TOWARDS A LAW

AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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INTRODUCTION:

The Position of the Hashemite Kingdom of Jordan (Jordan) towards the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Position towards the international mechanism monitoring the implementation of the Convention

As one of the most profound human rights violations, torture happens to stir up public opinion more than any other violation does. Stemming from the "right to life" itself, the right of not being subjected to torture is an absolute right that cannot be suspended or restricted even during a declared state of emergency. However, it is unfortunate that international reports are still filled with numerous methods of torture, cruel treatment and horrific punishments employed in various countries, including democratic ones.

Hence, Jordan's legislative stand towards this right and its compliance with the international obligations aimed at preventing torture is considerably important. Such legislation is significantly influenced by the international human rights instruments, particularly the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), as well as the judicial bodies which were established under these treaties and are responsible for interpreting them, such as the Committee Against Torture (CAT) which was established under the UNCAT.

Although not courts of law, these judicial bodies function as quasi-judicial bodies in rendering their general interpretations and concluding observations regarding States reports and their compliance with the relevant Convention, as well as in providing their feedback for individual claims they receive. All these concluding observations and feedbacks function as objective interpretations in order to ensure that States Parties are complying with the international agreement's provisions and achieving its objectives.

Jordan is a United Nations State Party that signed the Convention against Torture. As a State Party to the International Covenant on

Civil and Political Rights (ICCPR), which was the first universal human rights treaty explicitly stipulating the prohibition of "Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" in its seventh Article, along with the Convention on the Rights of the Child (CRC) which was signed by the United Nations General Assembly on November 20, 1989 and requires States Parties to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, harm, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19). Jordan is also a State Party to the Rome Statute of the International Criminal Court (ICC) adopted on July 17, 1998, which deems torture as a crime against humanity (Article 7) and defines torture as a war crime (Article 8).

In addition, Jordan has also ratified the Arab Charter on Human Rights (ACHR), which was adopted by the Council of the League of Arab States on 22 May 2004 and entered into force on March 15, 2008, in which Article 8 clearly states the prohibition of torture.

Jordan, more importantly to the purpose of this study, is a State Party to the UNCAT adopted by the United Nations General Assembly on December 10, 1984 which entered into force on June 29, 1987, the significance of this last agreement is tied to the fact that it is entirely dedicated to deterring torture, as well as including precise liabilities that aim to eliminate torture. Additionally, it is the first Convention to define torture and be the frontrunner for ratification by as many as 169 State Parties (Further information on the status of the Convention, including declarations issued under Articles (20), (21) and (22), and on the objections ratified by States Parties can be found here: http://treaties.un.org). Jordan has not only ratified this agreement but published it in its Official Gazette *(See Official Gazette No. 4764, pp. 2246, dated 06/15/2006)*, which accordingly made it part of the Jordanian legal system.

There is no doubt that Jordan's ratification of the international convention mentioned above, as well as many others, is an evident proof to its keenness in moving forward towards the promotion and protection of human rights and to its apparent intention to preventing and penalizing torture. However, and though the Jordanian constitution

is devoid of reference to the legal validity of international treaties or conventions, the Jordaniand

It is duly noted that Jordan has maintained a status of no-objection to every article of the Convention against Torture. Not to mention that Jordan was not among the States Parties who officially declared that they do not recognize the competence of the Committee provided for in Article 20 of the Convention – which states that if the CAT receives reliable information containing well founded indications that torture is being systematically practiced in the territory of a State Party to the Convention, the Committee invites that State to cooperate in its examination of the information and to submit concluding observations with regard to that information. And though these States Parties refusing to acknowledge the competence of the Committee are just a handful, the majority of them are of Arab countries including Syria, Saudi Arabia, Kuwait and Mauritania.

However, Jordan does not recognize the competence of the CAT to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention (pursuant to Article (21)). In addition to that, Jordan also does not recognize the competence of the Committee to receive and consider communications from, or on behalf of, individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention (accordance with its Article (22)). The total of 60 countries issued declarations recognizing Article (21), while a total of 68 countries issued declarations recognizing Article (22). Among Arab States Parties to the Convention, only Tunisia and Algeria issued the mentioned declarations, while Morocco issued declarations recognizing Article (22).

In fact, the CAT cannot look into complaints of individuals related to cases of torture in Jordan and can only consider the reports submitted by Jordan itself on the measures taken for implementing its obligations under the Convention – which is further discussed in this study.

Unfortunately, until May 17, 2019, Jordan was not among the Arab countries who submitted information to follow-up with the Committee›s concluding observations (Report of the Committee

Against Torture in its 3rd round held in 2019, the last one was held during the period April 23, 2019 - May 17, 2019: Document A/74/44).

Furthermore, Jordan is neither a State Party to the Optional Protocol to the ICCPR, which is associated with the right of individuals in submitting petitions to the Human Rights Committee, nor it is – more importantly for the purposes of the study – a State Party to the Optional Protocol to the Convention against Torture (OPCAT) which has a total of 90 States Parties including Lebanon, Morocco and Tunisia (A/RES/57/199).

It is essential that Jordan reconsiders its position and initiates adopting both declarations as well as ratifying the Optional Protocol to the ICCPR in order to allow individuals under its jurisdiction to file claims regarding non-compliance with the provisions of both the Convention as well as the Covenant. Since 1989, and up until the date of publishing this report, the CAT has registered 932 complaints concerning 39 States Parties to the Convention against Torture *(2018-2019 Report of the CAT, document: A/74/44, p. 15)*.

It is also essential for Jordan to ratify the OPCAT – which obliges States Parties to establish a national preventive mechanism in inspecting places of detention in order to prevent torture and other cruel, inhuman, degrading or humiliating treatment *(Tunisia being the only Arab country that established a National Authority for the Prevention of Torture in 2013. Refer to the Committee's report above).* As per the OPCAT , a sub-Committee against Torture was established, where regular visits to detention facilities are conducted and consequently relative recommendations are submitted to the States Parties regarding the protection of people deprived of their liberties against any form of torture and other cruel, inhuman or degrading treatment or punishment.

In 2006, Jordan received the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, whose report concluded that that he was unable to visit some detention facilities (HRC/4/Add1/Add.3.4). The report also concluded instances of systematic torture committed at the facilities which he was unable to visit as well as at Al-Jafr Correctional and Rehabilitation Centre (which was subsequently shut-down).

The United Nations Human Rights Council (UNHRC), which is made of 47 Member States, conducts a Universal Periodic Review (UPR) of the human rights records in the UN Member States - where national reports on the state of human rights are submitted by each of these States to the UNHRC.

The Council conducted its first UPR to Jordan in 2009, which was followed by a second UPR in 2014 (A/HRC/25/9) and a third in 2019 (A/HCR/40/10/Add.1). These reports indicate that the Jordanian government insists on rejecting the following:

- Looking into issuing the declarations made under Articles (21) and (22) of the UNCAT.
- Ratifying the OPCAT.
- Establishing an independent national preventive mechanism to monitor the conditions at detention facilities.
- Abolishing the jurisdiction of Police Courts in cases of torture crimes and transferring it to Ordinary Criminal Courts.

National prohibition of torture: the necessity of having an anti-torture legislation

In recent years, Jordan has approved new legislation and amended existing ones in order to better meet the International Human Rights Standards and Instruments. However, a comprehensive review of the Jordanian laws shows that the country still falls short of the set benchmarks. In 2011, comprehensive amendments were made on the constitution, and in particular on Article (8), which states the following:

1. "No person may be seized, detained, imprisoned or the freedom thereof restricted except in accordance with the provisions of the law.
2. Every person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves human dignity; may not be tortured, in any manner, bodily or morally harmed; and may not be detained in other than the places permitted by laws; and every statement uttered by any person under any torture, harm or threat shall not be regarded."

In regards to the UNCAT, it is noticed that the amendments of Article (208) of the PC in the year 2007 do not guarantee the application of the principles mentioned in the Convention, and in order for the prohibition of torture to have a real effect in Jordan, the provisions of the Convention must be further integrated into the Jordanian legal system.

First and foremost, it is important to determine the State Party›s obligations to the Convention, to review its national criminal law and examine its compliance with these obligations, to identify the current aspects of its law that need reformation and/or amendment, and to propose the appropriate text associated with such amendments. A research like this proves that there is an evident need for enacting a new and comprehensive law to ensure implementing the provisions of the Convention.

In adopting such a law, Jordan proves its commitment to prohibiting this particularly dangerous crime. It is not sufficient to ratify the agreement and publish it in the Official Gazette, as this is merely a first step towards an appropriate legal framework that ensures the accountability and punishment of law enforcement officials who commit acts of torture and other cruel, inhuman or degrading punishment or treatment – which are acts that detainees seem to be still subjected to within police stations, correctional and rehabilitation centers and other facilities *(See the fifteenth Annual Report of the National Center for Human Rights for the year 2018 and the Second Annual Report of Adalah Center for Human Rights Studies in Jordan on torture during arrest and detention)*.

Integrating principles and provisions of the Convention into the proposed law demands a comprehensive review of the entire national legal system, which goes beyond the capacity of one individual, not to mention that there are other bodies in the State, particularly the Ministry of Justice, which constantly conduct such reviews. Therefore, the proposed law does not include all required reformations, but merely states a selective application of the most significant provisions of the Convention.

In fact, the need for States to incorporate the provisions of the Convention into their own legal system is not only subject to Jordan,

as most countries essentially need such laws. Such incorporation guarantees that the Convention as a whole becomes part of the national law that binds all authorities within the State, and accordingly prevents inconsistencies and contradictions that could arise between these laws and the provisions of the Convention. What adds to the importance of this incorporation is the fact that the Convention itself is rarely argued before, or cited in cases brought to, Jordanian courts. Whenever the Convention is invoked before the Jordanian Court of Cassation, the Court considers it sufficient to state that: «National legislation pursuant to the provisions of the Convention.» (Cassation No. 3575/2015 dated 18/2/2016).

