

# **People's Law Office Submission to the UN Committee Against Torture On List of Issues Prior to Reporting to the United States For Its Sixth Periodic Review**

**June 27, 2016**

## ***I) Introduction***

This submission is by the People's Law Office, a progressive law firm dedicated to fighting police brutality and promoting human rights, based in Chicago, Illinois. The Office is writing to bring the Committee Against Torture's attention to human rights violations arising out of Chicago that should be included in the List of Issues Prior to Reporting for the UN Committee Against Torture's sixth periodic review of the United States. This submission seeks to draw attention to 1) the prosecution of torture survivor Rasmea Odeh and 2) practices of torture and cruel, inhuman and degrading treatment occurring at Chicago police department's facility "Homan Square." The People's Law Office represents certain former Homan Square detainees and Rasmea Odeh.

## ***II) The Prosecution of Torture Survivor Rasmea Odeh***

### **A) Background**

Rasmea Odeh is a 67 year-old Palestinian-American woman and torture survivor who is being prosecuted by the United States government for immigration fraud. In 1969, Ms. Odeh was taken from her home in the West Bank and was subsequently tortured for twenty-five days. Only twenty-one years old at the time, Ms. Odeh was severely beaten with batons and metal bars, electrically shocked on her genitals and breasts, and subjected to rape and other forms of sexual abuse.<sup>1</sup> She was also forced to watch the torture of her father and

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<sup>1</sup> Joseph Reubner, Why is Obama's DOJ prosecuting a torture victim? The Hill, (June 10, 2014), <http://thehill.com/blogs/pundits-blog/international/208699-why-is-obamas-doj-prosecuting-a-torture-victim>.

other people detained by Israeli authorities. Ms. Odeh was ultimately coerced into signing a false confession for a crime that she did not commit. This false confession was used against her when she was wrongfully convicted in 1969 in an Israeli military court, where nearly 100 percent of the trials of Palestinians end in a conviction.<sup>2</sup> Reports of her torture are well documented in Amnesty International reports and testimony at the United Nations.<sup>3</sup> She continues to suffer from clinically diagnosed PTSD as a result of the torture.

Odeh served 10 years in Israeli prisons, was released in a prisoner exchange, and eventually moved to the United States first as a legal resident and then as a naturalized citizen. Based in Chicago, Rasmia Odeh has become a beloved community leader and is the deputy director of the Arab American Action Network.

Twenty years later, the United States' Justice Department dubiously arrested her for naturalization fraud, a charge which can only be characterized as a targeted political prosecution. Ms. Odeh is a prominent organizer for Palestinian liberation.

The United States government accuses Rasmia Odeh of purposefully not disclosing her 1969 conviction in her 2004 naturalization papers, and charged her with violating 18 U.S.C. §1425(a), procuring U.S. citizenship contrary to law. Odeh maintains that her posttraumatic stress disorder and experience of torture impacted her memory, prompting her to suppress her traumatic experiences and causing her to interpret the naturalization questions as a way to avoid her past trauma. Her narrowed focus led her to interpret the questions of arrest, conviction and imprisonment to apply only to her time in the U.S. where she had already been living for 9 years.<sup>4</sup>

She was put on trial in November 2014 in Detroit, Michigan. At her trial, the lower court did not allow evidence of her torture into trial while the government was allowed to introduce highly prejudicial Israeli documents to prove she had been convicted, despite the fact that her conviction was a product of torture. Ms. Odeh was convicted and sentenced to 18 months in prison in November 2014 She was held in solitary confinement for weeks before she was released on bond, thereby torturing the torture survivor once more.

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<sup>2</sup> Chaim Levinson, Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns, Haaretz (Nov. 29, 2011), <http://www.haaretz.com/nearly-100-of-all-military-court-cases-in-west-bank-end-in-conviction-haaretz-learns-1.398369>.

