislation to prohibit the use of such statements, including Jordan,[147] Morocco,[148] Tunisia,[149] Bahrain,[150] Iraq[151] and Yemen,[152] there are serious problems of implementation. Defendants are routinely convicted on the basis of evidence allegedly obtained through torture, particularly those charged with political or national security related offences.

The European Court of Human Rights (ECtHR) has commented on the use of evidence obtained through torture in Jordanian courts in its decision in the case of *Othman (Abu Qatada) v. UK*. Abu Qatada, a well-known Islamist who was living in the UK as an asylum seeker at the time, and faced extradition to Jordan; he had already been convicted and sentenced *in absentia* to life imprisonment with hard labour on terrorist-related charges based on evidence obtained through torture. The ECtHR ruled in favour of Abu Qatada, finding that he would risk an unfair trial if returned. According to the ruling, Jordan's State Security Court, which has the power to reject confessions obtained through torture, has shown little willingness to do so, and according to the ECtHR, "the thoroughness of [its] investigations into allegations of torture [being] at best questionable."[153]

In Morocco, although the Criminal Procedure Code prohibits evidence obtained through "coercion" or "violence,"[154] such evidence is frequently admitted in cases against terrorism suspects, and more recently in cases against protestors.[155] In September 2012, a Moroccan court sentenced five pro-

[145] CAT, *Concluding Observations: Yemen*, above n. 102, para. 10; HRC, HRC, *Concluding Observations: Yemen,* UN Doc. CCPR/C/YEM/CO/5, para. 18.
[146] In 2012, the ICRC carried out 184 visits to 89 detention facilities in Libya. For more information on the work of ICRC in Libya, see ICRC, *2013 Annual Report (Events of 2012): Libya*, May 2013: www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-libya.pdf.
[147] The use of evidence obtained "under duress" is prohibited under Article 159 of the Jordanian Criminal Procedure Code. CAT has commented on the routine use of evidence obtained through torture. See: CAT, *Concluding Observations: Jordan*, UN Doc. CAT/C/JOR/CO/2, 25 May 2010, para. 30; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council',* UN Doc. A/HRC/4/33/Add.3, 5 January 2007, para. 19.
[148] Article 293 of Morocco's Criminal Procedure Code.
[149] Article 152 of Tunisia's Criminal Procedure Code (provides judges with the discretion to determine the validity of confessions admitted as evidence, however Article 155 of the same statute prohibits the use of confessions obtained through torture as evidence).
[150] Article 19(d) of the Constitution of Bahrain.
[151] Article 37 (c) of the Constitution of Iraq. Judges have reportedly failed to ensure effective investigations into defendants' allegations that confessions were obtained through torture. See: Amnesty international, *Iraq: Amnesty International submission to the UN Universal Periodic Review,* February 2010, p. 7.
[152] Article 48 of the Constitution of Yemen.
[153] ECtHR, *Omar Othman v. UK*, Application No. 8139/09, Judgment of 17 January 2012, para. 278.
[154] Article 293 of Morocco's Criminal Procedure Code.
[155] HRW, *Just Sign Here: Unfair trials based on confessions to the police in Morocco,* June 2013.

reform activists to prison terms for assaulting and insulting a police officer, basing its judgment exclusively on confessions allegedly extracted through torture while in police custody. Despite these allegations, the court failed to carry out any investigation, and refused to summon any of the officers allegedly assaulted or any eye-witnesses.[156] Similarly, following his visit to Tunisia in 2011, the UN Special Rapporteur on Torture expressed concern that "in practice, there appears to be no instruction to the courts with regard to implementing [this] rule or ordering an immediate, impartial and effective investigation if the rule is violated," and that "such confessions are not expressly excluded as evidence in court."[157] Similarly, in Yemen, both the Constitution and the Criminal Procedure Code prohibit the use of evidence obtained through torture. However, CAT has expressed concern that this continues to be a widespread practice regardless.[158]

In some countries, such as Algeria, there is no legislation in place to prohibit the use of illegal confessions. In the above-mentioned case of Abdelhakim Chenoui and Malik Medjnoune, who were arrested for alleged involvement in the killing of Algerian singer Loubnes Matoub, both men were convicted solely on the basis of a 'confession' by Chenoui, which he alleges was made while he was being tortured.[159]

In several countries, special courts, including military courts, are used to try civilians. This goes against international human rights standards, including Article 5 of the Basic Principles on the Independence of the Judiciary.[160] Courts of exception, where they exist, are usually used to prosecute those charged with national security offenses, which are vague defined making it possible for virtually anyone to be arrested and prosecuted. In most cases, courts of exception lack the robust independence required of the judiciary to ensure a fair trial, and defendants' confessions are taken at face value. Even if defendants allege that the confession was obtained through torture, judges typically fail to order an investigation. For example, in Lebanon, most persons arrested on national security charges are tried before military courts, which are presided over by military officers, who lack independence and routinely fail to investigate defendants' allegations of torture. For example, Tarek Rabaa (see section 3.1 above), was forced to sign a "confession" which constituted the basis of his trial before the military court, ongoing since February 2011.[161] Similarly, in Gaza and the West Bank, while Article 13(2) of the Palestinian Basic Law of 2003 prohibits the use of evidence obtained through torture, this is not always implemented by military courts. For example, Abdel Karim Shrair, a resident of Gaza, was arrested and prosecuted before a military court for allegedly providing information to Israeli intelligence officials.[162] He was convicted and sentenced to death on the basis of a confession he alleges was obtained through torture. Despite complaining about this to the judge, no investigation was ordered. Shrair was executed in 2011.

[156] HRW, "Morocco: Contested Confessions Used to Imprison Protesters," 17 September 2012: www.hrw.org/news/2012/09/17/morocco-contested-confessions-used-imprison-protesters.
[157] *Report of the Special Rapporteur on torture: Tunisia,* above n. 100.
[158] CAT, *Concluding Observations: Yemen*, above n. 103, para. 28.
[159] Amnesty International, "Algeria: Release Malik Medjnoun, unlawfully detained for over a decade," 21 July 2011: www.amnesty.org/en/library/asset/MDE28/002/2011/en/a163f626-b1f3-4b12-b85b-24f02824494c/mde280022011en.html.
[160] Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, UN Doc. A/CONF.121/22/Rev.1 at 59 (1985). Article 5: "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."
[161] Alkarama, "Lebanon: Two weeks of hunger strike for Mr. Tarek Rabaa," 15 May2013: http://en.alkarama.org/index.php?option=com_content&view=Article&id=1082:lebanon-two-weeks-of-hunger-strike-for-mr-tarek-rabaa&catid=26:communiqu&Itemid=131.
[162] HRW, *Abusive System: Failures of Criminal Justice in Gaza*, October 2012: www.hrw.org/print/reports/2012/10/03/abusive-system.

In Egypt, the use of evidence obtained through coercion or duress is also prohibited by the Constitution.[163] However, in practice, cases still pending before the disbanded state security court or being heard in military courts, which are still permitted to try civilians,[164] notoriously allow confessions obtained through torture. In the case of *Egyptian Initiative for Personal Rights and Interights (on behalf of Sabbah and Others) v. Egypt* before the African Commission on Human and Peoples' Rights (ACHPR), the three complainants were arrested by the State Security Intelligence (SSI) on suspicion of involvement in the 2004 and 2005 bombings in the Sinai Peninsula. They alleged to have been held incommunicado and tortured into signing "confessions" which served as the basis for their conviction and death sentencing. The ACHPR found Egypt to be in violation of Article 5 (prohibition of torture) of the African Convention on Human and Peoples' Rights arising not only from the torture, but also as a result of the use of the confessions.[165] The death sentences were repealed as a result of the decision, however the three men were sent for re-trial before a different bench of the Emergency State Security Court in September 2012.[166]

In Syria, the legislation adopted in the context of the long-standing state of emergency allows civilians to be tried before military courts, as well as before the Supreme State Security Court (SSSC), in cases involving acts "considered hostile to the socialist system or the revolution of 1966".[167] As in other countries where similar legislation is in place, acts are very broadly defined in the legislation, and in practice the majority of people tried before the SSSC are alleged members of the Muslim brotherhood, so-called Islamists, human rights activists and members of opposition political parties.[168] Torture of defendants before the SSSC for the purpose of obtaining a confession is reportedly routine; Furthermore, the Court systematically fails to investigate defendants' allegations that they have been tortured.[169]

3.7 Prohibition of refoulement

The principle of *non-refoulement* is recognised in Article 3 of CAT. According to this principle, individuals must not be returned to a country where they face a real risk of torture.[170] The principle

[163] Article 36 of the Constitution of Egypt.

[164] Law No. 162 of 1958 (Emergency Law) empowered the Egyptian president to refer cases involving ordinary crimes to the State Security Emergency Courts or the military courts. The 2012 amendment of the Military Justice Code removed this power from the presidency, however it did not remove the power of military courts to try civilians. In the months following the uprisings that ousted Mubarak, while the country was under the leadership of the Supreme Council of the Armed Forces (SCAF), more than 12,000 civilians were reportedly tried unfairly by military courts. In July 2012, a committee was established by presidential decree to review convictions of protesters made by military courts, and 700 civilians were pardoned on the basis of the committee's recommendation, and an amnesty imposed for offenses committed "in support of the revolution," however 1,100 civilians unfairly convicted by military courts for other offenses were not addressed. In addition, though the Emergency Law lapsed in May 2012, civilians continued to be tried before security courts. See www.amnesty.org/en/news/egyptian-blogger-facing-military-trial-must-be-released-2013-01-07; www.hrw.org/news/2012/05/07/egypt-new-law-keeps-military-trials-civilians; Amnesty International, Annual Report 2013: www.amnesty.org/en/region/egypt/report-2013.

[165] ACHPR, *Egyptian Initiative for Personal Rights and Interights (on behalf of Sabbah and Others) v. Egypt*, Case No. 334/06, Judgment on Merits, March 2011.

[166] UNHCR, Egypt: "Evidence obtained through torture, inadmissible in any court and in all circumstances", 12 September 2012: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12505&LangID=E, accessed 2 July 2013.

[167] Decree No. 46 of 1966 grants military courts exceptional powers to hear cases against civilians. The Supreme State Security Court was established under Decree No. 47 of 1968.

[168] Alkarama, *Syria: The Permanent State of Emergency – A Breeding Ground for Torture*, 9 April 2010: http://en.alkarama.org/index.php?option=com_docman&Itemid=200.

[169] Amnesty International, *Syria: Briefing to the Committee Against Torture*, 2010.

[170] Article 3 of UNCAT states: "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Further guidance can be found in CAT, *General Comment No. 1: Implementation of Article 3 of the Convention in the context of Article 22 (Refoulement and communications,* 16 September 1998, UN Doc. A/53/44, annex IX.

has not been incorporated into the legal systems of a number of countries in the region, and even where it has, there are persistent reports of individuals being returned to countries where they risk torture.