In addition, judges, in most -if not in all- countries, whose role is vital in combating torture and in holding those responsible accountable for their actions, prefer to abide by national domestic laws as they are not accustomed to the application of international laws. Jordanian courts almost completely overlook the International Human Rights Law (IHRL). Despite this, there has been a growing awareness and a desire among academics, civil society organizations, and lawyers for applying the IHRL within the national judiciary system. With that, and while noting that UNCAT includes several provisions that are not enforceable and cannot be directly applied by the national courts, as enforcing these provisions requires additional measures to be implemented by the State Party itself particularly through special legislation, it becomes evident that there is an urgent need to enforce a law against torture.

However, it is difficult to propose a comprehensive law that takes all provisions of the Convention into consideration, as this requires a deep and extensive review of several laws – mainly the Penal Code (PC), Rules of Penal Trials Code (CPC), the State Security Court Law (SSCL), and the Crime Prevention Law (CPL).

Consequently, at this stage, it is sufficient to address issues of direct relation to the “right not to be subjected to torture” and discuss these issues as being separate from the “right to a fair trial” – which are addressed below prior to moving to the primary issues that are directly connected to “torture”.

The UNCAT includes a set of provisions which, in order to comply with,

require reviewing the Jordanian legal system, as it is inapplicable to incorporate these provisions in a law against torture of this nature. Among these provisions are the following:

FIRST

PROVISIONS OF THE CONVENTION WHERE ITS RELATIVE LEGISLATION CANNOT BE PROPOSED

A. TAKING MEASURES IN PREVENTING TORTURE

The first paragraph of Article (2) of the Convention states that "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction", without specifying what these measures are. Therefore, it is considered insufficient in enacting laws that only penalize torture, as these States must also take all necessary measures to ensure that torture does not occur inpractice – which is something difficult to propose, as this requires deep, and perhaps comprehensive reviewing of more than one legislation in that States legislation.

B. TRAINING OF LAW ENFORCEMENT OFFICIALS

Article (10) of the Convention states that "each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment." Such training programs must include methods for dealing with detainees and methods for discovering and documenting any form of physical and psychological torture.

These programs should also include special training on «The Manual For Effective Investigation and Documentation on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (known as the Istanbul Protocol of 1999), as well as the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment General Assembly Resolution 43/173 (9 December 1988), and the Code of Conduct for Law Enforcement Officials (adopted by the United Nations General Assembly Resolution No. 74 dated 1/12/1979), and the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, and Principles of Medical Ethics relevant to the Role of Health Personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture (1982), and United Nations› Convention for the Protection of All Persons from Enforced Disappearance (adopted on 20 December 2006

by the UN General Assembly), and The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules which was adopted by the United Nations General Assembly on December 7, 2015). The purpose behind these programs is to ensure that all sectors dealing with detainees are aware of the International Standards and Instruments in regards to human rights in general and to the rights of detainees and prisoners in particular.

C. PROCEDURAL GUARANTEES

The Convention against Torture dictates that all "Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture." (M/11). This Article aims at monitoring the treatment of persons deprived of their liberty.

To fulfill this obligation, States Parties must ensure that places of detention under the control of the public general authority in which a detainee is deprived of his/her liberty, are inspected. This applies whether detainees are being held in prisons, jails, police stations, public security headquarters, special detention units for general public institutions, social care homes, mental or psychological health care homes, foreigners detention centers, centers for refugees and asylum seekers accommodation, centers for juveniles, or any other place in which a person is deprived of his/her liberty by the order or knowledge of the public authority. The main purpose of the inspection is to monitor the treatment and conditions of detainees.

The inspection team should be able to talk with the detainees in private and to issue an associated public report regarding the inspection. It is also important for these teams to be able to make sudden and unannounced visits to places of detention, and to record any complaints from detainees in order to ensure that all persons deprived of their liberty are treated humanely (Article (10) of the ICCPR) and to also ensure a fair trial (Article (14) of the ICCPR).

Prohibiting torture cannot be achieved without securing the basic legal guarantees to all suspects during the period of their detention

from the very outset of their deprivation of liberty. This includes the right to be assisted by a lawyer, the right to promptly notify a family member, relative, or a third party of their arrest, the right to receive medical diagnosis conducted by an independent doctor, and the right to be informed of their rights upon detention – which includes the right to be informed of the charges as well as the right to appear before a judge within a specified period of time in compliance with the international standards.And to have access to records of detention and to take practical measures to granting conditioned parole along with other guarantees associated with a fair trial, especially that which guarantees the prohibition of torture and mistreatment.

Any form of administrative detention or detention in any secret facility is considered a violation of the provisions of the Convention, since often, and in both cases, such detention leads to torture. It is essential for the State Party to take effective measures to ensure that no one is subjected to an Unacknowledged Detention. Solitary confinement should also be of a limited period of time and shall only be used as a last resort and in compliance with international standards.

No doubt that the measures leading to the avoidance of torture demand, on a large scale, reviewing the provisions of the CPC. For instance, it is necessary to reconsider the measures violating the period of detention during the preliminary investigation stage (investigation proceedings and gathering information in the form of statements) where the period exceeds the lawful detention period stated in Articles (112) and (113) of the CPC.

Articles (63) and (64) of the CPC need re-evaluation as well, for both of these Articles allow the Public Prosecutor, exclusively, to interrogate detainees without the presence of a lawyer during a State of Emergency, while Article (66/1) of the same Law allows the Public Prosecutor to ban any sort of contact with the detainee for a period of up to (10) days.

All in all, the CPC needs amendments, including arresting and detention without having a clear and legal basis, and detention without having supportive evidence, and the detention for days,

weeks, months, or sometimes for years, without having any sort of pressed charges or accusation.

In addition, the 1954 CPL has to be revoked as well, for it grants administrative governors, who are affiliated with the Ministry of Interior, an authority to detain any person suspected of a crime, or any person considered to pose a danger to the society, for a period of one year - renewable indefinitely. This law does not only violate the right to a fair trial, but also provides suitable circumstances for torture and mistreatment. The CAT has frequently called for the repealing of this law, and the same has been demanded by the National Centre for Human Rights (NCHR) for several years now.

Within the same framework, a review of the SSCL is required, as this law permits the custody (i.e. detention) of the accused person for a period of one week prior to even being referred to the Public Prosecutor (Article (7) of the mentioned law). It is also within the prosecutor's authority to arrest the accused person within the jurisdiction of the Court for a period of fifteen days, a period renewable if the investigation requires so, given that the renewal period does not surpass two months. There is no doubt that such a provision increases the likelihood of torture, as detainees are arrested for a long period without trial.

Article (38) of the Correctional and Rehabilitation Centers Law No. 9 of 2004 also needs reviewing as it permits the Public Security Directorate (PSD) to place inmates who commit any of the violations mentioned in Article (37), in incommunicado detention for a period not exceeding seven days and prevent visits during the concerned period".

Clearly, incommunicado detention may last for several months, where during such a long period confessions can be extracted and significant evidence of torture can be accordingly concealed. Article (13) of the mentioned Law states a set of rights that protect inmates (i.e. detainees), however, some authorities do not abide by this law in order to keep the detainee for the period of seven days before pressing charges. This contradicts with the IHRL, as it not only violates the detainee›s right to meet with a lawyer to be able to prepare for defense, but most importantly, increases the chances of torture and mistreatment.

Finally, it should be pointed out that it is essential for Jordan to join the OPCAT, which entered into force in 2006, and which obliges States Parties to establish a "National Mechanism to Monitor Places of Detention". This Protocol grants the subsequently established Sub-Committee against Torture to conduct sudden and unannounced visits to places of detention. There is no doubt that refusing to join the OPCAT constitutes an impediment to international bodies that are presumably unbiased in observing Jordan›s compliance with the provisions of the Convention.

D. CONDUCTING PROMPT AND IMPARTIAL INVESTIGATION

According to Article (12) of the Convention, "Each State Party 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.".

The State conducts the investigation based on the victim's complaint or on its own without waiting for a complaint from the victim, as soon as it receives information indicating any instance of torture or ill-treatment in any detention place. This information is received from either non-government organizations, national human rights institutions, family members of the victims, lawyers, doctors, or anyone else.

The investigation must be both «prompt and impartial». Perhaps the best approach to ensure impartiality is to avoid involving the person, or colleagues of the person, accused of torture in the investigation, and to establish an independent national preventive mechanism. As stated previously, this is required by the OPCAT . It is essential to conduct spontaneous and unannounced visits to detention facilities. Such investigation prevents all sorts of cruelty or inhuman treatment, in conformity with Article (16) of the Convention..

E. THE RIGHT TO LODGE A COMPLAINT AND THE PROTECTION OF VICTIMS AND WITNESSES

An investigation cannot be considered absolute without fully respecting the right to file complaints against torture, and other

cruel, inhuman or degrading treatment or punishment.

According to Article (13) of the Convention, "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

In its concluding observations in the third periodic report of Jordan, the CAT expressed concerns at Jordan's continuous failure in establishing an independent mechanism that investigates ill-treatment and allegations of torture. This is due to the currently used complaint-submission process (for example submitting the complaints to the Director of the prison, to the Legal Affairs Department, or to the Transparency and Human Rights Office of the PSD) which accordingly lacks the necessary speed and independence to protect the rights of plaintiffs and witnesses. Furthermore, the Committee expressed concern regarding reports that inmates and prisoners are pressured not to not lodge complaints or to withdraw their complaints, otherwise complainants risk being subjected to reprisals. The Committee also expressed concern that only a few complaints of ill-treatment or torture have led to prosecution and none has resulted in a conviction (CAT/c/JOR/CO13): paragraph 33, dated 29/1/2016).

It is also noted that the NCHR is unable to make visits, and is not granted access to detention facilities without prior coordination with the transparency and Human Rights Office of the PSD. In its last annual report of 2018, the NCHR indicates that security agencies were uncooperative in allowing it to perform its tasks.

In order to have a suitable, effective, and unbiased monitoring mechanism that ensures conducting prompt and impartial investigation for all allegations of torture and mistreatment from law enforcement officers in Jordan, establishing a special position for a High-Commissioner is required, and where this High-Commissioner can follow up on complaints of torture. Perhaps it is also useful to

assign a Special Judge for this purpose and to authorize him/her in conducting regular and periodic visits to detention centers and to create reports on the state of detainees and accordingly submit them to the Chief of the Supreme Judicial Council.

