

Women in Detention in the Middle East A Human Rights Perspective

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1. Introduction

Women in the Middle East² are systematically subjected to discrimination, prejudice, stereotypical treatment, and lack of protection by the law, customs and practice. Nowhere is this more evident than upon arrest or detention where they often find themselves subject to double discrimination: firstly, as “criminals”, or offenders, and secondly as women. The protective Arab culture of the “honor” and “interest” of the woman suddenly vanishes, and what is normally seen as the unacceptable, suddenly becomes acceptable.

Women in detention are even more invisible than their free counterparts. A simple search for literature about detention of women in the Middle East reveals very limited material compared to materials on men found in a similar position. One can only find few reports on certain high profile cases, or some thematic reports by human rights organizations discussing the subject mainly from a legal or human rights’ angle.

This article will attempt to highlight why women end up in detention; what they face while there; and, the obligation of the state regarding these women. It will end with some conclusions. Arguments will be supported by cases taken from different parts of the Middle East and are based on the records of Amnesty International. International human rights law and standards related to detention of women will not be discussed in detail as these will be explored in other parts of this issue of *Al-Raida*. Reference to human rights law will be made only in some instances, together with some references to relevant reports and conclusions by UN human rights bodies and experts.

The cases chosen for this article tend to steer away from the few high profile cases of women in detention who gained a lot of media and other attention because of who they are. Instead, it relies on cases that demonstrate some of the common practices and the daily suffering that many ordinary women face in detention. Some of the cases illustrate that the suffering of detained women does not end with their release, but haunts them and their families for a long time after release. It should be noted that many of the problems here are not unique to women in detention in the Middle East, but are faced by detained women in many other parts of the world.

Governments in the Middle East have taken some important steps during the last few years towards better protection of women’s rights. These include the ratification of relevant international human rights treaties, passing necessary amendments to national laws, human rights education and programs for raising awareness on women’s rights in the wider society. However, such initiatives are inconsistent with the pattern of violations that women continue to face while in detention in most parts of the Middle East. Accordingly, states must be more resolute in their efforts to combat the discrimination and other violations that women face both in general terms, and particularly during detention.

2. Who is Detained?

Women find themselves in detention for a variety of reasons. They are detained for their own activities, or in association with other male members of their families. Often, they are detained for their political activities, or sometimes for defying certain discriminatory social or legal norms. These cases tend to gain

more media interest, together with support from activist groups. However, many women are detained and charged with criminal activities resulting in abandonment by their families and society. Another group of invisible women in detention is migrant workers. Many of the prisons and detention centers in the Middle East host large groups of such workers, who find themselves in a particularly vulnerable position, as illustrated below. Finally, there is a small group of women who end up being detained “for their protection”. However, once in detention, they are treated as any other prisoners. These are the victims of attempted cases of “honor killings”.

Often, children are detained with their mothers, or girls are detained due to very low ages of criminal responsibility. They also must not be forgotten. This group of children in detention is beyond the scope of this article.

The following illustrate some of the typical cases under each of those categories. They are included here to show what these women face, and therefore help the reader think what needs to be done. The section is followed by a summary of what women face in detention, together with conclusions and recommendations.

A. Political Detainees

A large number of women are detained for what they believe in, even where their beliefs are not violent or when they do not advocate violence. Amnesty International normally adopts these women as “prisoners of conscience”. Many such cases often get the support of women and human rights activists, and campaigns are conducted on their behalf, although often without much success.

There are also many cases where wives, mothers and other members of the family are detained and subjected to torture or ill-treatment in order to put pressure on male members of the family to turn themselves in or to cooperate during investigation. This technique has been used often in Tunisia during the last few years. The Tunisian authorities repress political opposition of any kind. Active members of political movements, suspected sympathizers and even family members of suspected critics all find themselves targeted. Lawyers who speak out on behalf of victims of human rights violations have also been imprisoned and intimidated. Torture and other cruel and degrading treatment is routinely used by Tunisian police and security forces on both the targeted person and members of their family.

