

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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7 November 2017

Mr. Said,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In this connection, I would like to bring to the attention of your Government information I have received concerning **Law No. 65 on criminalisation of torture, adopted by the Lebanese Parliament on 19 September 2017, which contains several articles that seem to contravene the absolute and non-derogable prohibition of torture.**

According to the information received:

Lack of a comprehensive definition of torture

Article 1(a) of the new law, which amends article 401 of the Penal Code, limits the offence of torture to acts performed “during the investigation, preliminary investigation, judicial investigation, trials and executions of sentences”.

Please note that this definition of torture is significantly more restrictive than article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and, therefore, does not adequately reflect the universal and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Indeed, my mandate has consistently maintained that this prohibition is not confined to acts carried out against persons deprived of their liberty, or subjected to the criminal justice system, but also covers various forms of ill-treatment occurring in extra-custodial settings, that is to say, against persons who have not, or not yet, been deprived of their liberty or otherwise taken into the custody of the State.

I particularly wish to draw the attention of your Government to my latest report to the United Nations General Assembly (A/72/178), which states that the prohibition of torture and other ill-treatment also applies where State law enforcement agents resort to unnecessary, excessive or otherwise unlawful force, for example during arrest, stop and search, or crowd control operations.

Furthermore, I note that the relevant provisions of the Lebanese law in question criminalise torture only, but not other cruel, inhuman or degrading treatment or punishment as prohibited under article 16 of the CAT. Although Lebanon may not be expressly required under article 4 of the Convention to criminalise such treatment as a separate offence, I firmly believe that doing so is in practice indispensable for the effective prevention of such acts as required under Article 16 of the CAT.

Inadequacy of applicable penalties and statute of limitations

Article 1(b) of the law states that anyone who perpetrates torture shall be liable to one to three years of imprisonment if torture does not result in death or permanent or temporary physical or mental disability. I am concerned that these penalties are not commensurate with the gravity of the crime and would therefore not be compatible with the requirements of article 4(2) of the CAT.

I am also concerned that, by stipulating that the prescription period set forth in article 401 shall not start before the release of the victim from prison, detention or temporary detention if it is not followed by another prison sentence, article 3 of the law effectively subjects acts of torture to statutes of limitation.

Conclusion

In conclusion, I urge your Government to ensure that Law No. 65 on Criminalisation of Torture be amended so as to be brought into full compliance with Lebanon's obligations under UNCAT, as was recommended already by the Committee against Torture in its concluding observations of 8 May 2017.

In particular, I call on your Government: (a) to define torture in full conformity with article 1 of the CAT, (b) to ensure that acts of torture are punishable by appropriate penalties taking into account the gravity of the offence, as required by article 4 (2) of the CAT and (c) to ensure that the offence of torture is not made subject to statutes of limitation. Last but not least, I encourage your Government to adopt comparable measures also with regard to other cruel, inhuman or degrading treatment or punishment, so as to ensure the effective prevention of such acts as required by article 16 of the CAT.

Overall, this new law constitutes an important milestone for the effective prohibition and prevention of torture in Lebanon. I wish to congratulate your Government for having taken this important step and hope that the present letter may prove useful in consolidating and implementing this important piece of legislation with a view to effectively prevent acts of torture and other cruel, inhuman or degrading treatment or punishment from occurring within Lebanese jurisdiction.

Please accept, Mr. Said, the assurances of my highest consideration.

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment