

International Day in Support of Victims of Torture: LFJL, REDRESS and DIGNITY call on Libya to ensure the prevention of torture

26 June 2014 - Today marks the United Nations International Day in Support of Victims of Torture. On this day, Lawyers for Justice in Libya (**LFJL**), the REDRESS Trust (**REDRESS**) and the Danish Institute Against Torture (**DIGNITY**) wish to express their condemnation and concern over the continuing acts of torture and other ill-treatment in Libya.

Regarded as one of the most grave human rights violations, torture seeks to annihilate a person's inherent dignity and subjects them to severe mental or physical pain and humiliation. A State must, in all circumstances, ensure the absolute prohibition of torture and other ill-treatment. There are no exceptions.

We, the undersigned organisations, urge the Libyan government to take immediate and effective measures to actively prevent all forms of torture and ill-treatment, enforce the prohibition through independent investigations and prosecutions and ensure that those who have been subjected to torture are afforded with reparation, including rehabilitation.

Under Colonel Gaddafi, torture was a constant feature of the State. While successive governments have made clear their intention to eradicate its existence, torture remains a prevailing concern. The United Nations Support Mission in Libya (**UNSMIL**) gathered information on 27 cases of deaths in custody as a result of torture between late 2011 and October 2013. Amnesty International recorded 23 such cases since September 2011, but has received reports on a number of other cases, which it has not been able to document fully.

In a resolution adopted in March 2014, the UN Human Rights Council (**UNHRC**) urged the Libyan government to "intensify efforts to prevent acts of torture, to investigate all allegations of torture and other ill-treatment in detention facilities, and to bring to justice those responsible". While the undersigned organisations note the efforts made by the authorities in 2013 to adopt legislation that complies with the provisions in the ratified UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**UNCAT**), legislation remains weak. Indeed, Article 2 of the 2013 Law Criminalising Torture, Enforced Disappearances and Discrimination narrows the scope of the definition provided in UNCAT by restricting acts to those perpetrated against detainees, and by listing only three prohibited purposes.

The law also fails to adhere to the principle of non-refoulement which provides for the prohibition of deporting, extraditing or otherwise transferring a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The State must ensure that the legal and institutional framework guarantees full protection to victims and is capable of preventing future instances of torture. A number of other obligations of the Libyan State are missing from the law such as the inadmissibility of statements made under torture, right to compensation, duty to investigate, criminalisation of torture by non-state actors and universal jurisdiction.

Not only must legislation adhere to UNCAT, the State is also further obliged to ensure that the legislation is capable of being applied in practice: concrete steps must be taken to prevent torture, such as training all personnel who interact with detainees and ensuring that detention facilities are safe and regulated properly. According to the UNSMIL's 2013 report, torture occurs most frequently on arrest and during the first days of interrogations for the purposes of extracting confessions or information. It is imperative that adequate safeguards are put in place to prevent pre-trial torture from occurring and that detention facilities under armed brigades are brought under government control.

Thousands of conflict-related detainees are being held without due process being applied in conditions falling short of international standards. According to statistics released by the Ministry of Justice in March 2014, there were 6,200 detainees held in prisons under the Judicial Police. Of these, only 10% had been convicted of a crime. While some appear to be currently on trial or under investigation, hundreds of conflict-related detainees have yet to be judicially screened by the prosecution despite a deadline requiring the authorities to charge or release all detainees "affiliated to the former regime" by 2 April.

The undersigned organisations call on the Libyan authorities promptly to charge or release such detainees in compliance with the General National Council (**GNC**) Law on Transitional Justice passed on 22 September 2013.

Opportunities to seek redress and reparations are also limited for victims of torture. This is often due to a lack of understanding, the absence of effective mechanisms for reparation, as well as the unstable security situation in Libya. Certain bodies have tried to provide opportunities for redress, such as the National Council for Civil Liberties and Human Rights (**NCCLHR**) where victims of human rights abuses may report incidences of violations. However, merely 61 cases of torture were reported to the NCCLHR in 2013.

While this statistic fails to be indicative of the number of individuals who have been subjected to such violations, the number of reports highlights a worrying trend that victims of torture and other ill-treatment are often discouraged to seek redress due to the poor security situation. Further, it is unclear whether further steps were taken to provide the 61 with redress. The undersigned organisations urge the government to ensure adequate resources to the NCCLHR and other governmental bodies so that all reports are promptly and adequately investigated.

Redress has further been hindered by the lack of internal security which has meant that it has been difficult for the legal profession to bring proceedings on behalf of torture victims. Judges, lawyers, prosecutors, and witnesses have been continuously subjected to attacks, such as Attorney General Abdulaziz Al-Hassadi, who was assassinated on 8 February 2014.

Indeed, over the last year at least six individuals involved in the criminal justice system have been assassinated. Attacks or threats against those who work in the law weaken the justice system and prohibit victims of torture from accessing adequate mechanisms for redress. While judges and prosecutors have a responsibility to ensure that violations of the absolute prohibition of torture are prosecuted and that the standards in UNCAT are adhered to, the State must ensure that they can effectively do so without fear of reprisals.

In light of the foregoing, the undersigned organisations recommend the newly elected government to:

- i. Ensure legislation complies with international standards;
- ii. Ratify the Optional Protocol of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- iii. Bring militia run detention facilities under the control of the Ministry of Justice as a first step to ensure that all facilities can be inspected and accessed. Torture also remains prevalent in State run detention facilities and therefore the Ministry of Justice must include effective vetting mechanisms of all detention facilities to ensure that any administrators or guards reasonably suspected of committing human rights abuses are suspended from their duties;
- iv. Guarantee regular and unannounced visits to detention facilities from public institutions and civil society;
- v. Provide adequate training for officials on the prohibition of torture and the treatment of prisoners;
- vi. Ensure that statements and other evidence obtained through torture or other ill-treatment are not admissible in any proceedings except in relation to proceedings against a person accused of torture or other ill-treatment;
- vii. Establish an adequate register for all detention facilities which would note the names of the detained, arrival date, and charges;
- viii. Promptly charge or release all detainees without charge;
- ix. Establish governmental programmes for compensation and rehabilitation for torture victims;
- x. Ensure the protection of the legal profession from threats and harassments to allow the legal profession to investigate and prosecute cases; and
- xi. Guarantee the right to a fair trial including the right to be informed, at the time of arrest, of the reasons for the arrest; to be granted access to a lawyer; to be promptly charged and informed of the charges; and, to be brought promptly before a court. The State should also ensure that all cases of torture are promptly and adequately investigated.

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