An important group of “forgotten” or “invisible” political detainees is the “disappeared”.³ Disappearances occur or have occurred in several Middle Eastern countries including Morocco, Algeria,

and Syria. Possibly some of the most notorious cases were at the hands of the Moroccan authorities. Since Morocco took control of Western Sahara at the end of 1975, hundreds of Sahrawi men and women known or suspected of pro-independence activities and support for the Polisario Front, have disappeared after having been arrested by Moroccan security forces. More than 300 of these disappeared men and women were released in June 1991 after up to 16 years in secret detention centers in Morocco and in Western Sahara, where they were held in cruel and inhuman conditions, and where scores of them died as a result. For years, and right up to the time of their release, the Moroccan Government not only denied any knowledge of them and of their whereabouts, but even their existence. When those “disappeared” were freed in 1991, the Moroccan Government stated they were released by royal pardon. Many of the “disappearance” cases are still relevant today because families of the “disappeared” are still tormented by the agony of not knowing the fate of their loved ones and because both the former “disappeared” and families of those who died in secret detention have until now obtained no redress. Moreover, those responsible for these grave human rights violations have been afforded total impunity.



Although a process of compensation for some “disappeared” started in Morocco in 1999, it covered no more than tens of cases. Hundreds are still pending, and their fate is still not known. Further, the cases of several hundred people, the majority of whom are Sahrawis, and who had “disappeared” between the mid-1960s and early 1990s, have not been officially clarified. The deaths between 1976 and 1991 of some 70 Sahrawi who “disappeared” in the secret detention centers of Agdz, Qal’at M’gouna and Laayoune have still not been acknowledged by the authorities, and their families had not received the remains for burial or have not been told where they are. Women are among those who are still “disappeared”.⁴

In Algeria, demonstrations by families of “disappeared” have been dealt with forcibly and demonstrators were detained. For example, on 15 March 2000, the Security Forces on their way to a planned demonstration arrested around 40 relatives of the “disappeared” in Algeria. They were released after a few hours, after being interrogated and warned that they should not demonstrate again, despite their plans to do so every week. Among those arrested on the following day were about 30 women, two of whom were pregnant. There is no indication that the Algerian authorities have taken any concrete action regarding the fate of about 4,000 men and women who “disappeared” after arrest in 1993.⁵

One can not discuss women political prisoners in the Middle East without mentioning the situation of Palestinian women detained in Israeli prisons and detention centers. Palestinian women continue to suffer daily in the notorious Neve Tirza prison inside Israel. Methods of torture and ill-treatment they face include their cells being sprayed with tear gas, held with tight hand-cuffs to their beds for long periods of time causing severe pain to the wrists and ankles, being severely beaten all over their bodies, and held in solitary confinement for long periods of time. Girls under 18 are also held in this prison under the same conditions. No thorough investigation is carried out regularly into claims of torture, despite continuous complaints by prisoners, their lawyers and human rights organizations.

B. Criminal Detainees

Women detained on criminal charges face the cruelest treatment in prisons, both during interrogation and after trial. It is as if the assumption that they are criminals makes them sub-human and therefore not deserving of the same treatment and standards as everybody else. It should be noted strongly here that human rights law, especially those provisions on fair trial, detention conditions, prohibition of torture and other forms of ill-treatment, apply to political and

criminal prisoners alike. There is no excuse for treating detainees on criminal charges any worse than other prisoners or detainees, especially political prisoners. Accordingly, we, as women’s rights and human rights activists are not excused at all from allowing this to be perpetrated without protest. We are also responsible for the lives of those detainees.

According to information received by Amnesty International, the following summarizes the ordeal of Heba Ma’sarani from Lebanon, which can be considered as a representative case of many of those women held on criminal charges in different parts of the Middle East:

Heba Ma’sarani was arrested on 14 June 1997, when she was 39 years old, shortly after the death of her husband, allegedly by suicide, and accused of his murder. She was taken to the Makhfar al-Mina (Tripoli port police station) where she was interrogated for two days. There she says she suffered from verbal abuse. Police officers prepared to rape her, stripping off their clothes and undressing her, but the head of the police station heard them and ordered her transfer. She was then moved to Bab al-Ramla police station in Tripoli. However, there she stated that she was tortured for seven days without being interrogated while she remained in the police station after being brought before the examining magistrate. After the head of the police station left at night she said she was raped by members of the Dabita al-’adliyya. She was also subjected to the farruj and to the method of torture known as the dullab or hanging from a suspended tyre and beating. She said the police station was infested with cockroaches, rats, mosquitoes and other insects. After this period she was brought before an examining magistrate who ordered her transfer to prison. She was brought to trial after nine months of detention.

In September 2001, when Amnesty International reported her case, she weighed only 36 kilograms, and was still being held in prison hospital. No steps have been taken to investigate her allegations of rape or to provide counseling or address the other serious allegations.⁶

The following is another case from Egypt, which is also representative of the kind of treatment, meted out to women detainees. On 3 March 2000 Salha Sayid Qasim, a 37-year old housemaid and mother of four, was taken from the house of one of her employers to Giza Police Headquarters by two plainclothes security officers on suspicion of burgling her employer’s house. In November 2000 Salha, still traumatized, described her ordeal to Amnesty International delegates:

The officer...took off my headscarf, blindfolded me, tied my hands and told me to take off my sandals and go in. When I went in, I didn’t know where I was or what was

happening to me. I realized that people were beating me. ... They were beating me with a stick, slapping my face, whipping me, and swearing very badly at me. ... They took me outside and after less than five minutes brought me in again. The same swearing and verbal abuse continued. They made me lie down with my legs raised and started on me with the stick. An officer held me down and stood over my legs. Of course my thighs and body were showing. He beat me very hard.... All this happened while I was blindfolded. He took me outside and...told me to dab my feet in some water, which I did. Then, he made me go back inside and asked me to take off my clothes. He made me stand in, if you'll excuse me, my bra and pants. He then asked me to turn around in front of them. I said, 'Shame on you! Why are you doing this to me?' I bent down to kiss his feet and he hit me and pushed me away with his shoe so that I fell over. I kept asking him to take mercy on me. He took the whip, hit me on the back and then told me to dress.

The officer then reportedly threatened Salha Sayid Qasim with further sexual abuse, including gang rape by police officers. She was then told to remove her blindfold and leave the room only to be summoned again minutes later to face further torture. The same torture was again repeated the next day, this time including electric shocks. All through Salha denied having stolen anything from her employers. Salha Sayid Qasim was released on 4 March 2000 without charge. She received a medical examination and treatment at the Cairo-based El Nadim Center for the Management and Rehabilitation of Victims of Violence. Doctors there examined the bruising, predominantly on her legs and back, and found that they were consistent with the results of beating and whipping. On 13 March 2000 the Egyptian Organization for Human Rights filed a complaint with the Public Prosecution regarding Salha Sayid Qasim's torture. By the end of 2000, Salha Sayid Qasim, who still had visible marks of torture on her body in November 2000, had still not been referred for a forensic examination.

In 1999 the UN Committee against Torture expressed concern regarding the "treatment of female detainees which sometimes involves sexual abuse or threat of such abuse", following its examination of Egypt's third periodic report. The Committee recommended "that effective steps be taken to protect women from threats of sexual abuse by police and officers of the State Security Intelligence as a means of obtaining information from them".⁷

The UN Committee on Elimination of Discrimination against Women (CEDAW) has also expressed its concern on Egypt that:

although efforts have been made, there is no holistic approach to the prevention and elimination of violence against women, including domestic violence, marital rape, violence against women in detention.... The Committee urged the Government to conduct a national survey of the extent of violence against women ...[and] to assess the impact of existing measures to address the various forms of violence against women.⁸

C. Detained "to be Protected", Honor Killings, and Adultery

Some countries in the region have now developed the practice of detaining women in order to protect them from what is known as honor killing. Human Rights Watch has reported that:

In Jordan, if a woman seeks protection from the police because she fears that her family wants to kill her, she will be held in indefinite detention in a local prison. It is important to note that once a woman has sought protection from the government and has been placed in prison, she is prohibited according to the government's policy from leaving the prison even though she has committed no crime. Ironically, women can only be released into the custody of a family member — perhaps the very persons trying to kill them. If these women are killed, they are buried in unmarked graves and their very existence denied.⁹

The case of Jordan is representative of the situation that exists in many other Arab countries. One has to understand the size of this problem in the region in order to appreciate the serious attention that needs to be given to solve it.