<sup>3</sup> See Recommendations of an Amnesty International Mission to The Government of the State of Israel, at 9, Amnesty International (June 3-7, 1979), available at <http://www.amnesty.org/en/library/asset/MDE15/002/1980/en/e3d7fa29-1c9f-4591-a8a8-f5ded8110429/mde150021980en.pdf> (“Josef Odeh had stated to the Sunday Times that his daughter, when in custody, had been threatened with rape and that an object had been thrust into her vagina in his presence.”).

<sup>4</sup> Protective coping mechanisms, such as denial and avoidance, makes it difficult for torture survivors to recall the conditions of their torture. See Office of the U.N. High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment* (“Istanbul Protocol”), 2004, U.N. Doc HR/P/PT/8/Rev.1 at § 142.

The Sixth Circuit court of appeals vacated the District Court's decision, and stated that evidence of her torture and posttraumatic stress disorder should not have been excluded during her trial. Her new trial is scheduled for January 2017. If convicted, Odeh faces up to ten years in prison and a maximum fine of \$250,000, as well as revocation of her American citizenship and deportation.

### **B) Relevant Legal Framework– Violations of Article 15**

The abuse that Rasmia Odeh suffered at the hands of Israeli authorities unquestionably constitutes torture under Article 1 of the UN Convention Against Torture (CAT).<sup>5</sup> Prosecuting Ms. Odeh for failing to disclose a conviction based upon a tortured confession is a direct violation of Article 15 of the Convention Against Torture, which prohibits the United States from using a statement procured from torture as evidence in any proceeding against the tortured person.<sup>6</sup> This prohibition is absolute, and applies regardless of whether the alleged torture occurred under the jurisdiction of the United States.<sup>7</sup>

Furthermore, refusing to admit psychological evidence, which is now considered a key component of proving torture and interpreting the actions and testimony of torture victims, in the prosecution of Rasmia Odeh is an affront to international human rights law. The Convention Against Torture assigns an important role to medical, including psychological evidence, in establishing torture.<sup>8</sup> Indeed, the Special Rapporteur on torture has also emphasized the importance of psychological evidence in verifying a victim's allegations of torture.<sup>9</sup>

### **C) Recommended Questions**

We respectfully ask the Committee Against Torture to ask the following questions:

- 1) Does the United States intend on halting the prosecution of Rasmia Odeh to ensure that she is not further punished as a torture victim for an alleged naturalization offense that she did not knowingly commit?
- 2) Will the United States continue to move to take Ms. Odeh's citizenship and deport her from her adopted country where she has lived for over two decades?

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<sup>5</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, Article 1 ("Convention Against Torture"), G.A. Res. 39/46, A/RES/39/46 (10 Dec. 1984).

<sup>6</sup> Convention Against Torture, Article 14.

<sup>7</sup> G.K. v. Switzerland, CAT communication No. 219/2002, 7 Ma 2003, § 6.10.

<sup>8</sup> UN Committee against Torture, General Comment No.3, Implementation of article 14 by States parties, U.N. Doc. CAT/C/GC/3, ¶¶ 13, 25, 35 (Nov. 19, 2012).

<sup>9</sup> See Interim report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, A/69/387, ¶ 52 (Sept. 23, 2014).

- 3) If the United States intends to continue with the prosecution of Ms. Odeh what measure is the United States taking to ensure that psychological evidence, which is a key component of interpreting the actions and testimony of torture survivors, is admitted?

### ***III) Homan Square***

#### **A) Background**

During the past year a series of investigative articles by the Guardian newspaper revealed that for more than a decade, Chicago police officers have systematically arrested thousands of predominantly civilians of color without legal cause and transported them to “Homan Square”- an “off the books” Chicago Police Department facility where officers detained, interrogated, threatened and sometimes physically abused civilians for the purpose of coercing confessions and obtaining “informant” information.<sup>10</sup> Indeed entire Chicago communities of color have been targeted and abused by Chicago police officers at Homan Square.

