

TORTURE AND ILL-TREATMENT IN LEBANON

Stakeholder report to the 3rd Cycle of the UN Human Rights Council's Universal Periodic Review (UPR)

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A. Introduction

1. Restart Center for Rehabilitation of Victims of Violence and Torture is a Non-Governmental Organization (NGO) established in 1996, active in the field of Human Rights; specifically, the Rights to Rehabilitation and Prevention from Torture. The Center seeks to prevent torture practices, nationally and regionally, through awareness-raising, advocacy, and capacity building and to ensure victims of torture, ill-treatment and war-trauma obtains redress particularly through the provision of the means for as full rehabilitation as possible.
2. In this report, the Restart Center examines the Government of Lebanon's compliance with its international human rights obligations to uphold, promote and protect human rights within Lebanon in what regards the prohibition of torture and cruel, inhuman or degrading treatment, conditions of places of detention, and systematic follow-up on treaty body recommendations.
3. This submission to the 3rd Cycle of the Human Rights Council's Universal Periodic Review, highlights the state of human rights in the country within the period under review and provides recommendations to the Lebanese Government for further implementation.

B. Prohibition and prevention of torture and cruel, inhuman or degrading treatment or punishment:

B.1. Criminalization of torture:

During the 2nd cycle of the UPR, Lebanon received and accepted recommendations to amend national legislation to effectively criminalise torture, ensure that prosecutions are brought, perpetrators receive punishments commensurate with the gravity of the crime and providing for adequate assistance to victims as well as for victims' access to redress and compensation.

4. In October 2017, Lebanon adopted an amendment to the Lebanese Penal Code Article 401 to criminalize the act of Torture. However, the new law (Law 65) fails to comply with the standards established in the UN Convention Against Torture and ignores recommendations made by the UN Committee against Torture in April 2017 and the 2nd cycle of the UPR.
5. Below are the law's most significant shortcomings:
 - a) It does not criminalise ill-treatment and it does not criminalise attempts
 - b) It is restricted to only cover acts committed "during the initial investigation, judicial investigation and trials";
 - c) It continues to allow military courts jurisdiction in torture cases;
 - d) It includes statutes of limitations between 3-10 years depending on the gravity of the crime;
 - e) It fails to establish penalties commensurate with the gravity of the crime; and
 - f) It does not provide a procedure for providing reparations to victims.

6. As a result of these significant shortcomings, the law does not provide an effective tool for preventing torture, prosecuting perpetrators and providing reparation to victims. During a series of stakeholder consultations in Lebanon several judges and general prosecutors have deemed the law unimplementable due to the above-mentioned shortcomings.

Recommendation:

7. Adopt a comprehensive anti-torture law in full compliance with the UN Convention against Torture with a specific focus on ensuring an appropriate definition, eliminating statutes of limitation and providing adequate reparations to victims.
8. Establish a special civilian court for dealing with torture cases within the Lebanese Judicial system.

B.2. Effective legal safeguards: Access to a lawyer and medical examinations

During the 2nd cycle of the UPR, Lebanon received and accepted recommendations to ensure effective legal safeguards for all persons deprived of their liberty.

9. There are significant shortcomings with regard to access to a lawyer and medical examinations for persons detained within the framework of preliminary investigations for crimes that are not committed in flagrante delicto. Article 47 of the Lebanese Criminal Procedure Code only provides basic procedural safeguards such as the right to contact family, meet a lawyer, get assistance from a translator and a medical examination. These are both insufficient in their scope of coverage and ineffectively implemented, which puts detainees at an increased risk of torture and jeopardises their access to a fair trial.
10. In practice, detainees are allowed to meet a lawyer as a formalistic measure but defence counsel is not allowed to attend the interrogation of his or her client during the preliminary investigation and many pre-trial detainees have no access to counsel beyond the initial meeting with a lawyer. This concern was also raised by the UN Human Rights Committee in 2018.
11. When detainees request a medical examination, they are generally offered a forensic doctor who is hired by the ministry of Justice which may lead to a dual loyalty and thereby challenge their independence and impartiality. While it is positive that a forensic evaluation is offered, this safeguard is only effective if detainees are allowed to have a private consultation by an independent doctor.
12. Proposed amendments to Article 47, developed by Restart Center, have been discussed and approved by the Lebanese Parliamentary Committee of Administration and Justice.

Recommendation:

13. Adopt relevant legislation and policies, including amendments to Article 47 of the Criminal Procedure Code to effectively guarantee continued access to a lawyer and legal

representation during all stages of the criminal investigation and a prompt medical examination in accordance with the Istanbul Protocol without charge to the accused.