However, these proposals require further studying. There are several designated bodies which are currently concerned with the inspection of Correctional and Rehabilitation Centers, such as the Public Prosecution, their Minister of Justice or his/her Deputy, the Department of Correctional and Rehabilitation Centers (DCRC), the NCHR, and the Karama Project which has been recently co-established by the Minister of Justice and the Judicial Council. Yet, it is evident that the current inspection mechanism needs to be more effective and further institutionalized.

SECOND

PROVISIONS OF THE CONVENTION WHICH CAN BE INCORPORATED WITHIN THE PROPOSED LAW

Jordan stems its international obligation to withstand torture from UNCAT. These obligations, which can be incorporated within the proposed law for the aim of providing an effective legislative framework that prevents torture and avoids impunity, can be presented as the following:

A. DEFINITION OF TORTURE

There is enough debate regarding the definition of torture. However, the definition of torture was first introduced in Article (1) of the Convention against Torture as:

1. For the purposes of this Convention, the term «torture» means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This Article does not oppose any international or national legislation that includes or may include provisions of a more comprehensive nature (M/1 of the Convention).

According to this definition, a crime of torture takes place by either performing an act (or certain acts) or by abstaining from performing an act (or certain acts). Indeed, the definition itself does not explicitly mention “abstinence” in preventing torture, but the CAT urges States Parties to include “acts and omissions from acts” in their definition of the crime of torture (CAT General Comment No.3, 2012, paragraphs 23 and 37). An example of abstaining from performing certain acts that fall under the definition of the crime of torture is when depriving a prisoner of food, water, sleep, medical care, etc.

An action, or an abstinence from action, is not considered torture

unless it results in severe physical or mental pain. The Convention does not establish a comprehensive list of actions that are sufficiently serious, because the severity of the action must be analyzed within the context in which it took place and its impact on the victim, and because it is almost impossible to comprehensively include all types of torture in a list. Moreover, there are constantly new forms of torture. The intensity of physical or mental pain varies individually and depends on the torture's physical and psychological effects, the victim›s gender, age, health condition, etc.

Furthermore, action or abstinence from action is not considered torture unless it is deliberately imposed on the victim, meaning the genuine intention of the perpetrator to conduct a behavior that causes pain or extreme suffering. In other words, it is required that the behavior that results in torture is committed intentionally, which is known as the general intent. The Convention excludes free, self-contained torture that is not intentionally committed or committed within a specific criminal intent, but only committed with the intention of torture, such as when the tormentor has a sadistic tendency where he/she enjoys the torturing of others.

Deliberate intention must be the motor behind the crime of torture, the act is not considered torture unless it aims to achieve one of the forms of the specific intent which essentially fall under one of the following four elements:

1. to obtain information or a confession directly or indirectly from the victim or a third person;
2. to punish the victim or a third person for an act committed or suspected of having been committed by either of them;
3. for the purpose of intimidating or coercing the victim or the third person;
4. for any reason based on discrimination of any kind.

Unlike the Arabic text in Article (1), the phrase «for such purposes as» in its English version, and the phrase «aux fins notamment de» in its French version, indicates that the mentioned objectives do not constitute a comprehensive list and that other objectives can be

appended. These elements of intent and purpose do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances. (CAT General Comment No.2007:2).

The perpetrator who commits the crime of torture, punishment and cruel, inhuman or degrading treatment, is a public official or a person who acts in his official capacity. Equally, the act of torture is committed either personally or by inciting, counseling, or procuring any person to commit the criminal offence of torture

The reason behind the Convention restricting the definition of torture to being an "official" is that it involves unequal confrontation between defenseless victims and government agencies.

However, the definition of the "official" personnel should take a broader term (the Report of the CAT in 2013 and 2014) (A/69/44). The CAT has made clear that "where State authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill- treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts (CAT General Comment No.2, 2007; Human Rights Committee, General Comment No. 20, 1992, Paragraph 13).

This is in regards to the Convention against Torture, However, in regards to the IHL and the International Criminal Law (Article (7), Rome Statute of the ICC) the involvement of an official or a person working in an official capacity is not a condition in committing the crime of torture.

It is noted that the Article only defines torture without specifying what the "other cruel, inhuman or degrading treatment or punishment" that do not fall under the level of torture in terms of severity or seriousness are. The Committee against Torture admitted that it is hard to distinguish between acts of torture and acts of cruel, inhuman

or degrading treatment or punishment (CAT General Comment No.2). The absence of a clear distinction between these two types of behavior is a problem regarding the obligations of States Parties, which are only applicable to "torture". Further, Article (7) of the ICCPR does not contain any definition of the concepts covered by the Article, which states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Moreover, the Human Rights Committee does not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; as the distinctions depend on the nature, purpose and severity of the treatment applied in each of particular incident *(HRC No. 20, 1992: Article (7): Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*.

The conclusive criterion for differentiating between torture and cruel, inhuman or degrading treatment is not the severity of pain or torture caused by the action or by the abstinence of action, but rather related to the deliberative intention of the perpetrator, which is considered as the drive behind committing the act itself. This intention is only achieved if the victim is fully under the control or supervision of the offender, and/or subject to legal or actual authority whether during arrest or detention. As for the purpose of punishment or cruel, inhuman or degrading treatment, it is to humiliate the victim or undermine his/her dignity, given that in both cases, the perpetrator is an official employee or a person acting in an official capacity.

The definition of torture contained in the Convention is a definition of the minimum, which is why the second paragraph should be subject to consideration. For that reason, States Parties can adopt a definition that provides greater protection and enhances the purpose of the Convention (CAT General Comment No.2). Although the ICCPR does not include a definition of torture, the HRC overseeing the implementation of the provisions of the Covenant has given it a broader definition than that provided by the UNCAT. The 1985 Inter-American Convention to Prevent and Punish Torture (IACPPT)[1] also has a broader definition of torture than the one mentioned in the Convention. IACPPT's definition includes «the use of methods upon

1 (https://www.oas.org)

a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain». Moreover, the definition of torture provided in the Rome Statute of the ICC is broader than that provided for in the UNCAT. This definition is as follows: "Torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." (Article (7/2) of the Statute of the ICC).

In defining torture, the CAT has stipulated that national legislations must at least include the basic elements listed in Article (1) of the UNCAT (Comment No. 2007:2). It is important that the definition stipulated in national laws is not narrower than the one defined in the Convention, because the narrower the definition, the less consistent it is with the provisions of Article (1) of the Convention and its international obligations.

Legal Penalties (Corporal Punishments and Death Sentences)

In Article (1) of the Convention, the definition of torture excludes the pain or suffering which arises from, or is caused by, legal penalties or is followed by these legal penalties. Therefore, using legal force for a legitimate purpose, under the condition that its severity is specifically used to achieve its intended purpose, is not considered torture. Such as arresting someone in compliance with the law or preventing a legally detained individual from escaping.

In order for the sanctions to be legal, it is not only enough that they comply with the national law of the State, but also with the international law. Corporal punishments that are not consistent with international standards are unacceptable, even if they are established within national law. This is considered as a general rule of thumb established by Article (27) of the Vienna Convention on the Law of Treaties (1969), which states that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.»

In its interpretation of Article (7) of the ICCPR, the Human Rights Committee that oversees the application of the provisions of the Covenant has concluded and urged of the prohibition of torture

and cruel, inhuman or degrading treatment that includes corporal punishment such as: excessive beating, cutting off the limbs, caning, or flogging. (Human Rights Committee, General Comment No. 20, paragraph 5, 1992).

This type of punishment cannot be justified based on the last part of the first paragraph of Article (1) of the UNCAT, which is what Mr. Manfred Nowak, the Special Rapporteur against torture, has suggested and agreed upon in his report to the United Nations General Assembly (A/60/316/par. 26). Therefore, legislation must be adopted at the national level in order to prohibit corporal punishment in all departments, including within families, schools and hospitals.

Regarding the death penalty, it is known that a trend towards its abolition exists in a growing number of countries. Both the Human Rights Committee and the CAT have stated that if the capital punishment is inevitable, it must be executed in a manner that does not cause any physical or psychological pain or harm whatsoever (Human Rights Committee General Report No.20:1992, paragraph 6). The CAT has also found that the method of carrying out the death penalty may in itself hold an amount to torture or mistreatment, for example, stoning violates the provisions of the UNCAT: General Comment No. 2 of the committee, see also my studies "The Death Penalty": Recent Trends in International Law «, Al-Jinan Journal for Human Rights, No.208, June 2016, p.57 onward).

Solitary Confinement and Incommunicado Detention

The question also arises in regard to solitary confinement and incommunicado detention. The purpose of incommunicado detention is to deny the detainee access to the outside world, which is an issue of concern to the Convention for the Protection of All Persons from Enforced Disappearance (adopted on 20 December 2006 by the UN General Assembly) – a Convention to which Jordan has not yet joined as a State Party. As for solitary confinement, it is intended to achieve a specific goal, such as protecting the isolated detainee from a possible imminent harm, warding off a general health risk, preventing the disappearance of evidence, preventing an escape, or to prevent conducting aggressive behavior.

Both the Human Rights Committee and the CAT have found that long-term solitary confinement violates both the ICCPR and the UNCAT.

This is regarding the definition of torture in the international law, what about its definition in the Jordanian law

Before the constitutional amendments that occurred in 2011, the Jordanian constitution had no mention of torture. While Chapter 2 of the constitution, which is associated with the rights and duties of Jordanians, neglected listing the right not to be subjected to torture, at a time when the prohibition of torture became a constitutional base for many countries, including Arab countries. *(For example, the Omani constitution 101/96, the Yemeni constitution (M/47), and the Qatari constitution (M/36)).*

Article (8) of the Constitution, as adopted in 2011, merely has reference to torture. After prohibiting the arrest, suspension, incarceration, or restriction of a person's freedom –except in accordance with the provisions of the law– the second paragraph of the Article states that "Every person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves human dignity; may not be tortured, in any manner, bodily or morally harmed; and may not be detained in other than the places permitted by laws; and every statement uttered by any person under any torture, harm or threat shall not be regarded."