More than 7,000 arrestees have been taken to Homan Square.<sup>11</sup> This does not include an unknown number of detainees who are not formally arrested or charged with a criminal offense. The length of the detention ranges from several hours to several days. Once taken to Homan Square, detainees are not officially booked, their families and attorneys have considerable trouble locating them, and if they do, they are most often denied access to the detainee. Evidence obtained by the *Guardian* reveals that only 0.94% of detainees held at Homan Square have been allowed access to their attorneys.<sup>12</sup>

Civilians are essentially “disappeared,” and then subjected to mental torture through sensory deprivation. They are held in Spartan-like cells without food, water or access to bathroom facilities.<sup>13</sup> Detainees are handcuffed to the wall, and subjected to a barrage of questions and threats, while Chicago police officers try to coerce confessions or insider information from the detainees.

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<sup>10</sup> Spencer Ackerman, Homan Square Revealed: How Chicago Police ‘Disappeared’ 7,000 people, *The Guardian* (Oct. 19, 2015), <https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands>, Spencer Ackerman and Zach Stafford, Chicago Police Detained Thousands of Black Americans at Interrogation Facility (Aug. 5, 2015), <https://www.theguardian.com/us-news/2015/aug/05/homan-square-chicago-thousands-detained>; Spencer Ackerman, Chicago Police Detain Americans at Abuse-Laden “Black Site” (Feb. 24, 2015), <https://www.theguardian.com/us-news/2015/feb/24/chicago-police-detain-americans-black-site>.

<sup>11</sup> Spencer Ackerman, Homan Square Revealed: How Chicago Police ‘Disappeared’ 7,000 people, *The Guardian* (Oct. 19, 2015), <https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands>.

<sup>12</sup> *Id.*

<sup>13</sup> Flint Taylor, Homan Square is Chicago’s new ‘House of Scream’, *The Guardian* (April 13, 2016), <https://www.theguardian.com/commentisfree/2016/apr/13/homan-square-chicago-police-station-house-of-screams>.

In addition to this sensory deprivation, the police interrogators all too often employ physical brutality against detainees. These tactics include electrically shocking detainees with Tasers, violently invasive body cavity searches, suffocation, anal rape, beatings with batons, and threats with knives. If detainees fail to offer the information sought by Chicago police officers, the officers sometimes bring false criminal charges against them. Below are just a few examples of civilians tortured in Homan Square.

**Deanda Wilson** was falsely arrested in October 2013 and taken to Homan Square. He was not told why he was being arrested or detained and was forced to spend countless hours in a dark cell, chained to a bench. He was interrogated by Chicago police officers, who bombarded him with questions and ignored his requests for an attorney, phone call, or to use the bathroom. The officers repeatedly asked him about the whereabouts of illegal drugs. He did not know the answer and so could not answer their questions, so they continued interrogating him. At one point a Chicago police officer held a knife to his neck. Upon his release he was maliciously prosecuted for a crime he did not commit and was ultimately found innocent after spending 15 months in jail.

**Jaime Galvan** was taken to Homan Square moments after speaking with his wife in 2006; he was dead later that day. He was never officially booked or given a phone call. While in Homan Square, another detainee overheard officers speaking, banging noises and a gagging sound coming from Galvan's cell, hours after he had arrived at the facility. An independent medical examiner determined that he died from asphyxiation, consistent with abrasions on the left side of Mr. Galvan's neck and a blunt force trauma on his head. The Chicago police department falsely reported that he died from a drug overdose.

**Angel Perez** was taken to Homan Square on October 20, 2012. He was brutally arrested and held in a cell for several hours where he was questioned about matters he knew nothing about. He was handcuffed to the wall and his ankles were shackled. Chicago police officers threatened that he would be raped by gang members, that he would be falsely charged with a crime, and that they would plant illegal drugs on him. Officers pulled at his body and shoved their elbows into his back. They also pushed hard on Mr. Perez's eyes, causing him severe pain. Finally, they inserted a cold metal object in Mr. Perez's rectum, which Mr. Perez believed to be a revolver, and laughed at him.