There were at least 21 family or "honor" killings in Jordan reported in Amnesty International's Annual Report for 2001. The Upper House voted to repeal Article 340 of the Penal Code (which exempts males from any penalty for murdering wives or female relatives on grounds of adultery or reduces the penalty if the victim is found in an "adulterous situation"). However, the repeal was later rejected by the Lower House.

The UN Committee on Elimination of Discrimination against Women has expressed its clear dissatisfaction with the Jordanian law and practice in this regard. The Committee stated that:

The Committee expresses its concern that several provisions of the Penal Code continue to discriminate against women. In particular, the Committee is concerned that article 340 of the Penal Code excuses a man who kills or injures his wife or his female kin caught in the act of adultery.

The Committee urges the Government to provide all possible support for the speedy repeal of article 340 and to undertake awareness-raising activities that make “honor killings” socially and morally unacceptable. It also urges the Government to take steps that ensure the replacement of protective custody with other types of protection for women.¹⁰

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahangir, discussed the issue in her report to the UN Commission on Human Rights in 2001.¹¹ She stressed that she has received a considerable amount of information regarding traditional practices, particularly so-called “honor killings”, targeting women in many parts of the world. She stressed that:

... it is the right of every individual to enjoy the rights to life, liberty and security. Governments are obliged to protect these rights by law and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which are in violation of the human rights of women.

She clarified that she does not take up all cases of such killings, but has limited herself to act where the State either approves of or supports these acts, or extends impunity to the perpetrators by giving tacit support to the practice. She noted that the General Assembly at its fifty-fifth session adopted resolution 55/66 entitled “Elimination of crimes against women committed in the name of honor”. She particularly suggested that “states should abolish “protective custody” and should assist non-governmental organizations, in particular by providing financial resources, to create alternatives for women in need of shelter.”¹²

In its General Comment on Violence against Women, the Committee on Elimination of Discrimination against Women recommended that states should amend their legislation “to remove the defense of honor in regard to the assault or murder of a female family member.”¹³

Although the practice of the so called “honor killings” is not the subject of this article, it is essential to make the following few observations about it as it relates to the detention of women. Crimes of “honor killings” are either condoned through government inaction or defended as legitimate cultural practices in many countries. As a result, police fail to investigate and prosecute these crimes. In the rare cases where a man is prosecuted, it is the woman’s behavior that becomes the focus of the trial, not the culpability of the defendant. In the even rarer case that a man is found guilty, the man’s claim that it was a crime committed

to restore family honor allows the courts to reduce the sentence. This is often based on legal provisions that provide for mitigating factors for the male in such cases. Conversely, such considerations are not provided for the woman if she commits a crime against her husband when she claims to find him in an adulterous situation. In such cases, she ends up with a harsh sentence.

D. Migrant Workers

Migrant workers, particularly domestic workers, tend to be among the most invisible, particularly when they are detained. They are stripped of many of the rights that are guaranteed to other detainees. For example, they often do not understand the language of the country and the legal system, and thus become vulnerable as they do not understand the charges brought against them, or how to defend themselves. As they often do not have family in the country, they are kept in isolation without access to the outside world. Often, they do not have access to their consulates or to lawyers.¹⁴ They are kept in separate cells and thus do not have the benefit of having another detainee who might help them to explain the process. While in interrogation, they are often subjected to severe torture, facilitated by their isolation from the outside world.

According to Amnesty International, in Saudi Arabia, a secret and arbitrary criminal justice system confronts everyone who comes into contact with the law. Women continued to be particularly subject to human rights abuses by the state, including arbitrary arrest and detention, torture and the death penalty, which is imposed for a wide variety of offenses. At least 145 people were executed between January 2000 and February 2001, most of them foreign nationals. Foreign workers from developing countries have much less chance of escaping gross abuses than Saudi Arabian nationals. Saudi Arabia has a strict moral code that is not translated only in customs, but also in legislation that prohibit or criminalizes certain behaviors. Many of such codes are related to women, for example the requirement to wear a certain dress and covering her head all the time, and not being allowed to be walking in the streets alone without a close male relative of the family (brother or husband). Many cases show that the “crimes” of immoral conduct, although appearing gender-neutral, can be invoked against women in more circumstances than they can be invoked against men — mainly as a result of the many injunctions and limitations in respect of women’s behavior.¹⁵ The following is a clear example that shows the plight of not only women in general in Saudi Arabia, but particularly that of migrant domestic workers.

Amnesty International reported the case of Tess dos Reyes, a 41-year-old domestic worker from the

Philippines, who received a sentence of lashes after she was accused of having kissed a man who visited her employer's compound. She refuted the accusation, but was denied legal representation and was unable to cross-examine the witnesses who had made accusations against her. Tess at no stage confessed, but the court accepted the written accusations as evidence against her. Her employers, who had made the accusation, were not present in court. She was not given the assistance of a lawyer. She was also unable to send letters when she was in prison. Tess was never given clear information about the precise nature of the charges against her, although it seems likely that she was convicted of immoral conduct.

She told Amnesty International:

What led to my going to prison was that at 9 pm or 10 pm one evening, the Filipino driver who lived in the compound received a visit from another Filipino man... The first thing that I knew about this was that my employer came to me and said that the man was my boyfriend. I said that I had no idea who this man was. My employer immediately called the police and the two Filipino men and I were all arrested. At 3 am I was taken straight to the Malaz women's prison. I was never interviewed by the police prior to being imprisoned. There was a subsequent occasion when I was interviewed in the prison. I simply told the truth, and signed the statement. I felt helpless. I never saw a lawyer. I was in jail from 6 April 1998 to 6 November 1998. There was only one visit from the Philippines Embassy. This was more than two months after my imprisonment. I went to court once only. There was me, the judge and an interpreter in court and a female prison guard. The judge read out my statement, and then read out a statement from my employer in which he said that he had seen me embracing the Filipino visitor. The employer was not in court and was not required to "speak to" his statement. Even if I had felt capable of doing it, I did not have the chance to challenge the statement of my employer. I was simply told by the judge that I was to be given 75 lashes in one session, and eight months in jail. I am not sure exactly the crime I was sentenced for. I am not sure whether it was immoral conduct. I am not sure whether an inference was drawn from my supposed embrace that I had had sex with the man in question. I was given the lashes before I left, about a week before.¹⁶

3. What do Women Face While in Detention: Relevant Human Rights Standards

It is clear from the cases cited above that torture is often practiced against women, and it seems to be most frequently related to her gender. Women are often

subjected to rape by state officials, acting individually or collectively, or to threat of rape. What increases this risk is that, contrary to clear international standards, women are often interrogated by male officers in the absence of female officers. Their isolation from the outside world, particularly from their family, legal counseling, and independent medical doctors increases the risk of their being subjected to such forms of torture and suffering in silence without quick possibility of salvation. According to Rule 53 of the UN Standard Minimum Rules for the Treatment of Prisoners, the presence of women officers is required in detention centers where women are held. In line with this Rule, female security officers should be present during the interrogation of a woman, and should solely be responsible for conducting body searches. Women wearing a head-scarf are often stripped of it as soon as interrogation starts as a form of humiliation and as a means of putting pressure on them to confess or cooperate with the interrogation.

Women are also subjected to the other forms of torture or ill-treatment or punishment that men are regularly subjected to. This includes being tortured with electric shock, sleep deprivation, position abuse including being put in awkward positions tied with ropes or to pipes which lead to pain, or being forced to sit on a chair with hands and legs tied, sometimes to the back, for a long time. They are also beaten or whipped regularly all over their bodies.

International law clearly prohibits torture in any circumstances. This prohibition is now customary international law and the obligations related to it are reflected in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and Article 7 of the International Covenant of Civil and Political Rights. State obligations include the prohibition of torture, investigation of cases of torture and redress for victims of torture (see below).