14. Ensure the effectiveness of the criminal legal aid system by financing prompt and free legal services for those who do not have sufficient means to pay for representation.
15. Restore the forensic department at the Ministry of Justice in order to systematize the mandate of the forensic doctors and their responsibilities towards the judicial system in accordance with international standards.

C. Places of detention

C.1. Conditions of detention:

During the 2nd cycle of the UPR, Lebanon received and accepted recommendations to improve detention conditions and eliminate overcrowding in places of detention.

16. The establishment of the General Security's Center of detention in 2016 was a step forward in providing detention conditions in compliance with international standards including the Mandela Rules. However, most places of detention in Lebanon are still far from conformity with these standards. In most places, prisoners' most basic needs such as health, safety and security are not fulfilled. This is primarily due to overcrowding, a lack of human and financial resources, the absence of a clear strategy for prison reform and the fact that decree nb. 14310, which establishes internal rules of prisons, detention places, and juvenile Centers was originally issued in February 1949.
17. Many places of detention suffer from overcrowding, partially due to the high number of persons in pre-trial detention. In addition, most cells have insufficient heating, lighting and ventilation and there are insufficient sanitary facilities to meet the needs of the many detainees. This has a severe negative effect on the physical and mental health and wellbeing of detainees.
18. The health care systems in most places of detention are not able to address the many new and pre-existing physical and mental health needs of detainees. The systems have insufficient human and financial resources and many health professionals working in places of detention lack awareness of international standards and mental health needs of detainees. As a result, many detainees suffer from long term physical and mental health problems and they are unable to seek appropriate care by themselves due to their detention.
19. The relation between persons deprived of their liberty and the detention administration is dominated by a focus on punishment and rather than holistic unified rehabilitation procedures and social reintegration. This is keeping prisoners, ex-prisoners and their families in a vicious circle of imprisonment.
20. In Restart Center's professional opinion, the accumulated effects of the conditions described above cause physical and psychological pain and suffering to detainees, which reaches a level that qualifies the situation as amounting to ill-treatment and in some circumstances torture.

21. In response to COVID-19, prison authorities have limited contact with the outside world by restricting the visits of relatives, lawyers, and organizations operating inside places of detention. Unfortunately, no other measures have been taken to prevent the spread of the virus inside Lebanese prisons and places of detention.
22. Attempts to reduce overcrowding in prisons have been insufficient. The Lebanese government has made some efforts to accelerate the trials, but no real measures have been taken to reduce new arrests, number of detainees or provisionally arrested persons, and the number of inmates. A limited number of detainees have been released as a response to the crisis but the number is insufficient comparing to the total number of prisoners and arrested persons in Lebanon.
23. On the health level, the prison authorities have failed to take precautionary measures to protect prisoners from COVID-19. Elderly persons with health deficiencies have not been released; there are no designated quarantine zones for newly arrived prisoners; facilities and materials for personal hygiene are inadequate; and there is no overall strategy for dealing with COVID-19 in the specific scenario of detention centers.

Recommendations:

24. Transfer the administration of prisons from the Ministry of the Interior and Municipalities to the Ministry of Justice and incorporate the Ministry of Public Health to be in charge of the health and mental health services inside places of detention.
25. Reduce overcrowding due to pre-trial detention by accelerating the criminal judicial process, including through the establishment of clear targets and deadlines for the processing of cases.
26. Adopt a law to replace decree nb. 14310 to establish new and updated internal rules for prisons, detention places, and juvenile centers that are in compliance with the Mandela Rules and other relevant international standards.
27. Activate the medical center in the Tripoli prison for men to improve the quality of health and mental health services.
28. Integrate the response to prevent the outbreak of the COVID19 in places of deprivation of liberty in the Governmental National Plan - Corona Epidemic Response 10 March 2020 including closed institutions such as psychiatric hospitals, social welfare institutions, disability institutions and nursing homes.
29. Take legislative measures to adapt to the rapidly evolving situation of COVID 19 by reducing the number of persons inside places of detention through reducing new arrests, number of detainees or provisionally arrested persons and reducing the number of inmates.
30. Ensure the enjoyment of all human rights for persons in quarantine including by applying strict proportionality evaluations to all measures that restrict their rights.
31. Provide medical information about the reasons for the quarantine, the right to consult a doctor of their choice, the right to seek legal assistance, and to ensure that a family member or any other person of their choice is notified that they are in the quarantine.