Moroccan legislation prohibits "the deportation […] of any alien to a country where they can demonstrate that their life or liberty would be at risk or that they would be subject to inhuman, cruel or degrading treatment,"[171] though it fails to make specific reference to torture. In the case of *Djamel Ktiti v. Morocco*, CAT found that the pending extradition of Djamel Ktiti to Algeria would lead to a breach of Article 3.[172] In its subsequent review of Morocco, the Committee expressed concern that following the decision the Moroccan authorities failed to halt the extradition process and suspended it instead. In the case of *Alexey Kalinichenko v. Morocco*, the Committee found that the extradition of Djamel Ktiti, a Russian national who had fled Russia fearing for his life and safety after disclosing details of an organised crime group to the authorities, would constitute a violation of Article 3, and that the diplomatic assurances sought by the Moroccan authorities were insufficient.[173] Similarly, Tunisian law prohibits returning persons to countries where they may be at risk of torture.[174] Despite this, in June 2012, Tunisian authorities extradited former Libyan prime minister al-Baghdadi al-Mahmoudi to Libya, even though he risked torture, disappearance and execution as a result of his position within the former Gaddafi regime.[175]

All states in the region are bound by the principle of non-refoulement as a result of their international treaty obligations, however these have not been translated into domestic law. For example, Egypt, which is party to CAT and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa, has a track record of refoulement. In recent years, hundreds of Eritrean refugees and asylum-seekers have been summarily deported to Eritrea, where the repressive ruling regime is known to employ torture against perceived "deserters" who have left the country without permission.[176] Similarly, in Jordan, though CAT technically has domestic application, there is no statutory legislation in place prohibiting refoulement, with numerous cases of persons being returned to countries where they risk torture.[177] In particular, Jordanian authorities have been complicit in refoulement in the context of the "war on terror". In 2010, CAT expressed concern regarding the violations of Article 3 arising from the irregular deportation, expulsion or return of Maher Arar and Mohamed Farag Bashmilah. Both men were reportedly apprehended by Jordanian authorities at the request of the USA, interrogated and allegedly tortured by members of the Directorate of Intelligence, and irregularly transferred to the custody of Syrian and US authorities respectively as part of the CIA's "extraordinary renditions" programme.[178] As in Jordan, there is no legislation in place prohibiting refoulement in Yemen, despite being a state party to both the 1951 Refugee Convention and CAT. Tens of thousands of refugees from the Horn of Africa arrive in Yemen each year—those coming from Somalia receive *prima facie* refugee status on the basis of the conflict

[171] Article 29 (c) of Morocco's Law No. 02-03 of 2003.
[172] *Yousri Ktiti (brother of alleged victim) v Morocco*, Committee Against Torture, Communication No. 419/2010, UN Doc. CAT/C/46/D/419/2010, 5 July 2011.
[173] *Alexey Kalinichenko v Morocco*, Committee Against Torture, Communication No. 428/2010, UN Doc. CAT/C/47/D/428/2010, 18 January 2012.
[174] Article 313 of Tunisia's Criminal Procedure Code (as amended in October 2011).
[175] FIDH, "*Tunisie : Extradition de Baghdadi, une violation flagrante du droit national et international*," 25 June 2012: www.fidh.org/Tunisie-Extradition-de-Baghdadi.
[176] Eritrea requires all citizens under the age of 50 to serve a mandatory and indefinite military service, and anyone of draft age who leaves the country without permission is considered a 'deserter' and at risk of serious human rights violations of returned. See HRW, "Egypt: Don't deport Eritreans," 15 November 2011: www.hrw.org/news/2011/11/15/egypt-don-t-deport-eritreans.
[177] UNHCR, *Submission to Universal Periodic Review of Jordan*, March 2013: www.unhcr.org/refworld/docid/513d90172.html.
[178] CAT, *Concluding Observations: Jordan*, above n. 148, para. 23.

ongoing there, while others, in particular Ethiopians, have been systematically returned with no assessment of the risk of torture.[179]

The ongoing conflict in Syria has led to an acute refugee crisis in neighbouring countries, with over one million Syrians having fled to Lebanon, Jordan, Turkey, Iraq and Egypt.[180] In several of these countries, refugees have been returned to Syria and many more are at risk of being returned. For example, in August 2012, 14 Syrians in Lebanon were reportedly returned on grounds of national security and there are similar reports from Jordan.[181] Similarly, in January 2013, two Syrian men were deported from Egypt.[182] The well-documented, widespread and systematic use of torture by all sides in Syria creates a serious risk of torture for returned persons, in particular if they have been involved in the anti-government uprisings.

[179] HRW, *Hostile Shores: Abuse and Refoulement of Asylum Seekers and Refugees in Yemen*, December 2009: www.hrw.org/sites/default/files/reports/yemen1209web.pdf.
[180] UNHCR, "Number of Syrian refugees tops 1.5 million mark with many more expected," 17 May 2013: www.unhcr.org/519600a59.html.
[181] UPI News, "EU raps Lebanon on Syria refugee move," 7 August 2012, available at: www.upi.com/Top_News/Special/2012/08/07/EU-raps-Lebanon-on-Syrian-refugee-move/UPI-21761344335400/; HRW, "Jordan: Obama Should Press King on Asylum Seekers", 21 March 2013: www.hrw.org/news/2013/03/21/jordan-obama-should-press-king-asylum-seeker-pushbacks.
[182] HRW, "Egypt: Don't force Palestinians Back to Syria," 18 January 2013: www.hrw.org/news/2013/01/18/egypt-don-t-force-palestinians-back-syria.

4. Accountability for torture

Across the region, a climate of impunity for perpetrators of torture prevails—this is the case in countries that have undergone regime change or reforms, as well as those that have not, and applies to present and past perpetrators of torture. In some countries, transitional government structures replacing former regimes have been responsible for widespread acts of torture mirroring the actions of the old regimes the uprisings sought to overthrow, largely because the institutions and structures of old remain intact.

While impunity for serious human rights violations has long been the *status quo* in the region, there have been some isolated, controversial, initiatives. There have been trials of former authoritarian rulers, including Saddam Hussein and other Baath party officials in Iraq, Hosni Mubarak and several low-ranking officials in Egypt, and Zine el Abidine Ben Ali and other high-ranking military officials in Tunisia. Despite the well-documented use of torture under these heads of state, none were prosecuted for this particular crime, and these trials have also been plagued with procedural problems. For example, the Supreme Iraqi Criminal Tribunal, which has jurisdiction over international crimes committed in Iraq between 1968-2003, has been mired in controversy over its failure to adhere to fair trial standards, particularly in relation to the Saddam Hussein trial.[183]

In Tunisia, Ben Ali was tried *in absentia* alongside two of his former interior ministers, four directors general of the security forces, and 16 other high-ranking commanders, for their role in the crackdown on protesters in January 2011 and the resultant numerous deaths. Despite the charges against them, the transitional government promoted some of these defendants to higher positions in the state security apparatus, raising serious concerns about the political will to ensure accountability.[184] Ben Ali was convicted along with several high-ranking officials, and sentenced to life imprisonment. However it is unlikely he will serve this considering his current state of exile in Saudi Arabia.[185] In Egypt, Mubarak was prosecuted for premeditated murder of demonstrators during the early 2011 protest movement, though he was acquitted of these charges and instead found guilty of complicity in the killing of protesters, and was sentenced to life imprisonment.[186] This conviction has been overturned, and a re-trial was underway at the time of writing in June 2013.[187] Ten other low-ranking officers were convicted alongside Mubarak, while six assistant ministers of interior and hundreds of police officers were acquitted on grounds of insufficient evidence. Unlike Saddam Hussein's trial in Iraq, neither Mubarak nor Ben Ali were charged with the gross and systematic violations committed during the pre-uprising decades. While such initiatives run the risk of undermining the very idea of criminal justice, calls for accountability of those responsible for international crimes have been an integral part of demands during the uprisings and the current transitions. Moreover, the symbolism of former dictators facing criminal charges cannot be underestimated. While these trials of high-level figures are notable, there has been a marked dearth of prosecutions of police and military officials responsible for excessive use of force and torture in the context of the popular uprisings.

[183] Michael A. Newton, "The Iraqi High Criminal Court: controversy and contributions," *International Review of the Red Cross*, Vol. 88, No. 862 (June 2006).
[184] HRW, "Tunisia: Q&A on the Trial of Ben Ali, Others for Killing Protestors", 11 June 2012: www.hrw.org/news/2012/06/11/tunisia-qa-trial-ben-ali-others-killing-protesters.
[185] BBC, "Tunisia's Ben Ali sentenced over protesters' deaths," 13 June 2012: www.bbc.co.uk/news/world-africa-18421519.
[186] New York Times, "New Turmoil in Egypt Greets Mixed Verdict for Mubarak," 2 June 2012: www.nytimes.com/2012/06/03/world/middleeast/egypt-hosni-mubarak-life-sentence-prison.html?pagewanted=all&_r=0.
[187] Reuters, "Mubarak Trial Unseals New Evidence on Crackdown", 10 June 2013: www.reuters.com/Article/2013/06/10/us-mubarak-trial-idUSBRE9590K220130610.

4.1 Criminalisation of torture

As recognised in Article 2 of CAT, states must take effective legislative measures to prevent torture. Anti-torture legislation, be it in the form of specific provisions of pre-existing legislation or separate legislation, is an essential means of ensuring that torture is effectively prohibited and punished.[188] Article 4 of CAT stipulates that states are obliged to enact legislation, stipulating appropriate punishments that reflect the gravity of the crime and its consequences. While the majority of countries considered have constitutional or statutory provisions prohibiting torture, or both, in most cases legislation does not adequately define the crime to include all the elements covered in Article 1 of CAT.

Constitutional prohibitions of torture and ill-treatment exist in Bahrain,[189] Iraq,[190] Morocco,[191] Syria,[192] Palestine[193] and Yemen.[194] In Tunisia, where a Constitution drafting process is underway, the current draft Constitution prohibits torture under Article 17,[195] and is also criminalised under statutory law. In Morocco, Article 231 of the Penal Code of 1963, as amended by Law No. 43-04 of 2006 prohibits torture with a definition that is in line with CAT,[196] however, this is the exception.

The definition of torture in the majority of states does not meet the CAT definition. For example, in Algeria, Article 263bis of the Penal Code defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for any purpose whatsoever."[197] This definition is broader than Article 1 of UNCAT by including torture by private or non-state actors. However by failing to specifically refer to public officials, the definition does not take sufficient account of state responsibility and weakens the overall impact of the definition.

In some states, the definition of torture used fails to incorporate all the elements of the crime. For example, in Iraq, torture is criminalised under article 333 of the Iraqi Criminal Code of 1969.[198] The offence does not define the act of torture, is limited to the purpose of obtaining a confession, and does not make mention of discrimination as a prohibited purpose. The same is true in Egypt[199] and

[188] CAT, *General Comment 2*, UN Doc. CAT/C/GC/2, 24 January 2008.
[189] Article 19(d) of the Constitution of Bahrain.
[190] Article 37 (c) of the Constitution of Iraq.
[191] Article 22 of the Constitution of Morocco.
[192] Article 28 of the Constitution of Syria.
[193] Article 13(1) of the Palestinian Basic Law 2003 (serves as Constitution for Gaza and West Bank).
[194] Article 48 of the Constitution of Yemen.
[195] Article 17 of the Draft Constitution of Tunisia.
[196] Article 231-1 of Morocco's Criminal Code: « *Au sens de la présente section, le terme torture désigne tout fait qui cause une douleur ou une souffrance aiguë physique ou mentale, commis intentionnellement par un fonctionnaire public ou à son instigation ou avec son consentement exprès ou tacite, infligé à une personne aux fins de l'intimider ou de faire pression sur elle ou de faire pression sur une tierce personne, pour obtenir des renseignements ou des indications ou des aveux, pour la punir pour un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis ou lorsqu'une telle douleur ou souffrance est infligée pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit. Ce terme ne s'étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légales ou occasionnées par ces sanctions ou qui leur sont inhérentes. »*
[197] Article 263bis of Algeria's Criminal Code (emphasis added).
[198] Article 333 of Iraq's Criminal Code: "Any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by detention. Torture shall include the use of force or menaces."
[199] Article 126 of Egypt's Criminal Code 1937: "Any public official/civil servant or public employee who orders torturing a culprit or a suspect or the torturing personally, compelling him/her to confess, shall be punished by hard labour or imprisonment for a period of three to ten years. If the tortured victim dies the penalty as prescribed for deliberate murder shall be inflicted."