Concerning the connection between torture or ill-treatment and access to the outside world, the Special Rapporteur on Torture has stated that "torture is most frequently practiced during incommunicado detention. Incommunicado detention should be made illegal and persons held in incommunicado detention should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention."¹⁷

International standards recognize many rights and protections for detained persons. These include that no one shall be arbitrarily detained or arrested. A person shall be informed promptly of the reasons of her arrest and any charges against her, be brought

promptly before a judge and be brought to trial within reasonable time, shall have the right to challenge the lawfulness of her detention, and, if she is subjected to unlawful detention, she shall have the right to compensation. All persons are entitled to fair and public hearings by a competent, impartial and independent tribunal. They shall have the right to be presumed innocent unless proven guilty by a court of law, to have adequate time and facility for the preparation of defense and to communicate with legal counsel without delay. In case of foreign nationals, they have the right to free assistance of an interpreter if she does not understand or speak the language used in the court.¹⁸

Women, who are detained with other male family members, are often tortured in front of the male member to put pressure on him to cooperate. In fact, in many cases women are detained and tortured just to put pressure on male members of the family or force women to confess information about such members of the family although the woman herself might have nothing to do with the case in question.

Women who were subjected to acts of torture or ill-treatment or punishment have often filed complaints against their torturers. However, in most cases, such complaints are not investigated properly, or when they are, often result in punishment disproportionate to the offenses: i.e. the officer is simply moved from one police station to another, or cautioned.

The Convention against Torture requires that the state “shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” (Article 12). It should be noted here that such investigation is not dependent on whether the victims or their representatives launched an official complaint. Article 15 requires that any statement which is established to have been extracted under torture should not be used as evidence in any proceedings against the accused. The Convention further requires that states should ensure that “the victim of an act of torture obtains redress and has the enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of

victim as a result of torture, ... [the] dependents shall be entitled to compensation.” (Article 14 (1))

Finally, it should be noted that although the Convention on Elimination of All Forms of Discrimination against Women does not include provisions directly on violence against women, the Committee on Elimination of Discrimination Against Women has clarified that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”¹⁹ The Committee further added that:

The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.²⁰

4. Why Does this Happen?

It is very important to identify where the problem lies in order to find the proper redress. In some cases, the problem starts with the legislation, in others, it is in the implementation. In the parts below, some of these reasons are explored, with reference to the UN system when possible.

A. Ratification of International Treaties

At the first instance, one should examine the ratification of international human rights treaties by states of the region. A quick examination of the ratification of international treaties shows that the problem is actually not in ratification. For example, all the following states have ratified the International Covenant on Civil and Political Rights, which includes important provisions on non-discrimination and standards related to arrest, detention, and fair trials: Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Somalia, Sudan, Syria,

Tunisia, and Yemen.

The following have ratified the International Convention on Elimination of All Forms of Discrimination against Women: Algeria, Comoros,

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Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, Tunisia, and Yemen.

And finally, the following has ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Libya, Morocco, Qatar, Saudi Arabia, Somalia, Tunisia, and Yemen.

So it is clear from the above that the problem for many states is not at the level of ratification of international treaties. However, the problem in relation with international law and standards lies on another level:

1. The repeated reservations that states have entered to many provisions of these international treaties. The various human rights treaty bodies have often called on states to lift their reservations stating that such reservations are often inconsistent with the purpose and spirit of the treaty;
2. It is often that national legislation is still in violation with obligations under these international treaties as will be shown below; and
3. Even in the rare occasions where the law is consistent with international law, or even when it is not, the problems most often remains that the practice by state officials, including the police and judges, are in violation of these standards.

It should be stressed that ratification of international standards should not be only a demonstration of will by the state to the international community. It rather carries with it immediate obligations including guaranteeing the rights included in the treaties to all persons without discrimination; harmonizing national law with these international standards, and training of government officials on these standards so that they become a reality in practice.

B. National Legislation

The problem often lies in national legislation, including cases where there is lack of constitutional guarantees for non-discrimination against women; or cases where there is conflict between the constitution and other national legislation.