In its Article (208), the PC punished, prior to its amendment in 2007, the commission of types of violence which are not permitted by law with the intention of obtaining a crime confession or information. Before the amendment, Article (208) was only partially, or not at all inclusive of, defining torture as causing psychological pain or suffering, without imposing penalties proportional to the intensity of the torture, which was noted by the Committee against Torture in its concluding observations of 26 July 1995 (A/50/44, paragraph 166). This was in response to the Jordanian government, which insisted in its reports (CAT/C/6/Add.5) that "the Jordanian PC largely addresses cases of torture, abuse, or cruel or inhuman treatment." This conclusion was also adopted by the mentioned Special Rapporteur against Torture (A/HRC/4/33.Add.3.p.7).

However, the Jordanian legislator appointed importance to the crime of torture when Article (208) of the PC was amended in 2007, where it explicitly criminalized torture. The definition of torture according to the second paragraph of the mentioned Article is an exact copy of the definition of torture adopted in Article (1) of the Convention in its Arabic version.

With this amendment, torture became an independent crime from any other broader crimes such as intentional assault or abusing powers of official authority. There is no doubt that the new modified definition of the crime of torture highlights the seriousness of the crime. It is now well distinguished from other assaults and crimes and alerts everyone, including the perpetrators, victims and the public, to the seriousness of the crime of torture. The revision of Article (208) of the PC falls within the framework of activating the international Conventions ratified by Jordan among of which is the Convention against Torture.

The proposed definition of torture is the same as that defined in Article (208) of the PC, but with the addition of the phrase "especially with intent of", in order to ensure consistency with both the English and French versions of the same definition, along with complying to the requirement that legal sanctions that adhere to International Human Rights Standards and Instruments.

Accordingly, and for the purposes of this proposed Convention, the term "torture" refers to: Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person and where such pain or suffering is inflicted by, or at the instigation of, or with the consent, tolerance, or acquiescence of a public official or any other person acting in an official capacity, in particular with the intent to:

1. Obtaining information or obtaining a confession from this person or from a third person.
2. Punishment for an act committed or suspected-to-be committed by this person or by a third person.
3. Intimidating or coercing this person or a third person.
4. For any reason based on discrimination of any kind.

5. This does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions or resulting from legal penalties under the applicable national law.

As for cruel or inhuman treatment or punishment, it can be defined as follows: «the infliction of pain or torture, whether physical or psychological, or its incitement or approval by an official or any other person acting in this capacity.».

B. CRIMINALIZATION OF TORTURE

States Parties are obliged to list all acts of torture as offences under their domestic law.

Article (4) of the Convention conditions that "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture."

As provided, the Convention obliges States Parties to criminalize torture under their domestic law and to classify it as an offence separate from other crimes. The Convention also requires that offence is appropriately punished by penalties that the serious nature of the offence is taken into consideration (CAT General Comment No. 2:2007).

The required criminalization is exclusive to torture without mentioning any other forms of cruel, inhuman or degrading treatment or punishment stipulated in Article (16) of the Convention, which only requires that States Parties' commit to preventing it without any reference to criminalizing it.

However, the aforementioned Article does not mind if a State Party wishes to criminalize the act for punishment or cruel, inhuman or degrading treatment, but rather favors it.

The mentioned Article requires applying Articles (10-13) of the Convention «in particular» to this type of punishment or treatment. In other words, it is preferable to apply the rest of the provisions of the Convention, including the Article on criminalization. However, it is worth mentioning that the punishment for the crime of cruel,

inhuman or degrading treatment or punishment is usually milder than that of torture. Article (4) calls for States Parties to embrace criminal responsibility for «attempting» or «plotting» torture as well as other forms of participation in the act itself.

The Article does not require the fulfilment of the act of torture, as the initiation of torture is also an act that should be criminalized. For example, a superior officer is held responsible of any orders or instructions that encourage torture even if his/her subordinate refuses to comply with the order. Criminalization is not limited to the perpetrator, but also includes anyone who participates in, or is complicit in this crime. Urging, allowing, or tolerating torture is also an act that should be criminalized. Officials who possess supreme authority cannot claim exemption from accountability or escape criminal responsibility for torture or mistreatment committed by subordinates, if they are aware of the act of torture, or were aware that such behavior occurred, or even being aware that such acts were more likely to happen and have not taken the acceptable and necessary preventive measures associated (CAT General Comment No.2, 2007). Participation in torture also include covering or hiding evidence(s) associated or resulted from the acts of torture.

Appropriate Penalties

The Convention requires that States Parties adopt «appropriate sanctions that take into account the serious nature of these acts». This means that the punishment of torture should be consistent with the penalties imposed for the most serious class of crimes in compliance with the national PC of that State Party.

The Convention does not define a minimum or maximum penalty, furthermore, the CAT has not reached an acute position in regards to the punishment appropriate for the crime of torture, which reflects the seriousness of this crime, however, from its concluding observations and general comments on the reports of the States Parties, it appears that the Committee tends to approve that the appropriate punishment is imprisonment for a period that ranges between six and twenty years. *(Association for the Prevention of Torture (APT), Guide on Anti-torture Legislation 2016, P.18) (The Center for Justice and International*

Law (CEJIL) and the Association for the Prevention of Torture (APT), Torture in International Law - A guide to jurisprudence, 2008, P. 37).

In observing States Parties, it is noted that the Committee condemns short-term penalties, such as imprisonment for one, two, three, or four years. However, it rejects sanctions that violate the IHRL such as executions, hard labor sentences and corporal punishment sentences. According to one of its observations, the Committee stated that if the minimum penalty is a nine year imprisonment, the punishment is then far from being flexible and does not take into consideration the cases of less-serious torture crimes. According to another observation, the Committee expressed that a five year imprisonment is a very lenient sentence which fails to prevent torture, while more severe or brutal penalties such as a minimum seven year prison sentence may lead the courts to not enforce such laws as it fails to account to individual circumstances. It is reasonable to increase the punishment when torture results in the victim's death or causes permanent disabilities, or when it is affiliated with a pregnant woman or a child under the age of (18) years. *(Association for the Prevention of Torture (APT), Guide on Anti-torture Legislation 2016, P. 38).*

For instance, the punishment for torture in Australia ranges between five and twenty-five years (M/274 of the Torture Prohibition and Death Penalty Abolition Act 2010). In France, the penalty reaches up to thirty years when the victim is a minor who is less than fifteen years old or when the crime of tortures leads to, or results in, permanent disability (M/221 and 222 of the French PC). In Norway, the sentence reaches fifteen years in prison and could reach up to twenty-one years if the crime of torture leads to, or results in, death of the victim.

This was regarding the stand of the Convention and the stand of some countries towards the criminalization of torture and the penalties associated with it. What about the stand of the Jordanian law? The Criminalization of Torture in Jordanian Legislation

The term torture did not appear in the original text of Article (208) of the PC, and "torture" was not explicitly criminalized until the year 2007, as explained before. Nevertheless, the new Articles and its amendments, the latest of which is the amended Law No.7 of 2018,

does not criminalize torture in a manner that is fully consistent with Article (4) of the convention, which is considered inadequate for several reasons. Article (208) of the law is entitled "extracting confession and information" rather than being entitled "torture", as mentioned in chapter 4, which is entitled "Crimes against the judicial administration". The first paragraph of the mentioned Article criminalizes torture if the intent of perpetrator is to extract a confession for a crime or to extract information about it, and this is only one example of the special intention included within the definition of torture in both the first paragraph of Article (1) of the Convention and within the second paragraph of Article (208) of the PC.

Prior to the amendments of M/208, it included a weird sentence which states that: "Any kind of torture that is not permitted by law". Such a phrase implies that other forms, or cases, of torture are authorized by law.

The person who was convicted of any kind of torture with the intention of obtaining confession or information is imprisonment from six months up to three years. However, if the act of torture leads to, or results in, a serious injury, then the penalty becomes a fixed sentence of imprisonment (first and third paragraphs respectively of Article (208) prior to amending Law No.27 of 2017). The first punishment is a felony according to Article (15) of the PC, while the second punishment is a criminal penalty with a minimum of three years and a maximum of fifteen years (According to Article (20) of the mentioned law). There is no doubt that the two penalties are totally incompatible with the seriousness of the crime. Moreover, the first paragraph of the concerned Article does not punish torture in all its forms, it only punishes that of "with the intention of obtaining a crime confession or obtaining information about it".

Amendments were made according to the Law No.27 of 2017. Under this amendment, the punishment for a person who is convicted of "any kind of torture with the intention of obtaining a crime confession or obtaining information about it" is the imprisonment from one to three years. In addition, amendments of Article (20) of the law has been made so that the maximum limit for the imprisonment (after the abolition of the term hard labor) is twenty years. It is clear that

the associated punishment is still a felony (Article (15) of the law) yet disguised under a new form. The penalty is therefore increased if the torture causes, or leads to, a serious injury.

Moreover, Article (208) does not consider attempted torture punishable if the act of torture does not lead to illness or to a serious injury, since the stated punishment is specifically associated with being convicted of any type of torture with the intention of obtaining a confession for a crime or obtaining information about a crime, and is punished with imprisonment from one to three years. This accordingly means that it is considered a felony, as it is known that the Jordanian PC, as stated in Article (71), does consider the act of initiating a felony punishable, except in some exclusive cases stated by the law.

Certainly, the law in its current form is inconsistent with Article (4/1) of the Convention, which obliges States Parties to criminalize attempting torture and to punish it. The CAT has repeatedly expressed its disappointment with Article (208) of the PC and the penalties which are not correspondent with the seriousness of this crime (CAT/C/JO/CO/3 dated 01/29/2016).