Bahrain.[200] Furthermore, these provisions fail to criminalise officials' consent or acquiescence to acts of torture. In Tunisia, torture is prohibited under Article 101bis of the Penal Code, as amended by Law No. 2005-46 of 2005.[201] However, the definition limits the purposes of the crime to obtaining a confession or for racial discrimination, excluding other forms of discrimination.

In Jordan, legislative reforms in 2007 led to the amendment of the criminal code designating torture as a criminal act under Article 208.[202] While this is a positive development, this provision falls short of the prohibition under CAT, as it limits the purpose of the crime to obtaining a confession, and includes the phrase "any type of torture impermissible according to the law," implying that there may be forms of torture that are permitted by law. Furthermore, unless the torture results in death, the crime is considered a misdemeanour carrying very light punishments ranging from 6 months to 3 years, which is manifestly inadequate and disproportionate.

A law against torture was recently adopted in Libya.[203] While this is an important step towards effective criminalisation, it fails to provide a comprehensive anti-torture framework and does not include a definition in line with Article 1 of CAT. The law does not include the requirement that torture be committed intentionally, and refers to the act being committed by a person "on a detainee under his control," which narrows its scope. Furthermore, it includes "revenge for any cause" as a purpose for torture. This wording does not reflect that of CAT, which refers to the wider concepts of punishment, intimidation and coercion, including of third parties. The new law also fails to address existing anti-torture legislation. For example, Article 435 of Libya's Penal Code already criminalises torture but the crime has not been defined.[204]

In some countries, acts of torture and ill-treatment are authorised by law, making such acts punishable only when committed by law enforcement agents without a court order, as is the case in Yemen.[205] In other countries, such as Lebanon and Syria, there is no legislation that specifically criminalises torture. Article 401 of the Lebanese Criminal Code 1943 provides that "[a]nyone who inflicts violent practices not permitted by the law against another person with the intention to extract a confession of a crime or information related to it will be imprisoned from three months to three years. If the violent practices have led to sickness or caused wounds, the minimum period of

[200] Article 208 of Bahrain's Criminal Code: "A prison sentence shall be the penalty for every civil servant who uses torture, force or threat either personally or through a third party against an accused person, witness or expert to force him to admit having committed a crime or give statements or information in respect thereof. The penalty shall be life imprisonment if the use of torture or force leads to death." Article 232: "A prison sentence will be the penalty for any person who uses torture, force or threatens to use them, either personally or through a third party, against an accused person, witness or expert to make him admit the commission of a crime or give statements or information in respect thereof. The punishment shall be imprisonment for at least six months if the torture or force results in harming the safety of the body. The punishment shall be life imprisonment if the use of torture or force leads to death."

[201] Article 101 of Tunisia's Criminal Procedure Code: « *Est puni de cinq ans d'emprisonnement et de cent vingt dinars d'amende, tout fonctionnaire public ou assimilé qui, dans l'exercice ou à l'occasion de l'exercice de ses fonctions aura, sans motif légitime, usé ou fait user de violences envers les personnes. » Article 101 bis. (Nouveau) Note – « Est puni d'un emprisonnement de huit ans, le fonctionnaire ou assimilé qui soumet une personne à la torture et ce, dans l'exercise ou à l'occasion de l'exercise de ses fonctions. Le terme torture désgne tout acte par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne aux fins notamment d'obtenir d'elles ou d'une tierce personne des renseignements ou des aveux, de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis, de l'intimider ou de faire pression sur elle ou d'intimider ou de faire pression sur une tierce personne, ou lorsque la douleur ou les souffrances aiguës sont infligées pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit. »*

[202] Article 208 of the Jordanian Penal Code of 1 January 1960 as amended by temporary law No. 49 of 2007.

[203] OMCT, LFJL, REDRESS, Dignity, "The new Libyan law criminalising torture, enforced disappearances and discrimination: a first step, but more is needed," 25 April 2013, available at: www.redress.org/downloads/PR_LibyaLawontorture_-250413.pdf.

[204] Article 435 of Libya's Criminal Code 1953: "Any public official who orders the torture of the accused or tortures them himself is punished by a prison term of three to 10 years."

[205] Article 166 of Law No. 12 of 1994 on Crimes and Punishments.

imprisonment is one year." The punishments carried for acts amounting to torture under this law are more along the lines of those carried for misdemeanour crimes, failing to reflect international standards and the gravity of the crime. Similarly, in Syria, Article 391 of the Penal Code prohibits "battering with a degree of force not permitted in law," carrying a punishment of three months to three years' imprisonment.[206]

4.2 Investigation of torture in practice

International human rights law has well-established principles for investigating allegations of torture. States' responsibilities are clearly outlined in Articles 12 and 13 of CAT, and the specific obligations have been further developed in the jurisprudence of regional and international bodies. The UN Human Rights Committee, responsible for overseeing compliance with the International Covenant on Civil and Political Rights, has affirmed "the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies."[207] The Committee's jurisprudence, as well as that of other international treaty bodies and regional courts, have further elaborated that an investigation into an allegation of torture must be effective in the sense that it is capable of leading to a determination of what happened and of identifying the perpetrators, in addition to being prompt and impartial.[208]

Lack of independence of complaints and investigation bodies

Lack of independence and inadequate oversight over investigating authorities are key barriers to effective investigations and prosecutions. This is so because often investigators and suspects form part of the same body, namely the police. Investigations often appear partial to the views of alleged perpetrators, often resulting in impunity. In most states considered, there is no independent body mandated with investigating allegations of torture or other human rights violations perpetrated by public authorities, and victims must bring complaints to the police, prison officials, or the public prosecutor.

In Egypt, victims in detention can bring complaints to prison officials, the police or the public prosecutor. While there have been some investigations into allegations of torture perpetrated by police officers, some of which have resulted in prosecutions, in many cases, investigations have been ineffective or have not been initiated at all. The vast majority of cases against police officers for violations committed during and after the uprisings have ended in acquittal, in many cases due to purported lack of evidence.[209] Reports indicate that allegations against members of the State Security Investigations Force are systematically ignored.[210] In Syria, victims can bring torture complaints to the public prosecutor. CAT has expressed concern regarding Syria's lack of a fully independent complaints mechanism and highlighted the need for impartial investigations into allegations of torture.[211] In Iraq, there are reports that investigations into allegations of torture

[206] Article 391 of Syria's Criminal Code.
[207] HRC, General Comment No. 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 March 2004.
[208] See for example HRC, *Eshonov v. Uzbekistan*, UN Doc. CCPR/C/99/D/1225/2003, 22 July 2010, para. 9.2; European Court of Human Rights (ECtHR), *Ergi v. Turkey*, 66/1997/850/1057, 28 July 2008, para. 86. The Court made the same finding in the cases of *Akkoç v. Turkey,* Application Nos. 22947/93 and 22948/93, 10 October 2000, paras. 77 to 99; *Kiliç v. Turkey,* Application no. 22492/93, 28 March 2000, paras. 78 to 83. See also Inter-American Court of Human Rights, *Gonzalez et al ("Cotton Field") v. Mexico,* Preliminary objection, merits, reparations and costs, Judgment of 16 November 2009, Ser. C, no. 205.
[209] See Amnesty International, "Egypt: no senior officials convicted two years on from revolution – new report", 24 January 2013: www.amnesty.org.uk/news_details.asp?NewsID=20592.
[210] Amnesty International, *Agents of Repression: Egypt's Police and the Case for Reform*, 2012: www.amnesty.org.uk/uploads/documents/doc_22729.pdf.
[211] CAT, *Concluding Observations: Syria,* above n. 45, para. 16.

systematically fail to adhere to international standards of independence and effectiveness.[212] As a result of the profound lack of confidence in the system, many victims choose not to file formal complaints against those responsible.

In Bahrain, the Special Investigations Unit within the Public Prosecution Office was established in February 2012 following recommendations of the BICI Report to "investigate unlawful or negligent acts that resulted in deaths, torture and mistreatment of civilians."[213] The Unit is headed by the Attorney General, who is mandated to examine allegations of unlawful deaths and torture in the context of the uprisings. While this is a welcome development, the Unit has reportedly failed to fully implement its mandate. Despite the BICI finding that torture was used systematically, no person has been convicted of "torture" under Article 208 of the Penal Code.[214] By early February 2013, of the 28 cases of unlawful death recorded in the BICI report, only eight had reportedly proceeded to trial.[215] This is in contrast to the numerous and speedy convictions of opposition activists and others, often with long sentences, including life imprisonment.[216]

There are also concerns regarding the independence of the Special Investigations Unit. The unit is staffed with members of the same public prosecution office which was responsible for politically motivated prosecutions before, during and after the 2011 protests – many of which relied on evidence obtained by torture.[217] It is also the same office responsible for prosecutions of leading figures from opposition and human rights organisations on freedom of speech related charges during 2012. It has also failed to allow independent medical examinations in cases of suspicious deaths and alleged torture or ill-treatment. Moreover, the Unit reportedly suffered from lack of staff and resources, hampering its effectiveness.[218]

In Morocco, torture survivors and relatives of torture victims may complain to the Ministry of Human Rights (MHR) and the Consultative Council on Human Rights (CCDH).[219] The MHR's Department for the Receipt and Investigation of Complaints considers the validity of complaints, and rejects those deemed ill-founded. Those considered well-founded are investigated, and if the investigation uncovers acts of torture, the Ministry informs the Crown Prosecution and Ministry of Justice so that the case can be pursued.[220] The CCDH also has the power to investigate cases of human rights violations. Following such investigations, the CCDH may recommend a particular course of action to the competent authorities, but it has neither the power to initiate prosecutions itself nor to monitor the progress of cases referred to in such a way.[221] CAT has expressed concern that allegations of torture "rarely give rise to investigations and prosecution."[222]

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[212] Amnesty International, *Iraq: A decade of abuses*, March 2013.
[213] Wording of Recommendation 1716 of the BICI Report, above. See the BICI Implementation Report, progress on recommendation 1716: www.biciactions.bh/wps/portal/BICI.
[214] For further information on trials and convictions of public officials in connection with violations in the context of the uprisings, see REDRESS and IRCT, *Bahrain,* above n. 9, p. 43-44. See also: Human Rights Watch, "Bahrain: No Progress on Reform", 28 February 2013: www.hrw.org/news/2013/02/28/bahrain-no-progress-reform, accessed 2 July 2013.
[215] Al Wasat, "20 death cases among 28 cases for Bahrainis have been documented in BICI report and have not been referred yet to courts," 2 February 2013: www.alwasatnews.com/ipad/news-734899.html.
[216] See generally HRW, 'No Justice in Bahrain: Unfair Trials in Military and Civilian Courts', February 2012, pp. 57-58, www.hrw.org/sites/default/files/reports/bahrain0212webwcover.pdf.
[217] Amnesty International, 'Bahrain: Reform shelved, repression unleashed', November 2012, p. 17, http://reliefweb.int/sites/reliefweb.int/files/resources/mde110622012en.pdf, p. 5.
[218] Human Rights Watch, "Bahrain: Promises Unkept, Rights Still Violated", 22 November 2012: www.hrw.org/news/2012/11/22/bahrain-promises-unkept-rights-still-violated, accessed 2 July 2013.
[219] REDRESS, *Reparation for Torture (Morocco)*, May 2003, p. 3-4: www.redress.org/downloads/country-reports/Morocco.pdf
[220] See Morocco's State Report to CAT, UN Doc. CAT/C/43/Add.2, 5 January 1999, para. 112.
[221] *Dahir* of 2001: The Council has been granted the following prerogatives: "On its own initiative or at the request of the party concerned, to study cases of violations of human rights which are submitted to it and to make the necessary

Special Investigation Commissions

In some countries in the region, commissions have been established to investigate and document allegations of human rights violations, including torture, during a specific period, such as during a conflict or following uprisings. These have been set up by the UN Human Rights Council, for example in regards to Libya[223] and Syria,[224] or by governments such as in Bahrain,[225] Tunisia[226] and Egypt.[227] In some cases, these commissions were mandated to only investigate violations arising in the context and aftermath of uprisings in those countries, while in others investigations included violations committed under the former regimes. The findings of these investigations reveal widespread use of torture and ill-treatment as a means of cracking down on the anti-government uprisings that took place in those countries.