Concerning conflict between constitutions and national legislation, this is often evident in family status legislation and penal codes. As shown above in the case

of adultery and “honor killings”, women are treated much harsher than men, even when caught under similar circumstances and charged with similar charges. The Committee on Elimination of Discrimination against Women have said in the case of Algeria, that although the Committee is satisfied that “the Constitution guarantees the equality of men and women and provides that the Convention prevails over national legislation, the numerous discriminatory provisions of the Family Code and the persistence of prejudice and patriarchal practices conflict de facto with the principles of the Convention.” The Committee recommended that the Algerian authorities review its legislation in view of harmonizing it with the Convention and the Constitution.²¹

On Jordan, the Committee on Elimination of Discrimination against Women was concerned that “although article 6 of the Jordanian Constitution contains the principle of equality of all Jordanians before the law, it does not contain a specific provision stating that there shall be no discrimination either de jure or de facto on the ground of sex.”

The Committee called on the Jordanian government “to encourage a constitutional amendment to incorporate equality on the basis of sex in article 6 of the Constitution and to reflect fully article 1 of the Convention in the Constitution.” The Committee further expressed its concern that several provisions of the Penal Code continue to discriminate against women. In particular, the Committee is concerned that article 340 of the Penal Code excuses a man who kills or injures his wife or his female kin caught in the act of adultery.”²²

In the case of Iraq, the Committee drew attention to the importance of not only having provisions of non-discrimination in the Constitution, but also that such guarantees do not have the purpose and effect to discriminate on the basis of sex.²³ In that sense, it is common in legislation or practice that there are no provisions that discriminate on the basis of sex directly, but in practice, the effect of certain legislations, or lack of additional protection provisions is to discriminate against women. This is evident in the case of lack of protection provisions and the lack of special training for law enforcement officers to deal with women during detention. In view of the lack of such additional protection, women suffer from violations of

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their physical and psychological integrity that could amount to torture.

C. Practice

Finally, even when international human rights treaties have been ratified, and the national law does in fact include the necessary provisions to protect the rights in question, there still remains the problem of implementation in practice. This is most obvious in the lack of adherence to provisions of international treaties or provisions in national legislation by law enforcement officers. In many cases this is due to lack of training provided to these officials on their obligations under international and national law. However, what complicates the problem is that more than often, violations of human rights by law enforcement officials go with total impunity. No investigations are carried out regularly in cases of torture, death in detention, or other forms of abuse of power. In the rare case when such investigations take place, the officials involved are let to go with a punishment that is totally disproportionate to the violation committed. Such impunity for violations is a perfect atmosphere for their repeat and has to be addressed promptly.

5. Recommendations

The following are some recommendations that are directed towards state authorities, NGOs and other activists. The recommendations for the state could be used as basis for programs by human rights and women's rights activists in addressing the plight of women in detention.

A. To States

States should amend provisions in constitutions and other laws that still discriminate against women, or do not allow for proper redress for violations against them, including during detention. Other specific amendments in laws include the abolishing of discriminatory laws and evidentiary rules that lead to disproportionate levels of incarceration of women for crimes like adultery. Also upon arrest or detention women should be guaranteed immediate access to the outside world, including to their families and to legal counsel.

Further, there should be human rights mechanisms to investigate violence against women in custody, and such mechanisms should give such violations the same priority as violence against men in custody. In their reporting, such mechanisms should consistently incorporate a gender analysis.

States should carry out training of law enforcement officers on international human rights law, particularly the standards related to the detention of women and conditions under which their interrogation can take

place; and states should provide ongoing gender-sensitization training for police and prison personnel; States should work towards the full implementation of concluding observations and remarks by the different human rights treaty bodies, including the Committee against Torture, the Committee on Elimination of Discrimination against Women, and the Human Rights Committee (supervising the implementation of the International Covenant on Civil and Political Rights). Also implementation of comments and recommendations by other UN experts, including the Special Rapporteur on Torture, and the Special Rapporteur on Violence Against Women. These experts and expert bodies have made general recommendations, but also specific recommendations related to law and practice in many of the countries of the region. Little effort has been made by states to implement these. Steps in this direction are essential to address the specific problems faced by women in detention.

B. To NGOs and Other Activists

Women's rights and human rights non-governmental organizations need to create and strengthen their programs of monitoring the situation of women in detention. More documentation of detention conditions, including during interrogation, needs to be available.

To achieve this, NGOs need to train more specialized staff to speak with women who have been raped, and subjected to other severe forms of physical and psychological violations.