Clearly, Jordan will not be governed by the provisions of the Convention unless Article (208) undergoes fundamental changes. Thus, the proposal of repealing it and replacing it with the following text:

1. An official who commits, orders, or approves an act of torture, or even ignores it by remaining silent shall be punished by temporary labor with a sentence of three to ten years.
2. If the act of torture leads to the amputation or resection of a body part, or causes a permanent disability, then the penalty should be temporary labor for a period not less than ten years.
3. The initiation of torture is punished as if the crime has fully occurred.
4. Any partner who incites and interferes in the crime of torture shall be punished with the same punishment of the perpetrator.
5. This law applies to all individuals without any discrimination on the basis of their official capacity. The official capacity does not provide immunity and the individuals should be held accountable

for his/her actions under this law and no reduced sentence or special treatment should be granted.

At this stage it is best not to mention the criminalization of, nor suggest the suitable penalty for cruel, inhuman or degrading treatment; moreover, not only because the Convention does not require criminalization of the act, but also because the PC includes provisions in this regard that may be sufficient and consistent with the Convention.

C. JURISDICTION

Article (5) of the Convention states that::

1. "Each State Party shall take all necessary measures to establish its authority and jurisdiction over crimes and offenses mentioned in Article (4), as the following:
    a. When these offences and/or crimes are committed in any territory under the State's jurisdiction, on ships flying its flag or aircrafts registered under its laws.
    b. When the alleged perpetrator is a citizen of that State.
    c. When the victim is a citizen of that State – in accordance with what the State considers appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to Article (8) to any of the States mentioned in paragraph I of this Article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

It is noted from the mentioned above that in addition to the traditional regional jurisdiction, it obliges States Parties, in its first paragraph, to extend their jurisdiction to acts of torture in a number of other cases.

I. **Territorial Jurisdiction:** The first paragraph of the Article (5) obliges the States Parties to prosecute and punish acts

of torture that occur on n any territory under its jurisdiction or on board a ship or aircraft registered in that State or over any region subject to its jurisdiction that includes all the areas in which the State Party has control over either directly or indirectly, partially or as a whole, de jure or de facto. For example, occupied lands, areas of peacekeeping operations, embassies, military bases, detention facilities, and others. (CAT General Comment No.2, paragraph 16).

II. **Positive personal jurisdiction:** The first paragraph of the mentioned Article requires States Parties to extend their criminal jurisdiction on their citizens accused of committing the crime of torture, regardless of the location of the crime. Both the former and latter states of nationality possess the extension of their jurisdiction to the crime of torture in the event of a change of nationality after the crime of torture was committed.

III. **Negative personal jurisdiction:** Under the first paragraph of Article (5), the State Party has the authority to extend its jurisdiction when the victim of an act of torture is a citizen of its State Party, meaning that this type of jurisdiction is optional, and is left to the State's discretion.

IV. **Global jurisdiction:** The second paragraph of Article (5) demands a bit more, as it requires the States Parties to establish a jurisdiction that penalize all torture crimes, regardless of the nationality of the offender, the nationality of the victim, or the location of the crime. However, this commitment is subject to the following two conditions:

    a. If the person accused of the crime is present in a region under its jurisdiction. The Convention does not require that the accused person is permanently present in the territory of the State Party. It is sufficient for the extension of global jurisdiction that the accused person is present on the territory of the State without having the intention to permanently stay there.

b. If it does not extradite the accused person to any country that specializes in looking into the crime.

The "Global jurisdiction" allows the State Party to prosecute the perpetrator in order to impose a penalty on him/her if he/she is not extradited. However, it is noted that the States Parties, and even if they have power to apply global jurisdiction over crimes of torture, are not legally obligated to do so. It is not obligated if the State Party chooses to extradite the person accused of the crime to the State where torture took place or to the State of either the perpetrator or the victim (principle of aut dedere aut judicare). However, the CAT urged, under its concluding observations, countries that did not enact laws providing for global jurisdiction over the crime of torture to do so (Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL), torture in international law manual of jurisprudence, 2008, p.22).

In a report concluded by the CAT in 2001, shows that among the 126 States Parties to the Convention at that time, only 80 countries took global jurisdiction over torture cases. It is also worth mentioning that those cases were not war crimes nor crimes against humanity. A study conducted by Amnesty International in 2012[2] showed that 85 of the UN members states (around 44%) called for a universal jurisdiction on this crime.

The second paragraph of Article (5) establishes a global jurisdiction for any defendant of torture who is on its soil if not being deported, and this in fact does not depend on receiving a request for extradition. However, the Convention also prohibits the State from extraditing or sending a person to another country if there are substantial grounds for believing that he/she could be at risk of torture (Article (3)). In such a case, the state must undergo the trial of that individual, as extradition is not a permissible option.

It is noted that the penal provisions in terms of locality, and which are listed in the Jordanian PC (Articles (7-11)), do not include all forms of jurisdiction mentioned in Article (5) of the Convention. Consequently, we propose the following text that is consistent with the mentioned Article:

2 https://www.amnesty.org/download/Documents/24000/ior530192012en.pdf

"Despite what is stated in Article (10) of the PC No.16 of 1960 and its amendments, the provisions of this law apply::

1. Every foreigner who resides in the Hashemite Kingdom of Jordan (Jordan) who is either being the main accused person, partner, initiator, or somehow related to the crime of torture, unless he has personally requested the deportation or has accepted it.
2. When the victim of the crime of torture is a Jordanian citizen.".

D. IT IS NOT PERMISSIBLE TO USE THE STATEMENTS MADE UNDER TORTURE AS EVIDENCE IN ANY PROSECUTION

Article (15) of the UNCAT demands that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

This text is extremely important as it means that confessions extorted under torture inflicted by law enforcement officials cannot be admitted in evidence in any court case. This prohibition is absolute, and it stems from the absolute nature of the prohibition of torture and applies to both criminal and administrative procedures. The theoretical basis of Article (15) consists of two parts: Firstly, confessions or statements extorted under torture are usually not reliable enough to be used as a source of evidence in any legal procedures. Secondly, prohibiting the use of these confessions or statements in legal procedures omits an essential incentive for the use of torture, which is obtaining information or a confession. Ultimately, contributing to preventing this practice.

Given that in most cases the accused or the witness is unable to prove that his statements were extracted under torture, bearing the burden of proving such act could undermine the absolute prohibition in Article (15). Therefore, when the accused or witness claims that his confession or statements were extorted under torture, the burden of proof must lie on the public prosecution, who must prove that the evidence presented against him/her has been granted through torture. The position of the CAT stands firm regarding this. The Committee has repeatedly expressed its opinions regarding individual complaints, which states that the complainant should only be required to state

that his/her confessions were made under torture, so that the burden of proof is then transferred to the state itself.

Article (15) is concerned with torture without addressing the cruel, inhuman or degrading treatment or punishment. Additionally, Article (16) of the Convention does not clearly require States Parties not to invoke statements made under the act of punishment or cruel or inhuman treatment as evidence in any procedures. However, the CAT has repeatedly stated that Article (16) requires the application of Articles (10-13) of the Convention of punishment, cruel, inhuman or degrading treatment, but it does not mention these Articles exclusively. Thus it can be observed in the use of the phrase «in particular». This means that other Articles of the Convention are not necessarily, not applicable to the mentioned punishment or treatment. Thus, what justifies the applicability of Article (15) on this type of punishment or treatment is that the conditions that give rise to ill-treatment frequently facilitate torture (CAT General Comment No.2).

Therefore, the prohibition in the mentioned Article should be applied to torture and to cruel, inhuman or degrading punishment or treatment alike. Statements made as a result of torture, or as a result of punishment, cruel, inhuman or degrading treatment are not valid for citing as an evidence in any procedures and the only exception to this is what the last sentence of Article (15) of the convention stated: "except against a person accused of torture as evidence that the statement was made." This means that confessions or testimonies extorted under torture can be used as evidence for the crime of torture. The State is obligated to review cases of criminal convictions based on confessions extracted under torture or any other mistreatment in order to release those convicted on the basis of these confessions or statements and to take all appropriate corrective measures. This includes adequate compensation to the victims and the prosecution of those responsible..

This was regarding the international law. But what about the Jordanian domestic law?

In fact, the CPC has dealt with such issues in the following manner: "In the absence of the public prosecutor, the statement made by

the accused, the suspect, or the defendant where he/she admits to committing a crime, is only accepted if the prosecution provides evidence of the circumstances in which it was performed and if the court is satisfied that the accused, the suspect, or the defendant has voluntarily testified to the crime." (Article (159)).

This is in terms of the law, but in terms of the position of the judiciary on the issue, the Court of Cassation (Supreme Court) has repeatedly overturned convictions issued by the special courts based on statements by the defendant that were taken with physical and moral coercion during the investigation of him and without his free will (including Court of Cassation resolution 450-2004 dated 3/17/2004, and its resolution 1513/2003 dated 4/5/2006).

However, Article (159) does not clearly state that confessions extracted under torture are void. What is required, according to the Convention, is to explicitly prohibit the possibility of quoting any statements that were made under torture as evidence in any proceedings, unless it is for the purpose of evidence against a perpetrator.

States Parties should explicitly prohibit reliance over the evidence of any statements proven to have been made under torture, in any case against the victim, in conformity with Article (15) of the Convention (see, for example, the second paragraph of Article (155) of journal of Tunisian criminal procedure).

And when the court decides to exclude any evidence that was extracted under torture, punishment, or cruel, inhuman or degrading treatment, the public prosecutor should immediately conduct an investigation into the case of torture and track its perpetrator according to the established rules. However, it is unfortunate that the public prosecution does not follow-up on such cases, nor prosecutes any of the security officers involved in the act of torture and mistreatment. Usually, Judges are not concerned with complaints of torture and mistreatment and often continue with the trial proceedings as if nothing happened. Therefore, they do not observe the principle of the inadmissibility of such evidence in every case.

To proceed in accordance with the provisions of the Convention, the following is a proposed replacement of the current Article (159) of the CPC:

1. "Any statement extracted from the accused, suspect, defendant, or from anyone under the influence of torture, punishment, cruel, inhuman or degrading treatment is considered invalid and may not be adopted as an evidence against the person from whom it was extracted or against others in any lawsuit or procedure.
2. It is permissible to cite any statements that prove that they were made as a result of torture, if it is to be used as evidence against a person accused of committing torture."