In Libya, the National Transitional Council (NTC), the interim body established to govern the country which was dissolved in July 2012 following the election of the General National Congress, also promised to take steps to investigate past gross human rights violations and to bring those responsible to justice. It passed Law 17 establishing a Fact-Finding and Reconciliation Commission to investigate crimes committed by the former regime. However at the time of writing in June 2013, the Commission had not yet begun its work.[228]

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recommendations to the competent authority," see *Core Document forming the initial part of State Party Reports, Morocco*, UN Doc. HRI/CORE/Add.23/Rev.1, 15 April 2002, para. 24.

[222] CAT, *Concluding Observations: Morocco* UN Doc. CAT/C/MAR/CO/4, 21 December 2011, para. 16.

[223] The International Commission of Inquiry on Libya was established in February 2011 under UN Human Rights Council resolution S-15/1, with a mandate to investigate actions of all parties that might have constituted violations of international human rights law in Libya, taking into consideration violations committed before, during and after the demonstrations witnessed in a number of cities in the country in February 2011. This includes the well-documented and widespread violations committed under the Gaddafi regime prior to February 2011. The Commission's report was presented to the UN Human Rights Council in March 2012. See: *Report of the International Commission of Inquiry on Libya*, above n. 22.

[224] The Independent International Commission of Inquiry on the Syrian Arab Republic was established by the UN Human Rights Council in August 2011, following the rapid deterioration of the human rights situation, with a mandate to investigate all alleged violations of international human rights law since March 2011. The Commission's report was presented to the UN Human Rights Council on 5 February 2013, and documented patterns of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children's rights. See: *Report of the independent international commission inquiry non the Syrian Arab Republic*, UN Doc. A/HRC/22/59, 5 February 2013: www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A.HRC.22.59_en.pdf.

[225] The Bahrain Independent Commission of Inquiry was established by the King of Bahrain in June 2011 to investigate the events that took place from February 2011 and the consequences, with a view to determining whether violations of international human rights law and norms occurred, and to make recommendations. See for the Commission report, www.bici.org.bh/ and for an assessment of its implementation, REDRESS and IRCT, *Bahrain*, above n. 9.

[226] The Tunisian National Fact Finding Commission on Abuses Committed During Recent Events was a public body charged with investigating the abuses and violations committed during the uprisings in Tunisia which began in December 2010. The Commission was mandated to collect information and documentation on the abuses committed during the period through testimony of the victims of those killed or injured and documents to be collected from any relevant administration or institution. The Commission's final report was issued on 4 May 2012. For the full report in Arabic, see http://apache.npwj.net/webfiles/Tunisia/ReportTunisiaMay2012.pdf.

[227] In Egypt, a fact-finding commission was established by presidential decree in July 2012 to investigate violence against protesters from January 2011 to June 2012. The commission, which was made up primarily of judges, submitted its findings to President Morsi in January 2013. Though the report has not been made public, sections have been leaked to the media, and from the information available, the commission documents 19 incidents in which police or military officials committed abuses against demonstrators. However no further investigations or prosecutions have been initiated as a result of the report's findings, drawing heavy criticism from victims and their family members, human rights organisations and the media. For more information, see The Guardian, "Egypt's army took part in torture and killings during revolution, report shows", 10 April 2013: www.guardian.co.uk/world/2013/apr/10/egypt-army-torture-killings-revolution.

[228] Amnesty International, Annual Report 2013, Libya: www.amnesty.org/en/region/libya/report-2013.

4.3 Procedural obstacles to accountability

Use of special or military courts for trying perpetrators of torture

In a number of states considered, security legislation provides that police and military officials are under the jurisdiction of special courts. A special court attached to security or military forces is usually an internal forum to maintain discipline and the integrity of the institution, and therefore lacks the independence, transparency and the essential elements of criminal justice. Participants noted that victims in many countries lack confidence in the ability of such special courts to deliver justice, which is justified by their poor record in combating impunity. International treaty bodies and UN special procedures have persistently called on states to ensure that officials accused of human rights violations are subject to the jurisdiction of ordinary courts.[229] Principle 9 of the UN Principles Governing the Administration of Justice Through Military Tribunals states that "[i]n all circumstances, the jurisdiction of the military courts should be set aside in favour of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes."[230] This is necessary not only because human rights violations do not fall within the scope of duties performed by military officials, but also because "military authorities might be tempted to cover up such cases by questioning the appropriateness of prosecutions, tending to file cases with no action taken or manipulating 'guilty pleas' to victims' detriment."[231] In several states in the region, including Jordan, Lebanon and Egypt, the prevailing impunity is facilitated by the use of special or military courts, which are often part of the same institution as those being prosecuted.

In Jordan, victims can either file complaints directly with the public prosecutor or through a mediator in the Public Security Directorate or to the National Human Rights Commission, who will forward the complaint on to the appropriate judicial authority if it is considered serious.[232] Investigations into torture allegations committed by police officers are undertaken by a special prosecutor under the Public Security Directorate who is, however, a member of the police force. If the complaint is deemed admissible by the special prosecutor, it is handed to the police tribunal which is presided over by three judges, two of whom are also members of the police force, and the third being a civil judge.[233] Similarly, complaints of torture against security officers fall under the jurisdiction of the special court for general intelligence, and those against military officers under the jurisdiction of the military court.[234] As stated by the Special Rapporteur on Torture, "[i]n simple terms, the person whom a suspect is accusing of committing torture is the same person who is guarding him or her, and the same person who is appointed to investigate and prosecute allegations of torture being made against him [...] it is only the special police, intelligence and military courts and not the ordinary prosecutors and criminal courts which have the competence to bring to justice any security official accused of torture."[235] The inherent lack of independence from the bodies they are investigating has led to an entrenched culture of impunity for torture. Despite the well-documented use of torture in Jordan, no public officials were charged with torture until March 2013. The first prosecution for torture under Article 208 of the Jordanian Criminal Code began in March

[229] HRC, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. CCPR/C/GC/32, 23 August 2007.
[230] UNESC, *International Standard: Principles Governing the Administration of Justice Through Military Tribunals*, 2010, p. 16: www.dcaf.ch/Publications/International-Standard-Principles-Governing-the-Administration-of-Justice-Through-Military-Tribunals.
[231] Ibid.
[232] *Report of UN Special Rapporteur on Torture, Mission to Jordan*, above n. 26, para. 22.
[233] ACAT, Annual Report 2011, above n. 25 p. 151.
[234] *Report of UN Special Rapporteur on Torture, Mission to Jordan*, above n. 26, para. 54.
[235] Ibid.

2013 before the special police court, in a case involving six officers of the Public Security Directorate.[236]

Amnesties for the crime of torture

The obligation to prevent, investigate and punish human rights violations requires the state to ensure that there are no barriers to accountability. Amnesties for widespread human rights violations, including torture, feature prominently in the region, creating a serious obstacle to accountability for perpetrators and justice for victims. In some countries, amnesty laws have been adopted as a condition for authoritarian rulers to step down—for example in Yemen, Law No. 1 was adopted in January 2012 granting former president Ali Abdullah Saleh and his subordinates total immunity from criminal prosecution for "politically motivated acts" carried out during the course of their official duties, which in practice includes torture.[237] At the time of writing, the Yemeni Parliament was considering a proposed transitional justice law that incorporates these immunities.[238]

In some countries that have experienced conflict, amnesty laws have been adopted under the guise of peace-building. For example, in Algeria, the Charter for Peace and National Reconciliation 2005, adopted through Law 06-01, provides an amnesty for all public officials and members of armed groups responsible for abuses during the country's civil war in the 1990s, including for acts of torture and ill-treatment.[239] Despite the fact that no investigations have taken place and there has been no inquiry into the numerous crimes committed during the armed conflict, the Charter negates the possibility of bringing legal claims against alleged perpetrators of torture and ill-treatment during this period, and includes provisions enabling the Government to prosecute any victims who attempt to bring a case against an alleged perpetrator. Furthermore, under the provisions of the Charter, families of the disappeared wishing to obtain compensation are required to sign a death certificate in relation to their missing loved ones, which nullifies any possibility of investigations into the disappearance, and forces indirect victims to effectively give up their right to determining the truth of the fate of the missing.

Similarly, in Libya, the National Transitional Council adopted Law No. 38, in a process lacking transparency and consultation, granting amnesty to all persons who committed "acts made necessary by the 17 February revolution" for its "success and protection", whether military, security or civilian in nature. This law has perpetuated the culture of impunity, and to date no supporters of the uprising have been held accountable for human rights violations, despite credible reports that militias were involved in widespread abuses, including torture and ill-treatment. Some former Gaddafi officials have faced prosecution. However, the majority of the judiciary in Libya is from the Gaddafi-era, raising concerns about the willingness of judges to hold such perpetrators to account.[240]

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[236] HRW, "This is why Jordan can't be trusted on torture," 29 April 2013: www.hrw.org/news/2013/04/29/why-jordan-cant-be-trusted-torture, accessed 2 July 2013.

[237] Law No. 1 2012 on the Granting of Immunity from Legal and Judicial Prosecution.

[238] Preamble of the Yemeni Draft Transitional Justice Law: "Based on Law No. 1 2012 on the granting of immunity from legal and judicial prosecution….Confirming the commitments made by the political parties to stop all forms of revenge, follow-up and prosecution….": www.peaceandjusticeinitiative.org/wp-content/uploads/2012/03/Yemeni-draft-Transitional-Justice-Law.pdf. See also: Amnesty International, *Yemen's Immunity Law: Breach of International Obligations*, July 2007: https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/mde310072012en?CMD=VEROBJ&MLKOB=30564653838.

[239] HRW, "The Proposed Charter for Peace and National Reconciliation of August 15, 2005": www.hrw.org/legacy/backgrounder/mena/algeria0905/3.htm#_Toc113071760.