Interviewing those survivors of torture can be very emotional and devastating to them. Interviewers, field workers, and others involved in such cases, including lawyers who deal with these cases, need to be specially trained on how to carry out the interviews and research without subjecting women to further trauma.

NGOs and other activists, including lawyers and academics, need to identify in each country the priorities for legislative reform and start lobbying for that. Campaigns to create allies in the parliament and the community are essential for this.

The presence of women officers is required in detention centers where women are held

Endnotes

1. Mervat Rishmawi is a legal advisor at the International Secretariat of Amnesty International, based in London – UK. This article is written in personal capacity.
2. The term Middle East here refers to the country members of the League of Arab States in the region of the East Mediterranean, the Gulf, and North Africa.
3. According to the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, an enforced disappearance occurs when “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”
4. For further documentation of disappearances, see various Amnesty International’s reports including: MOROCCO / WESTERN SAHARA: “Turning the page: achievements and obstacles”, Amnesty International (AI-Index: MDE 29/001/1999), 04 August 1999; and “Addendum to “Turning the page: achievements and obstacles”, Amnesty International (AI Index: MDE 29/005/1999), 04 August 1999.
5. For further information, see for example Amnesty International Annual Report 2001: Algeria, p. 29; and “Algeria: Mothers and other relatives of the “disappeared” arrested and threatened”, Amnesty International (AI Index: MDE 28/02/00), 15 March 2000.
6. For further information about this case and a general discussion of detention of women in Lebanon see: “Lebanon: Torture and ill-treatment of women in pre-trial detention: a culture of acquiescence”, Amnesty International (AI Index: 18/009/2001), August 2001.
7. Concluding Observations of the Committee Against Torture: Egypt, UN Doc. A/54/44, paras. 209-212.
8. Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Egypt, UN Doc. A/56/38, 02 February 2001, paras. 344-345.
9. See: Human Rights Watch Oral Intervention at the 57th Session of the UN Commission on Human Rights: Item 12 - Integration of the human rights of women and the gender perspective: Violence Against Women and “Honor” Crimes, April 2001.
10. Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Jordan, UN Doc. A/55/38, paras 178-179, (27/01/2000).
11. See Report of the UN Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2001/9, (11 January 2001).
12. Ibid.
13. “Violence against women”, CEDAW General recommendation. 19, (UN Doc. A/47/38), 30 January 92, para. 24 (r-ii).
14. According to Article 36 of the UN Vienna Convention on Consular Relations and Principle 16(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: if the detained person is a foreign national, he or she shall be informed promptly of the right to communicate with consular post or diplomatic mission of his state.
15. See: “Amnesty International, 57th UN Commission on Human Rights (2001):background briefing” (AI Index: IOR 42/002/200); and “Racism and the Administration of Justice : Media Briefing” , Amnesty International (AI Index ACT 40/028/2001) - News Service Nr. 124, 25 July 2001. On 28 March 2000, Amnesty International launched a world-wide campaign concerning the human rights violations in Saudi Arabia, issuing several thematic reports and documents, including on violations against women.
- 16 “Saudi Arabia: Gross Human Rights Abuses against Women”, Amnesty International (AI Index: MDE 23/057/2000), 27 September 2000. Also on a general discussion on human rights violations in Saudi Arabia, see Human Rights Watch: “Human Rights in Saudi Arabia: A Deafening Silence”, December 2001.
- 17 Report of the UN Special Rapporteur on torture, UN Doc. E/CN.4/1995, para. 926 d.
- 18 These standards and others are included in many international human rights law and standards including: the Convention against Torture; the International Covenant on Civil and Political Rights (particularly Articles 7,9,10 and 14); the Standard Minimum Rules for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the Safeguards guaranteeing protection for those facing the death penalty.
- 19 “Violence against women”, CEDAW General recommendation. 19, (UN Doc. A/47/38), 30 January 92, para. 1.
- 20 Ibid, para. 6.
- 21 Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Algeria, UN Doc A/54/38, paras. 68, 92, (27 January 99).
- 22 Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Jordan, UN Doc A/55/38, paras. 168, 169, 178, 179, (27 January 2000).
- 23 Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Jordan, UN Doc A/55/38, para. 168, (14 June 2000).