**Kory Wright** was taken to Homan Square in 2005, where he was detained for 5 to 6 hours. His requests for phone calls and a lawyer were ignored, and Chicago police officers turned up the heat in his cell so that he began sweating through his clothes as he was interrogated. When he complained about the heat, officers told him to "help yourself by helping us." They asked him for information about things he knew nothing about and so was unable to provide them with information. As a result he was charged for a crime that he did not commit.

These are just a few of thousands of cases arising from Homan Square. It is imperative that the police conduct at this secret facility be properly and independently investigated to discover and document the systemic violations that have occurred there and to stop the torture and abuse that continues to occur there.

## **B) Relevant Legal Framework – Violations of Articles 2 and 11**

The reported abuse at Homan Square squarely meets the definition of torture under Article 1 of the Convention Against Torture and the practice of incommunicado detention at Homan Square creates conditions conducive to continuing systematic torture.<sup>14</sup> Detainees are routinely and intentionally subjected to severe mental and physical pain or suffering to obtain a confession or third party confessions to criminal activity. This torture happens at the hands of Chicago police officers pursuant to an understood practice and custom of the Chicago police department. Even if detainees do not confess or reveal information, their very detention constitutes cruel, inhuman and degrading treatment as defined by Article 16.<sup>15</sup>

Despite these well-publicized and documented complaints, the City of Chicago has done nothing to investigate the complaints of human rights violations in Homan Square, but rather has consistently denied any misconduct. As a result, citizens continue to be detained there illegally. This is a violation of Article 2 as set forth by General Comment 2, which stipulates that a State is responsible for allowing individuals to be in the custody or control of an institution known to have engaged in ill treatment without implementing adequate safeguards.<sup>16</sup> Once the United States is aware of practices of torture, its investigation of those practices must be prompt.<sup>17</sup>

Pursuant to Article 11 of CAT<sup>18</sup>, the United States must implement a systematic review of the treatment of persons subject to inhuman detentions, with a view of preventing any cases of torture, and that investigation must be continuous.<sup>19</sup> The continued operation of Homan Square is a clear violation of Articles 2 and 11. To guarantee the effective protection of detainees and the prevention of torture, the United States must ensure that detained persons are held in places officially recognized, that detainees are officially registered, and that information regarding detentions is readily accessible to relatives,

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<sup>14</sup> Convention Against Torture, Article 1.

<sup>15</sup> Convention Against Torture, Article 16.

<sup>16</sup> UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, available at: <http://www.refworld.org/docid/47ac78ce2.html> [accessed 23 June 2016].

<sup>17</sup> See for example *Blanco Abad v. Spain*, CAT Communication No. 59/1996, 14 Ma 1998, § 8.2 (finding that 18 days between the initial report of ill-treatment and the initiation of an investigation is too long).

<sup>18</sup> Convention Against Torture, Article 11.

<sup>19</sup> *Id.*

attorneys and friends.<sup>20</sup> The United States must close down Homan Square under through administrative, legislative or judicial means.<sup>21</sup>

### **C) Recommended Questions**

We respectfully ask the Committee Against Torture to ask the following questions:

- 1) What if any measures is the United States taking to investigate the allegations of systematic torture occurring in the Chicago police department facility “Homan Square,” a police detention facility located at the intersection of South Homan Street and West Filmore Avenue, Chicago, IL 60624?
- 2) What if anything is the United States and the City of Chicago doing to ensure that citizens are no longer illegally detained in the torturous, illegal, and inhuman conditions that continue to exist in Homan Square?
- 3) Does the United States intend on compelling the City of Chicago to close Homan Square?

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<sup>20</sup> HRC, General Comment No. 20, 1992, § 11.

<sup>21</sup> Convention Against Torture, Article 2.