[240] International Crisis Group, *Trial by Error: Justice in Post-Quadhafi Libya*, p. 19. See also, Human Rights Watch, "Libya: Ensure Abdallah Sanussi Access to Lawyer," 17 April 2013: www.hrw.org/news/2013/04/17/libya-ensure-abdallah-sanussi-access-lawyer; Human Rights Watch, "ICC: Libya's Bids to Try Gaddafi, Sanussi," 13 May 2013,: www.hrw.org/news/2013/05/13/qa-libya-and-international-criminal-court; Al Jazeera, Libya to try Gaddafi son in August www.aljazeera.com/news/africa/2013/06/20136184493943688.htm.

In Bahrain, Decree No. 56 of July 2002 grants amnesty to all officials implicated in torture and other crimes against political prisoners for violations that took place following the 1994-8 demonstrations.[241] The impact of the decree is that no alleged perpetrator has been tried for torture or ill-treatment even though its practice in Bahrain during the 1980s and 1990s is well documented.[242] On 11 December 2002, the Bahraini Public Prosecutor refused to consider torture allegations made by eight victims against a former member of the security service and 15 of his colleagues. The prosecutor responded that the case was void due to the amnesty introduced by decrees nos. 10 and 56.[243] On 11 September 2003, the public prosecutor refused to investigate another complaint of torture initiated by three Bahrainis (two men and a woman) against former members of the security service.[244] In 2005 the Committee against Torture recommended the suspension of the amnesty law, also to ensure that victims obtained redress.[245] However no steps were taken to repeal the decree. In Syria, Decree No. 64 of 2008 grants immunity to members of intelligence agencies, as well as military, air and public security forces, from prosecution for crimes committed while on duty.[246]

In Algeria, Article 45 of Law No. 06-01 (Charter for Peace and National Reconciliation), states that "no proceedings may be instituted individually or collectively against any of the components of the defence and security forces of the Republic for actions taken to protect persons and property, safeguard the nation and preserve the institutions of the Republic of Algeria."[247] Similar legislation also exists in Yemen[248] and is a major obstacle to accountability. In some countries, *de facto* immunity for perpetrators of torture is facilitated by legislation stipulating that complaints against public officials can only be pursued with the express permission of the Attorney General.

Statutes of limitation as a barrier to prosecution

Despite the position of CAT that statutes of limitation should not be applicable to torture, they frequently serve as another legal barrier in practice.[249] While prosecuting perpetrators becomes more difficult as time passes, it is equally clear that victims of torture may be unable or unwilling to pursue complaints in the immediate aftermath of torture for a number of reasons. However, it is for these very reasons that accountability for torture should not be time-barred, as reaffirmed by the

[241] During that period, citizens took to the streets to protest the government's authoritarianism, repression of civil and political rights, corruption within the ruling family and poor economic conditions, and were met with excessive force by security officers. The violent government crackdown on dissenters escalated and led to the arrest of thousands of Bahrainis, many of whom were also tortured. Decree 56 provides that: "*No lawsuit related to or result from crimes that were subject to general clemency will be heard in front of any judicial panel irrespective of the plaintiff's person or position and the accused person, whether he was civilian, a civil employee, or a military officer who was directly involved in the crime or was a partner to the crime that occurred during the period the preceded the issuance of this decree*." The prisoners had themselves been granted an amnesty under Decree 10 of 2001 in relation to *"crimes affecting national security*" under the jurisdiction of the National Security Court. Decree 10 provided that: "*A general amnesty shall be granted for crimes affecting national security and have been committed by citizens before the enactment of this Law and for which the court provided for in Article (185) of the Penal Code has the jurisdiction to hear*".

[242] REDRESS, "Parliamentary Human Rights Group Seminary: Bahrain; failed political experiment, serious HR violations", 21 August 2008, p. 3: www.redress.org/downloads/country-reports/Bahrain_seminar_presentation_main.pdf.

[4] Case by Attorneys: Mr Ahmed Jasim Abdulla, Mr Abdulla Al-Shamlawi, Mr Mohammed Ahmed Abdulla. Mr Essa Ebrahim, Mr Mohammed Redha Bu-Hussien Against Adel Fleifel and 15 members of the security service.

[243] REDRESS, "Parliamentary Human Rights Group Seminary: Bahrain; failed political experiment, serious HR violations", 21 August 2008, p. 3: www.redress.org/downloads/country-reports/Bahrain_seminar_presentation_main.pdf.

[244] This case was put forward by Attorneys Dr Hassan Radhi and Mrs Jaleela Al-Sayyed.

[245] CAT, *Concluding Observations: Bahrain*, UN Doc. CAT/C/CR/34/BHR, 21 June 2005, paras. 7 (d) and (3).

[246] CAT, *Concluding Observations: Syria,* above n. 45, para. 13.

[247] Article 45, Law No. 06-01 (Charter for Peace and National Reconciliation).

[248] Article 26 of Yemen's Criminal Procedure Code provides that criminal prosecutions of law enforcement or public employees for acts carried out in their official capacity can only be brought if express permission to do so is granted by the Attorney General, a delegated public attorney or heads of prosecution.

[249] CAT, *Concluding Observations: Japan*, UN Doc. CAT/C/JPN/CO/1, 3 August 2007, para. 12.

CAT in its General Comment No. 3.[250] It is also noted that the slow pace of investigations and constant interruptions to cases involving torture allegations in countries where statutes of limitation apply, often result in impunity.

In some states, crimes relating to torture prescribe after 20 years and are not exempt from pardons or amnesties, as is the case in Morocco.[251] In others states, felony offenses, including torture, are subject to a limitation period of 10 years, for example in Bahrain, Jordan and Algeria.[252] However, in several such countries, torture is rarely prosecuted as a felony and much more often classified as a misdemeanour crime which in practice has a much shorter limitation period, in many cases only 3 years, as was reported from Bahrain and Jordan.

In other states, the Constitution provides that complaints of torture cannot be time barred, as is the case in Yemen. However there is a contradiction in Yemeni statutory law as Article 38 of the Criminal Procedure Code provides that the right to bring a criminal complaint for serious crimes prescribes after 10 years.[253] For less serious crimes, which the Crime and Penalties Law 1994 describes as including abuse of authority, use of force and intimidation by public officials, the statute of limitation is three years.

In Libya, there is no express provision regarding the statutory limits for the crime of torture, and the newly adopted anti-torture law failed to include a provision stipulating that prosecutions for the crime of torture cannot be time barred.[254]

Challenges in obtaining forensic evidence

The lack of timely documentation by qualified doctors, in line with the Istanbul Protocol, is another major obstacle to accountability. Significant factors include limited resources and capacity, lack of independence of forensic doctors carrying out examinations, and the inability to carry out timely and confidential examinations. There is a paucity of qualified doctors and psychiatrists familiar with the relevant standards. In Egypt, there are reportedly only 500 doctors trained in forensic medicine, a small number considering the population of 80 million. In Yemen, the situation is more dire, with only five doctors with this specialisation throughout the country. In Bahrain, universities no longer offer forensic medicine as a course option which has resulted in very few forensic doctors. The only qualified personnel within Bahrain are those employed by the General Directorate for Material Evidence, under the direction of the Attorney General. Reportedly, only one of those forensic experts is a Bahraini citizen, while the others are non-citizens and therefore do not have security of residence status, which jeopardises their independence and impartiality.[255]

Lack of independence of forensic doctors is a major shortcoming across the region. In many countries, forensic medical services fall under governmental institutions, such as the public

[250] CAT *General Comment No. 3: Implementation of article 14 by States parties,* UN Doc. CAT/C/GC/3, 13 December 2012 , para. 40 states that "On account of the continuous nature of the effects of torture, statutes of limitations should not be applied as these deprive victims of the redress, compensation, and rehabilitation due to them."
[251] CAT, *Concluding Observations: Morocco*, above n. 222, para.6.
[252] Article 7 of Algeria's Criminal Procedure Code.
[253] Article 48(e) of the Constitution of Yemen: "The law shall determine the punishment for whosoever violates any of the stipulations of this Article and it shall also determine the appropriate compensation for any harm the person suffers as a result of such a violation. Physical or psychological torture at the time of arrest, detention or jail is a crime that cannot be prescribable (*sic*). All those who practice, order, or participate in executing, physical or psychological torture shall be punished."
[254] REDRESS, LFJL, OMCT, "Preliminary Comments on the Draft Law Criminalising Torture, Enforced Disappearances and Discrimination", 25 March 2013: www.libyanjustice.org/downloads/Publications/Draft-Torture-law-Note---Website-English-.pdf.
[255] Information obtained by REDRESS. See: REDRESS and IRCT, *Bahrain,* above n. 9, p. 37.

prosecution, which can give rise to problems regarding the independence and impartiality of doctors and other medical staff responsible for preparing forensic reports in cases of torture. In Bahrain, for example, blogger Zakariya Rashid Hassan al-Ashiri was arrested and charged with disseminating false news and inciting hatred.[256] He died while in police custody and pictures of his body show marks that indicate he was tortured.[257] However, the report issued by the forensic doctor determined the cause of death as cardiac arrest resulting from his anaemic state, and the injuries sustained were not considered indications of torture. The case of Yousef Mowali is also illustrative. In January 2012, Mowali was taken into police custody while on a walk near his house. Two days later, police reported that they found Mowali's body floating in the sea, and a state doctor carried out an autopsy and determined the cause of death as drowning. Upon receiving his corpse, his family noticed marks on his body and requested an independent autopsy which was denied by the government. With the assistance of human rights organisations, an independent forensic expert was brought into the country in secret to carry out a second autopsy, finding that Mowali had been electrocuted and was most likely unconscious when he was thrown into the sea.[258] The expert criticised the initial autopsy report for failing to mention the obvious injuries.[259]

In Morocco, many doctors are reportedly unwilling to document injuries as being consistent with torture by police or military officials. The case of six Moroccan pro-reform activists is indicative. They were arrested during a demonstration in July 2012, and allege they were severely beaten by police during and after their arrest.[260] When they appeared in court in September 2012, several had bloodied clothes, bruises and other marks indicating they may have been subjected to violence. The judge in the case ordered that the defendants undergo a medical examination. The resulting report submitted by the doctor consisted of one page (covering all five defendants), and stated that no trauma had taken place. The defendants alleged that the doctor had not actually examined them during the visit.

In Gaza, there are reports that hospital officials allegedly refused to provide medical reports that could be used as evidence of torture by detention authorities. In one case, an individual was arrested by the Internal Security force in Gaza, detained and interrogated for 10 days, during which he was tortured. When he was released, he went to the hospital to obtain a medical report. However, doctors refused to acknowledge the evidence of torture and prepare the report, despite the fact that he was in a wheelchair as a result of the injuries sustained.[261]

While lack of evidence poses a major obstacle for victims seeking justice and reparation, participants reported cases in which suspected perpetrators were acquitted on grounds of lack of evidence even in cases where medical reports were submitted. The case of Tarek Rabaa of Lebanon (mentioned in section 3.1 above), is one example—though a forensic medical report indicating that he had been tortured was submitted, the judge refused to consider it or to order an investigation into his allegations of torture.[262] Similarly, in Bahrain, even in cases where forensic evidence is presented,

[256] Bahrain Center for Human Rights, "Bahraini Blogger Dies in Custody; Journalists Under Attack", 12 April 2011: http://bahrainrights.hopto.org/en/node/3917.
[257] BBC, "Bahrain Police Go On Trial Over Death of Blogger", 12 January 2012: www.bbc.co.uk/news/world-middle-east-16511685.
[258] Al Jazeera, "Autopsy Finds Torture Behind Bahrain Drowning", 18 May 2012: www.aljazeera.com/indepth/features/2012/05/2012515155335968439.html, accessed 2 July 2013.
[259] Ibid.
[260] Human Rights Watch, "Morocco: Contested Confessions Used to Imprison Protestors", 17 September 2012: www.hrw.org/news/2012/09/17/morocco-contested-confessions-used-imprison-protesters.
[261] Human Rights Watch, *Abusive System: Failures of Criminal Justice in Gaza*, 3 October 2012: www.hrw.org/print/reports/2012/10/03/abusive-system.
[262] International Federation for Human Rights, *Lebanon: Promptly investigate torture and arbitrary detention allegations in the case of Mr. Tarek Rabaa*, 9 November 2011: www.refworld.org/docid/4ec116621c.html.

judges have found the evidence to be inconclusive.[263] For example, in the case involving 19 defendants tried for murder in connection with confrontations between demonstrators and security forces in Karzakan in April 2009, a lower court found that the marks identified in the medical reports were consistent with their allegations of coerced interrogations and declared their confessions inadmissible, resulting in their acquittal. However, the government appealed the decision, and the appellate court ruled that when prosecutors conducted formal questioning of the defendants, there was no evidence of injuries.[264] Participants attributed this to the lack of willingness to hold perpetrators accountable, compounded by a perception that violence is acceptable in some circumstances.