E. THE AUTHORITY COMPETENT TO PROSECUTE PERPETRATORS OF TORTURE

The authority responsible for prosecuting members of the security apparatus accused of engaging in torture as defined in Article (208) of the PC is the special Police Courts and the Military Council of the General Intelligence Directorate (GID) and not ordinary courts.

According to Article (85) of the Public Security Law and its amendments No. 38 of the year 1965, security officials, apart from the GID, appear before the Police Court, which consists of a president and at least two members, provided that the rank of the president of the court is not less than a major and that one of its members be certified as a lawyer (M/58/A).

Presenting cases before the Police Court are done by public prosecutors within the PSD apparatus (M/85/2). The Police Court is specialized to examine crimes stipulated by the Military Penal Code, the PC and any other statute body if a criminal act is committed by any member or student of the PSD in colleges, academies and police science academies, as well as individuals whose services have been terminated for any reason if the crime was committed while they were in active service. In addition to the authority to appoint judges, the director of the PSD, also has jurisdiction to demand a second trial on the grounds that probable cause is established, and the director provides a clear justification for that request (Article (85/f)).

In the event that one of the GID officials or members commits one of the crimes within the jurisdiction of the State Security Court, the individual charged with the crime and all the accomplices, instigators

and intervening parties are brought to be tried before the Military Council of the GID. The position of the public prosecutor within this council is held by officers who are certified to practice law (Article (7) of the GID Law and its Amendments No.24 of 1964).

Military Courts which are under the jurisdiction of the Jordanian Armed Forces are to hear crimes stipulated in the Military Penal Code and the crimes stipulated in the PC or in any other statute if perpetrated by any of the officers and members of the armed forces. The Military PP consists of the military Attorney General and a number of military judges, whom are appointed by a decree from the Chairman of the Joint Chiefs of Staff (Articles (8) and (10), respectively, of the Military Courts Formation Law No. 23 of 2006)

The European Court of Human Rights (ECHR) had previously indicated in its ruling issued in the case of Othman Abu Qatada against The United Kingdom on January 17, 2012 that the Jordanian State Security Court "has the authority to exclude evidence obtained through torture, but it has barely shown a willingness to use this authority. Moreover, the State Security Court's investigation of the allegations of torture is questionable at best. Perhaps the background of the court's judges may make them skeptical of the allegations of torture filed by their fellow public security officials, (see ECHR, Othman Abu Qatada against The United Kingdom, app. No 8/39/03, Date of 7/1/2012, paragraph 278)

Within such a hierarchy of special courts that do not meet the criteria for a fair trial; transparency, independence and integrity are the subject to a great deal of scrutiny. Therefore, it is not a surprise that no security officer has yet been subjected to judicial prosecution for the practice of torture under Article (208) of the PC. However, in March 2008, the Police Court laid-down a prison sentence of two and a half years for two police officers charged with beating an Aqaba prison inmate to death. This followed the court's ruling, charging them with the crime of «abuse of authority and the crime of disobeying orders and directions» and not for the crime of torture. Prior to this incident, the same Police Court had previously sentenced the director of Swaqa prison to two months in prison for abuse of power resulting in harm (Add.3A/MRC/4/33).

In 2017, the Court of Cassation ruled in a case in which the charge was fatal beating and extortion of confession, that the appellant Abdullah Mohammad be sentenced to imprisonment with hard labour for three and a half years, demoting his rank to police officer, and expelling him from the security service apparatus; and that the appellants Mohammad Muti Mohammad and Murad Ramadan Ali be sentenced to imprisonment with hard labour for a year and 8 months, demoting their rank to police officer, and expelling them from the security service apparatus[3].

In 2019, the Court of Cassation ruled in a case in which the charge was fatal beating with association, contrary to Article (330/1) of the Penal Code, that the appellant be sentenced to imprisonment with hard labour for seven years calculated with the duration of arrest, and expelling him from the security service apparatus, in accordance with Article (5) of the Military Penal Code[4].

It should be pointed out that the Court of Cassation ruled that "the jurisdiction of the Police Court is a competence that stems from the constitution which supersedes international laws and agreements (Court of Cassation rights No. 3575/2015 (ordinary body) date 2/18/2016). Jordan rejects the recommendation of handing over jurisdiction regarding torture cases that involve police conduct and prison abuse from Police Courts to the Civilian Courts (Report of the Working Group on the UPR (2014) (A/HRC/25/9) and (2019) (A/HRC/40/10)).

There must be a reassessment of which specialized judicial body is better equipped to hear, and look into, torture allegations. And whether this body should be the Court of First Instance or the Criminal Court, preferably the latter; considering the severity and serious nature of the crime. Accordingly, the text proposed in the draft law is as follows: "Despite the text of Article (4) of the Criminal Court Law No. 19 for the year 1981 and Article (85) of the Public Security Law and its amendments No. 38 for the year 1965 and Article (7) of the GID Law and its amendments No. 24 of the year 1964, the Criminal Court is competent to hear, and look into, the crimes of torture, regardless of where they occur."

3 https://qistas.com/ar/decs/info/4828625

4 https://qistas.com/ar/decs/info/6997443

F. NO JUSTIFICATION OF TORTURE ON THE BASIS OF ORDERS FROM A SUPERIOR OR A PUBLIC AUTHORITY

Paragraph 3 of Article (2) of the Convention states that "An order from a superior officer or a public authority may not be invoked as a justification of torture."

This means that perpetrators of torture protesting that thay were carrying out, or complying with, orders issued by a superior officer or a public authority, whatever that might be, may not be invoked as justification of torture to be discredited from the criminal responsibility, and does not spare them liability. Law enforcement officials have an obligation to disobey orders from superiors demanding the act of torture. Texts stated in the internal penal laws that stipulate the lack of criminal responsibility for a person who acts on the order issued by his/her superior do not agree with the obligation arising from the third paragraph of Article (2) of the Convention, and it should be explicitly stated that such an order were issued by a higher employee should not be cited. Even if under the international law it is possible to allow a sentence reduction based on higher orders, the reduction is only limited.

This is on the international law level, as for the Jordanian law, it is noted that Article (61) of the PC and after its amendment in the law No. 8 of 2011, does not consider it a crime if the act committed "obeys a superior order issued (as such!) through a jurisdiction reference that obliges obedience, unless the order is illegal". This text was criticized by the CAT in its concluding observations on the third report of Jordan (CAT/C/JOR/CO/3).

The text that I consider appropriate for the implementation of the third paragraph of the Article (2) of the Convention is as follows:

"In spite of what is stated in Article (61) of the PC, an individual is not exempted from criminal responsibility if his commission of the crime of torture, other cruel, inhuman, degrading punishment or treatment has been in compliance with an order issued by a superior employee or by a public, military or civilian authority."

G. THE ABSOLUTE CHARACTER OF THE BAN ON TORTURE

The second paragraph of Article (2) of the Convention states that: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

This Article utterly prohibits torture regardless of the seriousness of the crime. The right not to be subjected to torture is an absolute and unquestionable right. This right is not only protected under the text of the above Article under the UNCAT, but also under the second paragraph of Article (4) of the ICCPR.

It is an absolute right where, under normal circumstances, no restrictions apply. It is an unquestionable right because it is not permissible to dispose or violate it even in exceptional circumstances such as war or a threat of war, internal political instability or any other public state of emergency, war on terrorism and so on. Even if these conditions and circumstances were critical, they do not justify torture. The absolute and unquestionable nature of torture prohibition is currently a part of the customary international law, and it is well established that it is binding for States Parties and non-State parties alike. More precisely, the rule has currently become a peremptory norm of general international law (jus cogens). The international community recognizes its imperative nature (Articles (53) and (64) of the Vienna Convention on the Law of Treaties (1969)) and where it is not subject to any exception. Therefore, States Parties should ensure that the principle of the absolute ban of torture is strictly applied within its criminal legislation.

It is true that States Parties are currently facing tremendous difficulties in protecting their societies from the threat of terrorism and that public authorities in these are responsible for maintaining law and order therein and bringing those responsible to face justice, but States in their war on terrorism remain obliged to ensure that any taken measures are in compliance with the resolutions of the United Nations Security Council (UNSC), particularly number 1373 (20), 1456 (2003), 1566 (2004) and 1624 (2005), which require that counter-terrorism measures esnure full respect for international law, specifically the IHRL, the International Refugee Law (IRL), and the

International Humanitarian Law (IHL). Therefore, carrying out the responsibility to maintain security and stability, must be done in a way which adheres to the standards of the IHRL.

The absolute nature of the prohibition of torture, and its inadmissibility to be questioned, means that this rule is non-derogable and cannot be overturned for any excuse, be it invoking superior orders, self-defence, or cases of emergency. Likewise, the amnesty laws that prevent the prosecution of acts of torture violate the unquestionable nature of the prohibition of torture (CAT General Comment No.2) and the right of torture victims to compensation (General Comment No.3). Amnesty should not include serious human rights violations such as torture.

Moreover, statute of limitations or non-suit laws are inconsistent with the State›s absolute duty as mentioned in the Convention. The text explicitly states that torture crimes are not subject to statute of limitations and that perpetrators of these serious crimes. The CAT has argued on more than one occasion that the obligation to apply the criminal law to all acts of torture is not time-bound, and statute of limitations may not be applied to the crime of torture (for example the concluding observations of the Committee against Torture in cases involving both Turkey and Chile).

This is the situation on the international level. What about the position of the Jordanian legislator regarding the absolute nature of the prohibition of torture?

In fact, there is nothing in Article (208) of the PC nor in the CPC that excludes the crime of torture from a general amnesty, a special pardon, or from being subject to statute of limitations stipulated in the PC. However, a new paragraph has been added to Article (208) of the PC after its amendment under the provisional Law No. 7 in the year 2018. This is the fourth paragraph that reads as follows: “Despite of what is mentioned in Article (54) Bis, which is a duplicate of Article (100) of this law, it is not permissible for the court to stop the execution of the sentence imposed for the crimes mentioned in this Article, nor may it take mitigating grounds.”

