

Seizing a Historic Opportunity to End Torture in the Middle East and North Africa: Ten Steps Against Torture



Geneva, 10 December 2011. On the occasion of the UN Human Rights Day, the World Organisation against Torture (OMCT) and fourteen partner organisations from eight countries in the Middle East and North Africa (see below) jointly call on all governments of the region to make the absolute prohibition of torture and ill-treatment a reality. To this end, OMCT and its partner organisations have set forth a “10 Steps” agenda outlined below.

The year 2011 has been marked by the call for freedom and justice in the Middle East and North Africa. The wave of popular and peaceful protests sought to overcome repressive regimes in the region characterized by a widespread practice of torture and ill-treatment committed with impunity and deeply entrenched in a system of emergency and special laws. “This is an important juncture in time with a historic opportunity to bring endemic and systemic practices of torture and ill-treatment in the region finally to an end”, said the OMCT and its fourteen partner organisations. “It is thus vital to ensure that the fight against torture and impunity becomes centre stage in the reform agenda of countries engaging into genuine transition. Equally, we must not spare any effort to end the use of torture and seek accountability for those responsible for the violent repression of dissent and opposition movements.” While countries such as Tunisia have embarked in a transition process incidents of torture continue calling for lasting reforms that ensure accountability and prevent torture in the future. Other governments of the region have responded to the nascent protests by initiating certain reforms, such as in Morocco. However, concerns over continuous practices of torture and ill-treatment, the lack of steps to fight impunity remain acute as highlighted last week by the UN Committee Against Torture. In others, such as Algeria, reforms have been proposed that would increase restrictions on fundamental freedoms if they were adopted. The lifting of the state of emergency had no positive consequences as emergency provisions had already been incorporated into common law and new legislation fails to provide vital legal safeguards in detention, and even allows for detention in secret places. Human rights violations, including torture, arbitrary detentions and enforced disappearances, continue to be committed by security forces with full impunity. Furthermore, the implementing decrees of the Charter on Peace

and National Reconciliation remain in force providing blanket amnesties for State agents responsible for the crimes committed during the conflict in the 90's. While Tunisia and Egypt were the first countries of the region to hold free elections (Constituent Assembly and parliamentary respectively) and new opportunities are on the horizon the legacy of human rights violations is a daunting challenge. Especially in Egypt there has been little evidence of meaningful reforms to end the widespread practices of torture as the Supreme Council of the Armed Forces (SCAF) continues to rely on emergency laws and to use military courts to try civilians, to violently repress peaceful protests and to target persons who are perceived to be critical to the authority in place. The changes in Libya have raised enormous expectations and hopes about an end to gross human rights violations known under the Ghaddafi regime.

However, the revelations about torture and ill-treatment and arbitrary detention, including by the forces of the transitional authority, indicate the need for sustained efforts to prevent torture and to ensure accountability, and the full cooperation with the International Criminal Court. In other countries the situation remains dire, such as Yemen and Bahrain. In particular in Syria security forces continue to respond to protests with force and the use of torture. In its report published on 28 November 2011, the Independent International Commission of Inquiry on Syria expressed its grave concern that crimes against humanity have been committed by Syrian military and security forces since the repression against protests started in March 2011. Against the background of a defiant response by

Syria so far, a stronger and unanimous response by the UN, including the Security Council, must now include a transfer to the International Criminal Court. The protests in the Middle East and North Africa may herald the beginning of a new era in the region; there is, however, still a long way to go before attaining freedom, justice and democracy. The experiences in Lebanon following the "spring revolution" in 2005 illustrate the need for lasting reforms against torture. Despite progress on individual freedoms, the country is far from having eradicated torture in custody which remains widely practiced by the security forces. On the occasion of the universal day for human rights and to seize the momentum created by the Arab Spring, OMCT and its fourteen partner organisations in the region have set forth a "10 Steps" agenda against torture and accordingly urge the governments of the region and other relevant actors to fully endorse them. Signatories:

– Forum dignit pour les droits humains – Morocco – Observatoire marocain des prisons (OMP) – Morocco – Association marocaine des droits humains (AMDH) – Morocco – Organisation marocaine des Droits de l'Homme (OMDH) – Morocco – Collectif des Familles de Disparus en Algérie (CFDA) – Algeria – Conseil National pour la Liberté en Tunisie (CNLT) – Tunisia – Organisation Contre la Torture en Tunisie (OCTT) – Tunisia – Ligue Tunisienne pour la Défense des Droits de l'Homme (LTDH) – Tunisia – Human Rights Solidarity Libya – Libya – Land Center for Human Rights (LCHR) – Egypt – Egyptian Organisation for Human Rights (EOHR) – Egypt – Lebanese center for human rights (LCHR) – Lebanon – Syrian Human Rights Organization Sawassyah – Syria – Bahrain Center for Human Rights – Bahrain

Ten steps against torture 1) Committing to an end to torture and ill-treatment As the region is undergoing transformation governments should express publicly their unequivocal commitment to end any practice of torture and ill-treatment, to commit to fundamental reforms strengthening accountability for acts of torture and preventing them in the future. A clear message needs to be sent to all law enforcement agencies that acts of torture and ill-treatment will no longer be tolerated. In light of the continuation of systematic and widespread use of torture in some countries of the region, such as Syria, governments, including those in the region, should use their influence within the international community to ensure that those responsible are held accountable (cf. point 10).