Lack of witness and victim protection and harassment of lawyers

The protection of victims and witnesses is integral to the effectiveness of investigations into torture and ill-treatment, and forms part of victims' rights to security and to an effective remedy.[265] While it is increasingly recognised, both at the national and international level, that such protection is often critical to enable witnesses, including the victim, to come forward, many of the countries reviewed do not have witness protection legislation or programmes in place, including Algeria, Egypt, Libya, Morocco, Yemen and Bahrain.

In Algeria, victims of torture and ill-treatment are reportedly reluctant to come forward about their experiences due to "a lack of confidence in the justice system, and above all, the fear of being tortured again or of being sentenced to a heavy term in the event of a prosecution."[266] In Egypt, though a draft witness protection law is currently under consideration, trials relating to deaths and injuries resulting from the crackdown on demonstrators during the uprising have been marred by the intimidation of key witnesses by police.[267] In Libya, one member of the Independent Commission of Inquiry reported that many victims of rape and women who had witnessed such crimes refused to come to speak about these violations out of fear of being re-targeted.[268] The issue of lack of protection was noted by participants from across the region as a major problem impeding accountability.

Human rights defenders play a vital role in combating torture through advocacy and bringing cases on behalf of victims. Many defenders in the region have been harassed and intimidated by governments to prevent poor human rights records from being exposed. Authoritarian regimes in the region, both past and present, have been characterised by attacks on human rights defenders and activists.[269] Even in countries where authoritarian governments have been overthrown through recent uprisings, human rights lawyers and activists continue to face backlashes.

In Syria, government targeting of human rights defenders and activists was a common practice in the pre-conflict period. The case of Muhanad Al-Hasani, who participated in the MENA Regional Expert Meeting, is illustrative. A human rights lawyer by profession and president of the Syrian Human Rights Society (Sawisiy), Al-Hasani was arrested and detained in July 2009 for publishing reports

[263] See for example, Human Rights Watch, "Bahrain: Court Ruling Disregards Torture Evidence", 30 April 2010: www.hrw.org/news/2010/04/30/bahrain-court-ruling-disregards-torture-evidence.
[264] Ibid.
[265] UNHCHR, *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Punishment*, 4 December 2000, para. 3(b): www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx.
[266] ACAT, Annual Report 2011, above n. 25, p. 161.
[267] See, for example, the case of Ahmed el-Said Salem: Al Jazeera, "Nowhere to hide: Egypt's vulnerable witnesses," 24 June 2013.
[268] Asma Khader's opening speech at REDRESS-Mizan conference in Amman, Jordan, 14-16 January 2013.
[269] Association for the Prevention of Torture, *The Middle East and North Africa: A Torture Free Zone*, Summer 2012, p. 1, : www.apt.ch/content/files_res/mena_bulletin02_en.pdf.

about court cases, though he had obtained the necessary permission from the courts to do so. He was charged with "spreading false information" and "weakening national sentiment," among other vague charges, for his work publicising unfair trials before the Supreme State Security Court and a death in custody he alleges resulted from torture.[270] While in detention awaiting his trial, Al-Hasani was disbarred. His trial ended with a conviction and he was sentenced to three years' imprisonment in June 2010, though he fled the country to seek asylum in the United States. This is just one example of a widespread and well-documented practice in Syria of government repression of human rights defenders.[271]

The situation is similar in Bahrain, where dozens of human rights defenders and activists were arrested, detained and tortured during and after the February 2011 uprisings—following the same pattern of events seen during the uprisings of 1994-1998. Many defenders have been put on government watch-lists for their role in documenting violations by security forces and law enforcement officials. Others have been prosecuted criminally and have received harsh sentences. The case of Abdulhadi al-Khawaja is illustrative. Al-Khawaja, a prominent human rights activist and co-founder of the Bahrain Centre for Human Rights, was arrested in March 2011 for his role in the popular uprisings. He had previously been arrested in 2004 and 2007, and beaten by security forces in 2005. Along with a dozen other activists and opposition leaders known as the 'Bahrain Thirteen,'[272] Al-Khawaja was charged with terrorism related offenses including attempting to overthrow the monarchy.[273] In June 2012, the Bahrain Thirteen were tried before the National Safety Court, convicted and sentenced to prison terms ranging from five years to life. In September 2012, the sentences were upheld on appeal.[274] Al-Khawaja and others from the Bahrain Thirteen told the Court that they had been tortured by officials from the National Security Agency, however no investigations into these allegations were ordered. Similarly, prominent Bahraini human rights lawyer Mohammed Al-Tajer, who represented many of the victims of the government crackdown on protesters in February 2011, was arrested in his home in April 2011.[275] He was held in incommunicado detention for five weeks, during which time he was tortured and ill-treated, before being brought before a military court to face charges relating to speaking out against the regime.[276] He was released on bail in August 2011, but has continued to face threats and harassment from security forces for speaking out against the human rights violations committed by the Bahraini authorities with impunity.[277]

The attack on human rights lawyers and the widespread repression that is characteristic of the region negatively impacts on their ability to defend the thousands of protesters arrested and

[270] Front Line Defenders, "Syria: Detention of Prominent Human Rights Defender, Mr Muhanad Alhasani", 31 July 2009: www.frontlinedefenders.org/node/2111.
[271] International Human Rights Funders Group, "A Personal Story of a Human Rights Defender in Exile", July 2012: www.ihrfg.org/resource-archive/entry/personal-story-human-rights-defender-exile.
[272] The Bahrain 13 are Abdulwahab Hussain (life sentence imprisonment); Ebrahim Sharif (5 Years imprisonment); Hassan Mushaima (life imprisonment); Abdulhadi Al-Khawaja (life imprisonment); Abduljalil Al-Singace (life imprisonment); Mohammed Habib Al Miqdad (life imprisonment); Saeed Mirza Al-Nouri (life imprisonment); Abduljalil Al-Miqdad (life imprisonment); Abdullah Isa Al-Mahroos (5 years imprisonment); Salah Hubail Al-Khawaja (5 years imprisonment); Mohammed Hassan Jawad (15 years imprisonment); Mohammed Ali-Ismael (15 years imprisonment); Abdul Hadi Al-Mukhodher (15 years imprisonment).
[273] For a list of charges, see http://byshr.org/wp-content/Charges-and-ArticleArticles.pdf.
[274] CNN, "Bahrain's High Appeals Court Upholds Convictions of 13 Pro-Democracy Activists", 7 January 2013: http://edition.cnn.com/2013/01/07/world/meast/bahrain-unrest.
[275] Frontline Defenders, "Bahrain: Arrest and detention of human rights lawyer Mr. Mohammed Al-Tajir," 18 April 2011: www.frontlinedefenders.org/node/14839.
[276] Frontline Defenders, "Bahrain: Human rights lawyer Mohammed Al-Tajir is brought before a military court following five weeks of incommunicado detention," 13 June 2013: www.frontlinedefenders.org/node/15247.
[277] Human Rights First, "Bahrain prosecutes abused human rights lawyer on international day for torture victims," 25 June 2012: www.humanrightsfirst.org/2012/06/25/bahrain-prosecutes-abused-human-rights-lawyer-on-international-day-for-torture-victims/.

detained and many have not been able to find representation as a result. In Algeria, lawyers working to defend the rights of victims of human rights violations have experienced harassment and intimidation, often in the form of criminal prosecutions on frivolous charges. For example, a number of human rights lawyers have been prosecuted on trumped up charges such as denouncing the government and violating the laws governing prisons.[278] As a result, many lawyers are fearful to be seen as actively working on sensitive human rights issues.

4.4 Findings

Impunity for torture remains a major shortcoming, and challenge, across the region. Though international standards for investigation, prosecution and accountability for torture and ill-treatment have been accepted in principle by the majority of states considered, the number of prosecutions for torture in the region does not reflect the extent of actual cases of torture, owing to a range of factors. Investigations are frequently seen as inadequate and ultimately ineffective, and in practice have rarely led to prosecution or conviction. In Morocco, the CAT expressed concern regarding the fact that it had received no reports of persons being convicted for acts of torture, despite the well-documented practice.[279] Similarly, in Algeria, torture and ill-treatment are in most cases carried out by Directory of Intelligence (DRS), however no DRS officials have been held accountable for torture or ill-treatment, despite the numerous documented cases and credible allegations.[280] In Egypt, reportedly at least 200 police officers have faced prosecution in 35 trials for their role in the violence against protesters during the January 2011 uprising, with 21 cases ending in acquittal.[281]

In Bahrain, very few officials responsible for violations during the unrest of 2011 have faced prosecution, and even fewer have been charged with torture. According to information provided to REDRESS by the Senior Advocate General of Bahrain, as of December 2012 the Special Investigations Unit of the Public Prosecution Office was investigating 205 cases relating to alleged violations committed during 2011. By December 2012, 14 cases relating to torture and ill-treatment had been referred to the courts, along with six cases of deprivation of life, which have resulted in one conviction and two acquittals of police officers.[282]

Ineffective investigations has contributed to a profound lack of public confidence in the institutions responsible for holding perpetrators of torture to account. Coupled with the absence of protection mechanisms, this has resulted in many victims refraining from making complaints about torture or ill-treatment. When victims do complain, authorities often fail to register these complaints as torture, instead charging the suspects with lesser crimes. For example, in Morocco, if police officers face any prosecution for acts of torture, these are classified as lesser crimes of assault or battery, but not torture. The lesser crimes carry administrative and disciplinary sanctions which are not commensurate with the seriousness of the crime of torture.[283]

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[278] Amnesty International, "Human rights lawyers threatened with imprisonment on trumped-up charges," 23 September 2006. See also Amnesty International, "Algerian human rights lawyer convicted for denouncing violations," 26 November 2008.
[279] CAT, *Concluding Observations: Morocco*, above n. 222, para. 16.
[280] Collectif des Familles de Disparu(e)s en Algerie, *Rapport alternative du CFDA au rapport consolidé de l'Etat algerien*, April 2008: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/DZA/INT_CAT_NGO_DZA_40_8614_E.pdf.
[281] Human Rights Watch, World Report 2013, Egypt: www.hrw.org/world-report/2013/country-chapters/egypt. Five trials ended in convictions, with sentences mostly *in absentia* or suspended. See CNN News, "Egyptian police officers convicted of murder in protest crackdown", 22 May 2012: http://edition.cnn.com/2012/05/22/world/africa/egypt-officers-convicted.
[282] Letter from Senior Advocate General, Abdulrahman Alsayed Mohamed Ahmed to REDRESS, dated 12 December 2012.
[283] CAT, *Concluding Observations: Morocco*, above n. 222, para. 16.