In its concluding observations on the third periodic report of Jordan,

the CAT expressed concern that there are no clear provisions in the legislation of the State Party that guarantee the absolute prohibition of torture without exception (CAT/C/JOR/CO/3) dated 01/29/2016). The Committee also noted that there is no provision in the PC that excludes the crime of torture from the statute of limitations applicable to the provisions of the PC (the CAT›s concluding observations on the second report of Jordan (CAT/C/JOR/CO/2 dated 25/5/2010).

This is despite the fact that Article (16) of the Convention does not demand the application of Article (2) regarding the absolute nature of the prohibition of torture on other forms of mistreatment, however, it makes perfect sense that this Article should be applied. On this basis, the following is proposed::

1. "Despite of what is stated in Articles (54) Bis and (100) of the PC, the court may not suspend the execution of the sentence imposed for the crime of torture and cruel, inhuman or degrading treatment, nor may it take mitigating ground.
2. Despite of what was mentioned in Articles (50) and (51) of the PC, general amnesty cannot be applied to crimes of torture and cruel, inhuman or degrading treatment.
3. Despite of what is stated in Article (54) of the PC and Articles (338), (352) of the CPC, the statute of limitations is not applicable within public right or civil right lawsuits within crimes of torture, nor to the penalties prescribed.

H. REDRESS, COMPENSATION, AND REHABILITATION

Similar to the ICCPR, the UNCAT obliges its States Parties to provide adequate compensation to victims of an act of torture and mistreatment. Article (14) of the Convention states:

1. "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of tor
2. ture, his dependents shall be entitled to compensation.

3. Nothing in this Article shall affect any right of the victim or other persons to compensation which may exist under national law". (CAT General Comment No.3 explains the scope of the obligations of States Parties under Article (14. Refer to CAT/C/G/GC3 (12/13/2012).

The sixth paragraph of Article (14) of the ICCPR states that: "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him".

The ICCPR also states that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". (The fourth paragraph of Article (9) of the Convention).

The term "victim" also includes affected immediate family or dependents of the victim (CAT General Comment No.3). The right to an effective remedy for a breach of the Convention underpins the entire Convention, for otherwise the protections afforded by the Convention would be rendered largely illusory. (Refer to The Association for Prevention of Torture (APT) and Center for Justice and International Law (CEJIL), Torture in International Law - A guide to jurisprudence, 2012, p.27)

Not only does Article (14) of the UNCAT ensures the right of a victim of an act of torture to a fair and adequate compensation, but it also obliges State Parties to ensure that the concerned victim obtains redress.

This includes reparation for torture victims and their right to a fair and appropriate compensation for the pain and suffering they have endured. It also includes restoration of the situation that existed before the violation, financial compensation, including the means of full rehabilitation of victims as well as guarantees that violations will not be repeated.

The reparation means restoring the situation existing before torture was committed, such as restoring victims of torture to their freedom, returning to their work, or restoring the ownership of their properties. However, it is impossible to abolish the pain or suffering that occurred to the victim. As for monetary or financial compensation, which includes compensation for material or moral damages resulting from torture, it shall be established for each of the victims of an act of torture and those who were dependents of the victims in cases of death under torture. The compensation must be fair and sufficient without any discrimination. As the CAT has also stated that States Parties to the Convention must provide financial compensation for the damage and losses suffered by the victim. Examples of financial compensation include: reimbursement of medical expenses paid, pecuniary and non-pecuniary damage resulting from the physical and mental harm caused;, and legal or specialist assistance to victims (CAT General Comment No.3).

Rehabilitation involves medical and psychological care as well as legal and social services. As for reparation, it involves the prosecution of the perpetrator, along with a public and full disclosure of the facts, a public apology by the State, and the prosecution and punishment of those responsible for acts of torture, both criminally and disciplinary.

This includes preventive measures taken by States Parties to ensure that such acts will not be repeated including an obligation to review laws that contribute to, or permit, torture and to reform these laws with the intention of preventing the crime of torture.

The mentioned forms of reparation reflect the basic guiding principles regarding the right of victims of serious violations of the IHRL and the IHL in order to perform compensation, this is established by the United Nations General Assembly on December 26, 2005 (Resolution 60/147).

The compensation right should not be limited to the victims of torture, but also includes victims of punishment, cruel, inhuman or degrading treatment. Article (16) of the Convention does not limit the texts applicable to this treatment and to Articles (10-13) of the convention. Rather, these articles are mentioned in conjunction with the phrase that such rules “apply in particular”.

This means that other articles of the Convention can be applied, including Article (14) which reflects on the compensation for victims of torture, this has also been indicated by the CAT, who in its General Comment No. 3 did not distinguish between torture and cruel, inhuman or degrading treatment or punishment when it comes to the right to be compensated.

The responsibility for compensation does not only lie on the offender, but also on the State Party itself. For this reason, it is the right of torture victims to request both from the concerned State Party as well as the individual offender to receive fair and adequate compensation, including means of rehabilitating the victims as much as possible.

A criminal case is essential because its outcome may include the identification of other forms of compensation. However, the possibility of filing a civil lawsuit to claim such compensation should not take place, as the CAT stated that it must be subject to the outcome of the criminal lawsuit, especially since the rules of evidence in criminal procedures are stricter than those in civil procedures (CAT General Comment No.3).

Arbitrary detention is stipulated in Article (113) of the CPC, which reads as follows: "If the defendant was arrested by virtue of a subpoena and stayed in Police custody suite for more than twenty four hours without investigating him/her or brought to the public prosecutor in accordance with what has been mentioned in the previous article, his arrest shall be considered as arbitrary act and the in charge official shall be prosecuted for committing the crime of liberty deprivation stipulated in the PC" (see Articles (179) and (180) of the mentioned law).

In reference to all mentioned above, there is nothing in Jordanian legislation that states the right of victims of torture to be compensated. Jordanian law does not contain explicit provisions regarding the right of victims against arbitrary detention and victims of judicial errors for compensation, nor does it contain explicit provisions recognizing the right of victims of an act of torture and victims of cruel, inhuman or degrading treatment or punishment to the right to be compensated. It is true that Article (256) of the Civil Code has established the general principle in a prejudicial act, stating that "any harm is obligatory to be

compensated even if it does not result in guaranteed pain". However, this text is in a general form and it is important for the purpose of strengthening the victim's right to claim compensation to be in an exclusive text of compensation for torture.

It is worth noting that it is uncommon for civil lawsuits to seek compensation for arbitrary or unlawful detention, or for violations of the right to a fair trial, or for torture. We do not believe that there are cases in which individuals have received compensation for arbitrary detention, judicial errors, or torture. Meanwhile, the Jordanian Court's jurisprudence in the cases of reparation for material and moral damages, resulting from torture and cruel and inhuman treatment, is evident. So is its verdict on the determination of proceedings in accordance with the prosecutor's decision, to prevent trial for not establishing evidence (Magistrate's Court, Amman, No. 5-1-7721-2013, on 6/6/2012 ; The Amman Court, case no. 7/2012), and to inform the court, in case the penal sentence is issued from the police court, of the acquittal (The Amman Court, case no. 226/2010). Also, the Court of Cassation has ruled in a compensation case unrelated to torture —but rather to a death caused by accidental shooting from a member of the PSD— in favor to the victim's heirs, where the officer and the PSD were held accountable. (Resolution No. 4333/2003).

The possibility to prosecute the government or any of its official officers for the occurrence of torture was not valid under the Government Cases Law or any of its institutions for the year 1958. Article (5) of the mentioned law exclusively mentioned cases in which the courts may accept hearing cases that are filed against the government, and none of these cases include demanding compensation for being subjected to torture (or for arbitrary detention or for judicial errors). In addition, Police Courts that are currently competent to look into crimes committed by PSD officers do not have the authority to look into the claim of the personal right associated with the crime of torture.

The Government Cases Law and its amendments was repealed and replaced by the State Affairs Law No. 28 of 2017. According to this law, the Department of State Affairs is established under the Ministry of Justice, where cases against departments of the state are filed against the solicitor-general of that department and against his/her

official capacity. The solicitor-general represents departments of the state in cases of various types and degrees, which are filed by or against the state. The solicitor-general also represents state security agencies in cases where these agencies are involved (Article (4)). Hopefully, the new law will allow victims of torture the possibility to sue the government for compensation.

The general rules on liability for compensation considers personal liability and not service liability - and public facilities or their representatives are not jointly and severally responsible with the original perpetrator, except in the cases outlined in the law (Article (426) of the Civil Code).

According to the second paragraph of Article (263) of the Civil Code: "A public official shall not be responsible for his/her work which caused harm to others, if he/she executed their work in compliance with a superior's order, and if his/her compliance to that order was obligatory or if he/she believed that it was obligatory, and where sufficient evidence of his/her belief in the legitimacy of that work is provided, where that belief was based on reasonable grounds, and caution was taken into account."

Indeed, it is possible to rely on Article (14) of the Convention in filing a civil lawsuit related to individual or service compensation for torture and other forms of punishment or cruel, inhuman or degrading treatment. This is because it can be implemented by itself from the judiciary side and without the need for a special internal legal text for this purpose in specific. However, it is not expected that the judiciary will count on using this text to establish the right of victims of torture to compensation, especially after the Court of Cassation stated that the national legislation came in harmony with the provisions of the Convention (Court of Cassation Rights No. 3575/2015 dated 02/18/2016).

Therefore, it is not a surprise that the concluding observation of the Committee Against Torture in its second and third periodic report of Jordan expressed concern regarding the absence of any explicit provisions in the Jordanian law about the right of the victims of torture to a fair and adequate compensation for damages arising from the

act of torture (CAT/C/JOR/25/4 dated 25/5/2010 and CAT/C/JOR/CO/3 dated 29/01/2016.

Out of concern for the right of the victims of torture to be compensated, including the following in the proposed law is suggested:

"Despite the text of Article (5) of the Governmental Law No. 25 of 1958, the competent court examines claims of compensation that result from damages and harm at the request of torture victims and other forms of torture, cruel, inhuman or degrading treatment or punishment or any other harm that is brought against the government and the perpetrators in their personal capacity".