C.2. National Human Rights Institution / National Preventive Mechanism:

During the 2nd cycle of the UPR, Lebanon received and accepted recommendations to establish without delay a national preventive mechanism in accordance with the Optional Protocol to the Convention against Torture with adequate personnel and financial resources for its effective and independent work

32. On the 19th of June 2018, the Lebanese Cabinet issued Decree no. 3267 to appoint the 10 members of Lebanon's National Human Rights Institution (NHRI). Furthermore, on the 5th of July 2019, the Lebanese Cabinet issued Decree no. 5147 to appoint the 5 members of the National Preventive Mechanism (NPM) with the aim of giving effect to a central obligation under the Optional Protocol to the Convention against Torture (OPCAT).
33. While this is a positive step towards better human rights monitoring in Lebanon, there are serious concerns regarding the financing of the joint NHRI/NPM and the process of appointment of its members. At the time of writing, no funding has been allocated to the institution, which means that it is unable to carry out any activities. Furthermore, members are appointed through a process that does not objectively focus on or assess individual candidates' expertise or knowledge within the mandate of the NHRI/NPM. Considering the highly-specialised expertise that is required for effective monitoring of detention facilities and the lack of financial resources for the NPM to recruit a technically competent secretariat, this is a serious concern.
34. During the outbreak of the COVID19, members of the NPM are the only party allowed to visit places of deprivation of liberty with the aim of monitoring violations if any, and protecting persons deprived of their liberty from any type of ill-treatment. However, the NPM members did not perform any related visits noting that they weren't operational due to the mentioned above obstacles and didn't visit any place of detention since their appointment. Members alleged that they have addressed a demand to the Ministry of Health to access hospitals where patients infected by corona virus are being treated and quarantined, while they have the right to enter any facility without permit. Although NPM members were aware of the UNSPT's Advice addressed to States parties and national preventive mechanisms concerning coronavirus disease (COVID-19) which urged them to take actions and to do monitoring visits, this mechanism was not functioning properly.

Recommendations:

35. Allocate an adequate budget for the NHRI/NPM to effectively implement their mandate under the Paris Principles and the OPCAT.
36. Establish procedures for appointing members of the NHRI/NPM that promote and ensure that the appointees have the necessary knowledge and experience to implement their human rights monitoring function.

C.3. Civil society access to monitor places of detention

During the 2nd cycle of the UPR, Lebanon received no recommendations on civil society access to monitor places of detention.

37. Civil Society Organizations working in the Human Rights sector are a crucial actor in ensuring that Lebanese places of detention comply with their human rights obligation. They deliver crucial services and support to detainees and they provide important public oversight of the situation in places that are designed to keep detainees and the public separated.
38. Unfortunately, only organisations that have a strict services provision mandate are allowed access to detention facilities and those that implement human rights monitoring functions are systematically denied. This effectively prevents the public from receiving information about the situation in detention facilities and thereby removes a central safeguard for human rights compliant prison conditions. Despite several recommendations from the UN Committee against Torture, most recently in 2017, to authorize non-governmental organizations to carry out prison monitoring activities, the Government has taken no action on this issue.

Recommendation:

39. Establish an objective and transparent procedure and criteria for allowing civil society organisations access to conduct human rights monitoring in places of detention.

C.4. New law on community service

During the 2nd cycle of the UPR, Lebanon received no recommendations on the law on community service.

40. On the 26th of June 2019, the Lebanese parliament adopted a law that substitutes prison sentences up to 1 year with community service for adults convicted for committing “petty crimes”. Despite the good intention of this law, it raises serious concerns in relation to the involuntary nature of the measure and the fact that one day of imprisonment is converted with and equivalence to eight hours of community service. In many cases, this puts the person in a situation where they are unable to support themselves financially.

Recommendation:

41. Amend the law to provide clear limitations on maximum number of hours of community service, as well as annual and monthly limits, to enable the offender to have simultaneous gainful employment and thereby promote access to social and economic rights of the offender and his/her family.

C. National Consultations and reporting

During the 2nd cycle of the UPR, Lebanon received and accepted recommendations to establish a permanent inter-ministerial committee responsible for the implementation of its international human rights obligations.

42. On the 28th of June 2018, the Lebanese Government issued decree 3268/06/19 to establish the National Mechanism for Reporting and Follow-up (NMRF) with the mandate to coordinate monitoring and reporting on Lebanon's human rights obligations to international human rights monitoring mechanisms.
43. However, the mechanism has not been able to perform its function effectively due to a series of significant shortcomings. The key concerns are that:
 - a) There is a very low capacity for and focus on data collection in the individual ministries responsible for implementation and the NMRF does not have its own centralised database to track implementation.
 - b) There is very limited communication with parliament and the judiciary, which means that they are not effectively informed or engaged in implementation of international human rights obligations and reporting to the NMRF.
 - c) There is limited cooperation with civil society organisations who are key to supporting and monitoring implementation of international human rights obligations.

Recommendations:

44. Provide the necessary technical and financial support for the National Mechanism for Reporting and Follow-up function effectively with a specific focus on ensuring better data collection and coordination with all branches of the Lebanese State.