A major enabling factor for widespread use of torture is also the prevalence of security legislation allowing for extended periods of pre-charge and pre-trial detention for certain categories of suspects, and providing for suspension of other fundamental safeguards for the prevention of torture.

5. Reparation for torture

The goal of reparation is multi-faceted, aimed at undoing a wrong, restoring individual dignity, as well as fostering the rule of law.[284] Furthermore, reparative measures are a key component of the ongoing political transitions. However, victims across the region have faced serious obstacles in obtaining reparation for torture and ill-treatment carried out under authoritarian regimes, in the context of protest movements, and in countries in transition. Reasons for this include lack of legislation providing for the right to reparation; the lack of governmental commitment to upholding international human rights standards, including the rights of victims; and the limited capacity and/or mobilisation of victims and civil society at the national level, in many countries due to repressive and authoritarian governmental systems.

5.1 Recognition of the right to reparation for torture

The right to reparation for victims of torture and ill-treatment is well established in international law. It is enshrined in a number of international and regional human rights instruments, including UNCAT, the Inter-American Convention to Prevent and Punish Torture and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation[285] (Basic Principles). Established forms of reparation include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The right to a remedy and reparation comprises both procedural and substantive aspects, which should be underpinned by a non-discriminatory, victim oriented perspective. This has been reaffirmed by CAT in its General Comment No. 3 which sets out state party obligations with regard to reparation for victims of torture and ill-treatment.[286]

Victims of torture have a right to rehabilitation, as explicitly recognised in Article 14 of UNCAT. According to CAT, rehabilitation "refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment […]. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society."[287]

In some countries, constitutional norms provide general rights to compensation for victims of harmful actions, however not explicitly for torture. For example, in Egypt, under Article 80 of the 2012 Constitution, persons who have had their fundamental rights and freedoms violated, are to be granted "fair compensation" by the state.[288] In Yemen, Article 48 of the Constitution prohibits "physical and mental torture" and indicates that the law will stipulate the compensation to be provided to any person who suffers harm as a result of a violation of Article 48, though this has not been translated into any statute.

Legal recognition of the right to reparation varies among the countries considered. In most of them, there is no legislation explicitly providing for reparation from the state for torture. Rather, legislation establishes more general forms of reparation available to victims of any crime resulting in harm or

[284] See *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and guarantees of non-recurrence,* P. De Greiff, UN Doc. A/HRC/21/46, 9 August 2012. See also CAT, *General Comment No. 3*, above n. 250.
[285] *United Nations 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,* 60/147, E/CN.4/Sub2/1993/816, December 2005.
[286] CAT, *General Comment No. 3*, above n. 250.
[287] Ibid., para. 11.
[288] Article 80 of the Constitution of Egypt.

damage. For example, in Lebanon, a victim who is constituted as a "partie civile" in a criminal case may claim monetary compensation from the perpetrator in the course of the criminal trial.[289] The Court has discretion in calculating the quantum and may take into account the characteristics of the victim and the degree of physical and mental pain suffered.[290] In Yemen, the Criminal Code is based on a combination of Shari'a (Islamic law) and Napoleonic law. It allows injured victims of any crime to seek reparation at the final stage of criminal proceedings by requesting compensation in the form of *diyah* (blood money) or *arsh* (compensation for injury).[291]

In some countries, it is also possible to file civil claims for reparation separately from the criminal process. This is usually regulated by tort law. For example, Article 47 of the Algerian Civil Code allows individuals who have suffered a violation of their rights to request reparation. However in most cases such applications do not yield results due to lack of evidence resulting from ineffective investigations, as a result of which victims cannot discharge the burden of proof.[292]

Conditioning reparation on the successful outcome of a criminal case undermines the role of civil legal action as an effective remedy, particularly in the absence of effective cases. In this regard, CAT has clarified that "…a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding […]. Civil liability should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place."[293] Nevertheless, in some countries it is only possible to file a civil claim when criminal liability has been established. This is the case in Jordan where Article 256 of the Civil Code establishes the general principle of tort.[294] Similarly, in Lebanon a victim can file a civil claim for compensation; however the outcome is dependent on a criminal conviction.[295] Furthermore, government authorisation is required for civil claims brought against individual public officials, which is in practice difficult to obtain.[296]

In Bahrain, Article 158 of Decree Law No. 19/2001 provides torture survivors with a legal basis for a civil claim for compensation for acts of torture. A victim can file a civil claim for compensation provided that the torture can be proven and substantiated, regardless of whether a criminal case has been brought against the alleged perpetrator. However a victim has a 3 year time limit to file a case either "from the date on which the victim knows of the damage and the person liable for it, or fifteen years from the date on which the unlawful act has occurred, whichever comes first."[297] In practice, however, there have been only a handful of cases, owing in large part to the introduction of an amnesty law under Decree 56 of 2002, as discussed in section 4 above.[298]

Awards for rehabilitation are virtually non-existent, with the exception of rehabilitation measures provided following the findings of the Equity and Reconciliation Commission in Morocco discussed in section 5.2 below. While in many countries there are rehabilitation facilities, the vast majority of these are private rather than government-led initiatives, though the provision of such services is

[289] Article 68 of Lebanon's Criminal Procedure Code.
[290] Article 259 of Lebanon's Civil Procedure Code.
[291] CAT, *Concluding Observations: Yemen*, above n. 103.
[292] Amnesty International, *Algeria: Briefing to the Human Rights Committee*, September 2007: www2.ohchr.org/english/bodies/hrc/docs/ngos/AI-Algeria.pdf.
[293] CAT, *General Comment No. 3*, above n. 250, para. 26.
[294] Mizan Submission to CAT, 12 April 2010: www2.ohchr.org/english/bodies/cat/docs/ngos/Joint_report_Jordanian_civil_society_organizations_en.pdf, p. 5.
[295] Article 8 of Lebanon's Criminal Procedure Code.
[296] REDRESS, *Reparation for Torture (Lebanon)*, May 2003, p. 11: www.redress.org/downloads/country-reports/Lebanon.pdf.
[297] Article 180 (a) of Decree No. 19 of 2001.
[298] See also REDRESS, *Reparation for Torture (Bahrain)*, May 2003, pp. 12-13: www.redress.org/downloads/country-reports/Bahrain.pdf.

ultimately the responsibility of states.[299] The lack of awards that include medical and psycho-social rehabilitation, particularly in the form of psychological and psychiatric services, is a major shortcoming in both law and practice in the region. This includes the administrative and special reparation programmes, as seen in Egypt and Bahrain, which do not include rehabilitation services in any form.

5.2. Special Reparation Programmes

Morocco's Equity and Reconciliation Commission was established in January 2004 by King Mohamed VI to investigate arbitrary detention and enforced disappearances in the period 1956-1999. An earlier Arbitration Commission on Compensation had provided some compensation, but was criticised by victims and their families for the limited level of information revealed about the abuses. The Equity and Reconciliation Commission determined the fate of 742 individuals and recommended a series of measures, including restitution, rehabilitation and compensation in its 2005 report (in addition to that provided by the earlier Arbitration Commission on Compensation).[300] Together, the Arbitration Commission on Compensation and the Equity and Reconciliation Commission provided compensation to 23,676 individuals of a total of 1.56 billion Dirham (around €138 million) according to figures published in July 2007.[301] Reparation consisted of individual compensation and community measures and notably, included a rehabilitation component for several thousand victims.[302]

In Algeria, Presidential Decree No. 06-93 of 28 February 2006 provides for compensation for families of the estimated 4000-7000 persons who were disappeared during the civil war, referred to as the "National Tragedy," of the 1990s.[303] However, the process for receiving compensation has been heavily criticised as it requires a member of the victim's family to sign a document certifying that their relative is deceased and to request a death certificate—both documents must be presented when requesting compensation. Obtaining a death certificate effectively requires families to waive their right to the truth as to the fate of their loved ones, as this signals the end of any investigation into the disappearance. A number of international bodies, including CAT, the Human Rights Committee, the Working Group on Enforced and Involuntary Disappearances (WGEID) as well as regional mechanisms have recognised that ongoing suffering of families who are unaware of the fate of disappeared relatives can amount to cruel, inhuman or degrading treatment.[304]

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[299] CAT, *General Comment No. 3*, para. 15.

[300] Instance Equité et Réconciliation, *Synthèse du rapport final*: www.ier.ma/Article.php3?id_Article=1496; Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and Its Follow-up*, 2010: www.amnesty.org/fr/library/asset/MDE29/001/2010/en/63d99172-428d-4717-8c25-866c879c80e9/mde290012010en.pdf.

[301] See on the lack of clarity of the actual amount provided, Amnesty International, *Morocco, Broken Promises,* ibid, p. 45.

[302] Kingdom of Morocco, *National Human Rights Council, Community Reparation Programme*, www.ccdh.org.ma/spip.php?rubrique190&lang=LANG. See also Amnesty International, *Morocco, Broken Promises,* ibid, pp. 48-49.

[303] Décret Présidential No. 06-93 du 29 Moharram 1427 au 28 February 2006: www.algeria-watch.org/fr/Article/just/decret_06_93.htm.

[304] CAT, *Concluding Observations: Algeria*, UN Doc. CAT/C/DZA/CO/3, 26 May 2008, para. 13; HRC, *Concluding Observations: Algeria*, UN Doc. CCPR/C/DZA/CO/3, 12 December 2007, para. 13; UN HRC, Sharma v. Nepal, 28 October 2008, Communication No. 1469/2006 (2008), para.7.9; WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances. See also, *inter alia*, *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, Comm. No. 204/97 (2001), African Commission on Human and Peoples' Rights, para. 44; *Anzualdo Castro v. Peru*, Inter-American Court of Human Rights, Judgment, 22 September 2009, (Ser. C) No. 202, para. 113; *Sambiyeva v. Russia*, (Appl. No. 20205/07), European Court of Human Rights, Judgment, 8 November 2011.

