



29 June 2016

Open letter to the Constitutional Drafting Assembly calling for comprehensive prohibition of torture and ill-treatment in Libya's future constitution

Dear Members of the Constitutional Drafting Assembly (CDA),

Lawyers for Justice in Libya (LFJL) and The Redress Trust (REDRESS), two human rights organisations working on the prohibition of torture and ill-treatment in Libya, welcome the CDA's efforts to produce a constitution for Libya. However, our organisations are concerned that the draft constitution published by the CDA in April 2016 (the **April 2016 Constitutional Draft**), does not adequately guarantee the absolute prohibition of torture and ill-treatment within Libya's territory or jurisdiction. We are now writing to urge you as Members of the CDA to ensure that the future constitution of Libya is in line with international standards, upholds the absolute prohibition of torture and ill-treatment, ensures accountability of perpetrators and provides for a right of victims to redress.

LFJL and REDRESS previously provided an in-depth analysis and commentary to CDA members following the release of the December 2014 draft constitutional recommendations. Our organisations have now updated this review to reflect the recent changes made within the April 2016 Constitutional Draft in order to examine its capacity to prohibit torture and ill-treatment. Please find the updated analysis enclosed.

Torture and ill-treatment are crimes of the gravest nature that have been endemic in Libya for generations despite repeated attempts by successive governments to put an end to these practices and the impunity with which they are carried out. Enshrining the absolute prohibition of torture and ill-treatment at the highest level of Libya's domestic legal system would demonstrate Libya's commitment to upholding the prohibition, help draw attention to its importance and thereby contribute to eradicating torture and ill-treatment in the country.

However, LFJL and REDRESS are concerned by the weak language regarding the prohibition of torture and ill-treatment in the April 2016 Constitutional Draft. As outlined in detail in our enclosed commentary, the April 2016 Constitutional Draft does not incorporate key obligations and safeguards against torture and ill-treatment provided for in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), ratified by Libya in 1989. These include for instance the absolute prohibition of torture and ill-treatment under all circumstances, which is omitted in the April 2016 Constitutional Draft. Instead, the April 2016

Constitutional Draft only provides that the State “shall be committed to protecting human dignity and *preventing* all types of violence, torture and forced disappearance.”¹

LFJL and REDRESS are also concerned that the updated text of the April 2016 Constitutional Draft does not establish a comprehensive accountability framework and instead may be interpreted to allow amnesties or pardons to be awarded to those who have committed human rights violations, such as torture or ill-treatment. Article 117 of the April 2016 Constitutional Draft, for example, provides for a “Special Amnesty”, the scope of which is unclear and may apply to human rights violations, including torture and ill-treatment.²

Furthermore, the April 2016 Constitutional Draft does not prohibit the use of evidence extracted through torture. This may create the impression that torture has a legitimate role in the provision of justice, thus incentivising its use. Arbitrary arrest and detention are also not sufficiently prohibited yet are highly important safeguards against torture and particularly relevant in Libya as torture is reported to occur most frequently in Libya following arrest and during the first days of interrogation.³

As outlined in more detail in the enclosed commentary, LFJL and REDRESS urgently call for the following amendments to provide a comprehensive constitutional framework that will aid the state’s implementation of the prohibition of torture and ill-treatment and address the ongoing impunity and culture of acceptance of such acts:

- Enshrine the absolute prohibition of torture and ill-treatment in a separate detailed article, which defines torture and ill-treatment in accordance with all aspects of article 1 of UNCAT;
- Criminalise all instances of torture by ensuring that torture is defined according to the act itself, regardless of the context or identity of the actors involved;
- Establish that the state has a duty to investigate and punish all acts of torture ;
- Ensure that human rights violations, including torture and other ill-treatment, cannot be the subject of any amnesty or statute of limitation;
- Enshrine the rights to liberty and security, which encompass important safeguards against pre-trial torture such as the right to petition for a writ of *habeas corpus*;
- Safeguard all elements of the right to a fair trial, including the prohibition of the use of evidence obtained through torture except against a person accused of torture as evidence that the torture took place;
- Ensure that all state security forces must act and are overseen with transparency, accountability and respect for human rights;
- Provide for the right to effective access to justice and reparation of survivors of torture and ill-treatment at all times and irrespective of when and in which context the torture or ill-treatment were committed; and
- Ensure that the state’s responsibility to absolutely prohibit torture cannot be derogated from in any circumstance, including during a state of emergency.

¹ February 2016 Constitutional Draft, Article 40.

² Article 117, “Special amnesty shall be by a decree of the President of the Republic after considering the opinions of the Prime Minister and President of the Higher Judicial Council in a manner that does not contravene with the provisions of this Constitution.”

³ United Nations Support Mission in Libya (UNSMIL), *Torture and Deaths in Detention in Libya*, October 2013.

The following commentary elaborates on these points and offers suggested drafting amendments. As Members of the CDA, you play a crucial role in ensuring that Libya's future constitution incorporates its international obligation and, by doing so, effectively contributes to the eradication of torture and ill-treatment in Libya once and for all. LFJL and REDRESS are ready to provide technical assistance and further information at any time during the remaining drafting process.

Yours faithfully,

Lawyers for Justice in Libya
REDRESS