2) Investigating torture, bringing perpetrators to justice Torture is a crime under international law which imposes clear and unambiguous obligations on states to conduct independent investigations and to bring those responsible to justice. However, despite recent reforms in some countries there has been limited evidence of real accountability as of yet. We recall that the obligation to investigate acts of torture is an immediate one that needs to be conducted ex officio. This should include also investigations of past abuses to ensure that the victims of torture are provided with remedies and reparation and to ensure that the right to truth is fully respected. 3) Ensuring

the right of victims to remedy and reparation The policies of torture have created victims which need to be recognized as such. While there is a slowly emerging acknowledgement of past practices of torture in certain

countries, there remains insufficient recognition of the need to ensure effective remedies and reparation to victims of torture. Any credible reform process, must be built on the recognition of torture survivors as victims of a serious human rights violation, with full entitlement to effective remedies and reparation, including compensation and access to legal, social and medical rehabilitation.

4) Dismantling the apparatus of repression Dismantling the apparatus of repression and ensuring that law enforcement agencies operate within and not outside the rule of law needs to be a key priority. A plethora of national security services has been operating under intransparent mandates, ambiguous legal basis and lines of command and within a framework that has assured de jure or de facto impunity for acts of torture. A clear and transparent legal framework, the separation between intelligence and law enforcement functions with arrest and detention powers being the provenance of law enforcement, and effective civilian and judicial oversight are thus core demands.

5) Demilitarizing the justice system and building a protection system Long-standing emergency and other extraordinary laws have created repressive justice system with military, special or state security courts, often with jurisdiction over civilians and validating information obtained under torture. These special systems of justice need to be replaced by the jurisdiction of the ordinary civilian justice system. Moreover, any credible and viable reform process in the region should lead to the strengthening of judicial independence, the establishment of effective remedies, and in countries undergoing constitutional reforms, such as in Tunisia, may also consider the establishment of constitutional human rights remedies such as constitutional courts.

6) Preventing torture and ending incommunicado detention Torture and ill-treatment are still a reality today in police custody in the countries of the region, including in 'ordinary' criminal cases. Strengthening effective safeguards, such as immediate access to lawyers from the moment of arrest and without need for special permission, as well as access to independent medical expertise and other safeguards against torture must be made a reality. Effective judicial oversight is equally required to ensure compliance with existing standards. These standards are equally vital in national security and counter-terrorism cases to avoid abuse.

7) Establishing independent monitoring, control and oversight Transparency is the key for protecting human rights in custody. The ratification of the Optional Protocol to the UN Convention Against Torture should be an important first step and be followed-up by the establishment of independent national visiting mechanisms, that are properly resourced and have access to any place of custody. Moreover, independent civil society access and monitoring of places of detention is an important element of democratization that should be embedded in reforms demilitarizing the penitentiary system to ensure compliance with international standards and principles of democratic accountability.

8) Providing an enabling framework for human rights defenders and civil society A shift away from a control to an enabling system for human rights organisations, civil society actors that allow critical human rights reporting needs to be part of any reform process in the region. This should ensure that laws on association and assembly are brought fully in compliance with international standards. Authorities should also ensure that any form of threat or harassment of human rights defenders is brought to an end and that those responsible are held to account.

9) Making international law against torture key benchmark The lesson learnt from transition processes elsewhere is that international human rights standards should be made a direct part of domestic law and should be one of the benchmarks for the success of the transition process. This requires the integration of international standards into domestic law, ways to ensure compliance of domestic law with such standards, and may include the legal reception of decisions by universal or regional complaint mechanism. Where not yet done so states should accede to the UN Convention Against Torture, its Optional Protocol and accept the jurisdiction of the Committee Against Torture and the Human Rights Committee to receive individual complaints.

10) Strengthening the resolve of the international community In light of the continuous practices of torture in parts of the region it is vital that there is a clear response by the international community to address torture and impunity and to ensure legal accountability. It is particularly important to ensure that in cases such as the one in Syria jurisdiction is transferred to the ICC. We also call for the countries of the region to become actors for change that speak up for the protection of human rights and initiate and improve the universal human rights system and its mechanisms.