Efforts in other countries, such as Iraq, have been piecemeal and have not resulted in the establishment and implementation of broader reparation programmes due to ongoing conflict and political divisions.[305]

A number of other countries that have experienced recent upheaval have established reparation schemes, including Tunisia, Egypt and Bahrain. In Tunisia, in February 2011 the interim government allocated 20,000 dinars (US$12,624) to families of those killed and 3,000 dinars ($1,900) to those injured during the uprising, regardless of the severity of the injury.[306] Authorities paid compensation to 2,749 of those injured and to the families of 347 of those killed, according to official figures.[307] In December 2011, the interim government distributed a second instalment of the same amount to the injured and the families of those killed. However, these limited reparation measures have not met the needs for ongoing medical treatment and care of victims, or provided them with adequate financial compensation for lost wages. In Egypt, those who are officially considered victims of the revolution are entitled to monetary compensation. A compensation fund was set up in June 2011. The government's current official toll for persons eligible for such compensation is 913.[308] However, no official plan exists to provide rehabilitation or commemoration for surviving victims or the families of those that were killed. According to one expert, "in the overall context of lack of recognition and justice for violations the compensation fund appears more designed to appease and silence dissent than to ensure accountability, justice and reconciliation."[309] The fund established in 2011 to compensate victims has only provided monetary compensation, leaving out psychological assistance, care, nursing and other vital needs to rehabilitate victims or assist them legally. Families of the victims reported having suffered from increased bureaucratic procedures and difficulties when applying for compensation.[310]

In Bahrain, the BICI Report included a recommendation that all victims of torture, ill-treatment and prolonged incommunicado detention be provided with compensation and other forms of reparation. In connection with this, the National Fund for the Compensation of Victims was established through Decree No. 30 of 2011.[311] In early 2012, a number of mechanisms were set up to disburse funds to victims, including a civil settlements initiative.[312] The National Fund for the Compensation of Victims reportedly consisted of 10 million Bahraini dinars, and by June 2012, 17 families had been awarded a total of 1 million Bahraini dinars, raising some questions as to the number of victims who will actually be able to receive compensation.[313] While the establishment of the fund and subsequent

[305] See E. Stover, M.Sissons, P. Pham and P.Vinck, 'Justice on hold: accountability and social reconstruction in Iraq,' *International Review of the Red Cross*, 90 (March 2008) 869, 5-28.
[306] Human Rights Watch, "Tunisia: Injured of the Uprising Urgently Need Care," 28 May 2012: www.hrw.org/news/2012/05/28/tunisia-injured-uprising-urgently-need-care.
[307] Ibid.
[308] Al Akhbar, "After the Revolution: Egypt remembers its martyrs," 25 January 2013: http://english.al-akhbar.com/node/14766.
[309] Contribution of a participant at the MENA regional conference, Amman, Jordan, on 14-16 January 2013.
[310] Furthermore, the fund has fixed payments of thirty thousand Egyptian pounds ($5,000) for the families of those killed, fifteen thousand pounds ($2,500) for disabled protesters, and five thousand pounds ($833) for all others injured. See M. Hanna, "Egypt's Search for Truth," *Cairo Review of Global Affairs*: www.aucegypt.edu/gapp/cairoreview/pages/ArticleDetails.aspx?aid=90.
[311] Decree No. 30 of 2012: www.biciactions.bh/wps/themes/html/BICI/pdf/1722j/decree_30_2011_national_fund_en.pdf.
[312] The committee to manage the National Fund, established by Decree No. 13 of 2012, is made up of five members of the Supreme Judicial Council and is empowered to receive and consider all requests for compensation, and can order reparation in the form of financial compensation as well as other forms, such as apology and other measures of satisfaction. However, receiving compensation from the National Fund is contingent on a criminal judgment against an individual perpetrator, or a civil judgment against a state agency. The Special Compensation Courts were established to expedite such claims so as to enable victims to request compensation through the National Fund. In practice, there are serious delays in both criminal and civil cases, and particularly those involving protesters.
[313] PR Newswire, "Bahrain Disburses $2.6 million from Victim's Compensation Fund in First 17 Cases", 26 June 2012: www.prnewswire.com/news-releases/bahrain-disburses-26-million-from-victims-compensation-fund-in-first-17-cases-160404545.html.

mechanisms is notable, the process for compensating victims has not included investigations and prosecutions as part of the process. In relation to reparation for violations committed during 2011 that resulted in deaths, the government has relied on the civil settlement initiative to provide compensation to families of victims.[314] Lawyers of families involved said that many were reluctant to accept compensation, as they were concerned both that the amount awarded was a limited set amount which would waive their right to further compensation, and that it would mean foregoing their rights to other forms of reparation.[315] Some families refused the compensation, though, in at least one case found that it was deposited against their wishes in the bank account of a family member.[316] Such provision of compensation against the wishes of the family, entirely divorced from an investigation of what happened and a remedial process in which the family is consulted and involved, counters the aims of reparation. Similarly, although victims of other rights violations can lodge applications for monetary compensation through the settlement initiative,[317] this process has been almost entirely divorced from the provision of legal remedies such as effective investigations and prosecutions, or other appropriate forms of reparation. Furthermore, there has been a failure to provide services or resources for the rehabilitation of victims of torture and ill-treatment, as required by Article 14 of UNCAT.

[314] As at November 2012 it was reported that USD2.6 million had been distributed. See *Foreign and Commonwealth Office's written evidence to the Foreign Affairs Committee's Inquiry into the UK's relations with Saudi Arabia and Bahrain*, 19 November 2012, para. 42: www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/writev/bahrain/sab40.htm,
[315] Meeting between IRCT and REDRESS and lawyers, Manama, 29 April 2012.
[316] Al Wasat, '20 death cases among 28 cases for Bahrainis have been documented in BICI report and have not been referred yet to courts', 2 February 2013: www.alwasatnews.com/ipad/news-734899.html. This was reported to be the case in relation to the victim Hassan Maki.
[317] Meeting between IRCT and REDRESS and Minister of Justice, 2 May 2012.

6. Conclusion

The findings of the present report underscore the prevalence of torture and ill-treatment in most of the countries examined as well as some of the main factors that account for the problem and impede survivors' access to justice and reparation. The entrenched culture of impunity associated with decades of authoritarian rule and political violence coupled with the lack of adequate legal and institutional safeguards contribute to the persistent use of torture. This is both in the context of criminal justice processes and as an instrument of repression against human rights defenders and political opponents. The judiciary in most countries lack the requisite independence and resources to hold the executive accountable and uphold the fundamental rights of citizens. Security legislation and emergency laws serve to further undermine accountability.

Torture cases are often underreported because of restrictions placed on human rights defenders and the media as well as fear of reprisal and lack of confidence on the part of victims in their respective legal systems. Even where complaints of torture are brought to the attention of relevant authorities, such complaints are rarely investigated and victims have little or no recourse to reparation.

Marginalised groups including migrant workers and religious or ethnic minorities have little protection and recourse against abuses by authorities in many countries across the region. Governments have done little to address the structural discrimination that accounts for violence against women, including rape and other forms of sexual violence and ill treatment occurring in the private sphere.

Underlying most of the problems identified in the present report is the lack of political commitment in most countries to fully address legacies of serious human rights violations, put in place adequate structural guarantees against abuse of power and provide victims with an enforceable right to reparation. While the uprisings in the region have given rise to certain opportunities, the results so far have been mixed. In some countries, the protest movements have persuaded governments to undertake modest legislative reforms. However, these have not been matched by changes within institutions, in particular the police, the public prosecution service and the judiciary. The regime changes that have taken place have either failed to measure up to initial expectations in terms of greater protection for human rights or have led to a situation of flux characterised by continued instability and violence. The prospects for greater accountability for serious human rights violations and access to justice for survivors, depends on the ability and willingness of states to maintain the modest gains of recent years, in the few instances where such gains are noted, and to continue the path of reform.

7. Recommendations

To governments:

- Take all necessary measures to amend or adopt new national legislation, to ensure that torture is a criminal offence with a definition in line with Article 1 of UNCAT, that carries appropriate penalties that reflect the gravity of the crime. Amend or adopt legislation to provide torture victims the right to reparation in domestic law.
- Eliminate immunities, amnesties and other defences in relation to torture; particularly those provided for members of armed forces in general or in specific areas of conflict or for security forces by means of emergency laws or prevention of terrorism acts. This would include revoking any legislation that requires permission from the authorities for the prosecution of public officials.
- Take all necessary steps, including amending legislation and policy, to ensure fundamental legal safeguards for persons in custody, particularly those arrested on suspicion of national security related offenses. In particular, repeal legislation providing for courts of exception for such suspects.
- Take measures as may be needed to establish an independent institution responsible for providing oversight of places of detention with a view to ensuring the rights of detainees are respected in practice, including by ratifying the Optional Protocol to the Convention Against Torture.
- Train prison and other detention officials on international standards for places of detention and treatment of prisoners.
- Take all necessary measures to ensure the independence of the institutions and authorities responsible for investigating allegations of torture and ill-treatment.
- Introduce practical schemes to protect measures for victims, witnesses and human rights defenders.
- Provide training for doctors and medical officers in the use of the Istanbul Protocol, and take measures as may be necessary to improve the quality and availability of forensic medical experts. In addition, take all necessary measures to ensure such experts exercise the requisite independence.
- Provide training to members of the judiciary to ensure they have a good understanding of the international standards relating to the prohibition of torture; ensure training for public defenders with regard to international law and practice regarding torture, as well as with regard to domestic protocols that promote accountability for torture; provide training, particularly on the Istanbul Protocol, for all persons involved in documenting and investigating allegations of torture.

To the judiciary:

- Take into account international human rights law in judicial practice and judgments.
- Refuse to admit statements and confessions elicited through torture and order prompt investigations into allegations of torture when they arise in the course of judicial proceedings.
- Ensure improved judicial education and training to enable judges and magistrates to carry out appropriate investigations into allegations of torture.
- Take into account the gravity of torture as a serious violation of human rights and an international crime, and the severe impact it has on individual victims, their families and society at large, when deciding on punishment and forms of reparation where appropriate.
- Broaden the scope of reparation to include measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition, taking into account the seriousness of the violation and the particular needs and circumstances of torture survivors.

- Be mindful of the needs of victim and witness protection and order adequate measures where required or requested, taking into account defence rights and fair trial standards.

To Civil Society:

- Take advantage of the transitional context in many countries in the region to advocate for legislative reforms criminalise torture in line with Article 1 of the CAT. Press for institutional reforms to ensure that any legal reforms translate into effective guarantees against torture and ill-treatment.
- Take forward the conclusions of the Regional Expert Meeting to establish a Coalition Against Torture for the MENA region. The work of the network could include:
    - Identifying, sharing information on and publicising cases of torture so that they become known throughout the media, not just in the country where it took place, including where possible publicising cases of suspects prosecuted under international/universal jurisdiction to send a strong message that perpetrators will be held accountable and sharing of experiences and expertise with lawyers from other regions.
    - Lobbying for a regional human rights court, picking up on the initiatives of the Bahraini government in this regard.
    - Advocating for reform of the Arab Commission for Human Rights, which currently lacks independence.
    - Developing litigation strategies, including increasing the use of international conventions in domestic courts to apply international human rights standards and bringing cases against suspects currently considered 'out of reach' such as directors of intelligence services.
    - Mobilising public opinion to pressure governments to adopt the necessary legislative, institutional and policy reforms to combat torture and ensure accountability for perpetrators and justice and reparation for victims.
    - Drafting a model anti-torture law and a manual on legislative reform which could be used across the region.
    - Drafting a comprehensive report on torture in the MENA region which could be a highly useful advocacy tool, particularly if it is researched and drafted by local organisations and institutions.
- Engage in advocacy aimed at lobbying governments, where appropriate, to ratify the Convention Against Torture, the Optional Protocol to the Convention Against Torture, as well as to recognise the Committee Against Torture's competency to consider individual petitions.
- Train lawyers in anti-torture standards so as to ensure they are equipped with the skills and knowledge necessary to work effectively to defend the rights of victims of torture.
- Generate momentum towards increased respect for the rule of law and seek to change attitudes about violence and torture by promoting human rights values across the region, by, among others:
    - educational initiatives such as including human rights education in school curricula;
    - awareness raising campaigns regarding the prohibition of torture and the rights of victims, as well as human rights concepts more generally targeted at lawyers, judges, law enforcement officials, and the public in general; and
    - engagement with the media to encourage promotion of human rights norms and concepts, with a view to combating torture.

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