The party to which the public employee belongs must apologize to the victim or his/her family if the torture leads to, or results in, death. Therefore, the proposed text is: "In the event that a public official is convicted under this law, the government must submit a written apology to the victim or his relatives, a copy of it will be deposited in the court archive."

Fearing the suspected perpetrator will obstruct the investigation, we suggest the following text:

"Upon suspicion, suspects of torture or other cruel, inhuman or degrading treatment or punishment shall be immediately suspended from work and shall be dismissed from service if they are convicted of this crime."

I. NON-REFOULEMENT PRINCIPLE

The Convention requires States Parties not to deport any individual when there is "substantial grounds for believing that he will be in danger of being subjected to torture." In this regard, Article (3) of the Convention states:

1. 1. No State Party shall expel, return («refouler») or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the

State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

The rule on non-refoulement and protection offered by Article (3) is absolute; meaning that no excuse –such as public orders, national security, or anti-terrorism– can be invoked as a justification to breaching the non-refoulement principle. Being a peremptory norm of international law, this prohibition is applicable in all States, regardless of being States Parties of the Convention or not. Perhaps this is the reason behind the CAT dedicating two of its General Comments to this purpose (General Comment No.1, 1996 and General Comment No.4, 2017), which do not exceed a total of four General Comments up until this date. The CAT has repeatedly looked into cases of deportation to States where the person might be subjected to torture (CAT Report A/24/44. 2018 - 2019).

In the past, the International Court of Justice (ICJ) requested Senegal to extradite Chad's former President to Belgium for violating the Convention (Questions Relating to the Obligation to Prosecute or Extradite (aut dedere aut judicare), Belgium against Senegal, International Court of Justice - July 20, 2012).

The person mentioned in Article (3), refers to any individual regardless of the severity of his/her criminal-status and regardless of him/her being a citizen or not (generally, States do not expel their own citizens - Refer to Article (21) the Constitution of the Hashemite Kingdom of Jordan). The term Expulsion or Deportation refers to the act of forcing a person to leave the territory of the host State for reasons specified by law. As for the term Returning or Refoulement, they refer to denying a foreigner entry into the territory of the State, or to returning him/her to the territory of the State which he/she was in prior to entering the territory of the State taking this action. Finally, the person concerned is extradited at the request of another State in order to face prosecution or stand trial for a crime he/she is accused of or convicted with, or to serve a sentence issued against him/her in the requesting State.

The CAT has established that the application of the non-refoulement Principle is limited to cases in which there are substantial grounds for believing that the concerned person, if expelled, would be at risk of being subjected to torture as defined in Article (1) of the Convention

(General Comment No.1, 1996). The CAT has also explained the term "Another State" in the mentioned Article to include any State to which the individual concerned is being expelled, returned, or extradited as well as any State to which the individual may subsequently be expelled, returned, or extradited. (General Comment No.1, 1996).

The Committee has also concluded that the prohibition of torture must be assessed on grounds that go beyond mere theory or suspicion (General Comment No.1). In States prohibiting the death penalty, the expulsion, return, or restitution of a person to another States where he/she may be at risk of the death penalty is prohibited.

The Committee has repeatedly emphasized that the existence of a consistent pattern of gross, flagrant, or mass violations of human rights in a country does not as such constitute a sufficient ground for the Committee to determine that a specific person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist that indicate that the individual concerned would be personally at risk upon returning to that country. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered in danger of being subjected to torture in his or her specific circumstances. (The Committee Against Torture Report A/70/44 2014).

In the previously mentioned General Comment No.4, the CAT listed elements that could be considered as risk-of-torture indicators that should be taken into account by a State when determining the expulsion of a person from its territory. Such elements include any evidence of previous torture or maltreatment inflected on the person while in the same State to which he/she will be sent to, the judicial system in the State does not guarantee the right to a fair trial, credible allegations or evidence regarding genocide, crimes against humanity or war crimes in that same State, and whether the person concerned is deported to a State where he/she is expected to be deprived of the right to life; like being executed outside of the judicial system or being subjected to enforced disappearance.

The Convention limits the right not to be deported to persons who face the risk of torture in the countries to which they are, or will be, deported to. The CAT has confirmed that such cases are applicable

in compliance with the prohibition of torture, as listed Article (1) of the Convention and does not include other forms of mistreatment. (General Comment No. 1, 1996). In its General Comment No.4, the Committee did not modify this, but rather made it clear that many international agreements expand this right to include those who face the risk of being subjected to cruel, inhuman or degrading treatment or punishment. Among these agreements we mention in particular the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (Article (56/3)). Moreover, we refer to the International Convention for the Protection of All Persons from Enforced Disappearance (Article (16/1)) and the Convention Relating to the Status of Refugees (Article (33/1)). Unfortunately, Jordan is not a State Party to any of these Conventions, and there is no indication that it will become one to it in the near future.

State Parties should also refrain from deporting individuals to another State where there are substantial grounds for believing that these individuals would be in danger of being subjected to torture or treated or punished in a cruel, inhuman, or degrading way from non-State entities (CAT General Comment No.4).

Some State Parties use the "diplomatic assurance" as a loophole to undermine the principle of non-refoulement —to deport individuals to States where these individuals may be subjected to torture or degrading treatment— through seeking guarantees from the receiving State that the concerned individual will not be tortured. However, the Human Rights Committee and the Committee against Torture have expressed concern over the credibility of such guarantees (CAT General Comment No.4).

The ECHR have also raised questions regarding the credibility of the guarantees provided by Jordan to the United Kingdom in the case of "Othman Abu Qatada v. the United Kingdom" which was ruled on by the ECHR on January 17, 2012. (See https://hudoc.echr.coe.int7eng)

Competent authorities mentioned in Article (3) differ from one State to another, however, it is preferable that decisions of deportation, expulsion or extraditing are examined and issued by a judicial organ along with granting the right of appeal. These authorities should conduct a thorough, comprehensive and objective examination of

each case prior to reaching the decision of deportation, expulsion, or extradition.

This is on the international level, as for the law in Jordan, it is noted that there are no regulations that negate the Law of the Extradition of Fugitives of 1927, which is still in force until now and which demands the extradition of the wanted individual to a country where he/she would be at risk of torture. According to Article (6) of the mentioned law, the following restrictions shall be considered regarding the extradition of fugitive criminals:

a. "The fugitive criminal shall not be extradited if the crime for which he is requested to be extradited is of a political nature or if it is proven to the magistrate (whom the criminal was brought before him) or to the Court of Appeal, or it became clear to His Highness the Great Prince that the intent is the request for extradition is to prosecute or punish that criminal for a political crime.

b. The fugitive shall not be extradited to the foreign country unless its law or the agreement concluded with it stipulates that the criminal will not be arrested or prosecuted for another crime he committed in the country of that state before his extradition other than the crime for which the extradition request was made and the consent for surrender was based on it unless it is he had been returned to eastern Jordan, or he was able to return to it.

c. The fugitive criminal shall not be extradited if he is accused of committing a crime in eastern Jordan other than the crime for which he is requested, or imprisoned due to a judgment issued against him by the Transjordan courts, except after he has been released by the expiry of the said sentence, his acquittal, or otherwise.

d. A fugitive criminal is not delivered until fifteen days have passed from the date of his arrest pending his extradition."

It is clear that the law does not place any restrictions on the extradition of an individual to another country if that individual is at risk of torture in that concerned country. Moreover, the Residence and Foreigners Affairs Law No. 2 of 1973 does not include, or mention, any restriction on the expulsion of a foreigner who is at risk of torture in the country

to which he/she is sent to.

Therefore, the text stipulates the prohibition of expulsion, deportation, return or extradition to another state if the competent authorities have real reasons for believing that the person who is being "expelled", "deported", "returned", "currently returning", or "currently handed over" to another State in which he/she would be at risk of torture.

The Jordanian Court's jurisprudence is also evident regarding Article (3) of the Convention. In one case, that Article, as well as Article (18) of the Arab Charter for Human Rights 2004, was invoked to decide on the sentencing for not meeting the conditions for rendition (Case 2555/2013).

In another case, The Jordanian Court decided that acquitting the defendant of the charges against him makes research on the application of human rights and prevention of torture conventions and charters unproductive and futile (The Amman Court, no. 662/2010; Court of Appeal, no. 36933/2011, The Amman Court).

It bears noting that the 1998 Memorandum of Understanding between the Hashemite Kingdom of Jordan and the United Nations High Commissioner for Refugees, which was published in the Official Gazette on 3/5/1998, states the need to uphold the principle of non-refoulement or expulsion of any refugee seeking asylum in the Kingdom in any way to the borders or regions where such people could be subject to prosecution or threat because of their race, religion, nationality, membership in a social group, or political opinions.

The proposed text is as follows:

1. No one may be expelled, deported, returned, or extradited to another State if there are substantial grounds for believing that the concerned person would be at risk of being subjected to torture.
2. In determining whether these conditions exist, all relevant considerations must be taken into account, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the State to which the concerned individual is to be deported, returned or extradited.

3. It is within the jurisdiction of the Court of First Instance, in which the concerned individual currently resides, to determine if the "believing" grounds are substantial, and to assess the credibility and the gravity of the potential risks that the concerned individual might be subjected to if he/she is expelled, returned, or extradited.

PROPOSED LAW

Proposed Act No. ( ) 2020

Torture Protection Act

Article 1:

This law shall be cited as (Torture Protection Act of 2020) and it shall come into force as of the date of its publication in the Official Gazette.

Article 2:

"For the purposes of this law, "torture" shall be understood as any act intentionally performed by, agreed to, tolerated by, or encouraged by any public official or any person acting in an official capacity to inflict severe pain or torture on a person, physically or psychologically, – particularly with:

a. The intent of soliciting information or a confession from this person or from any third person.
b. The intent of punishing this person for an act committed or suspected to be committed by him or by any third person.
c. The intent of intimidating or compelling this person or any third person.
d. Any motive, reason or intention based on discrimination of any kind.
e. Pain or suffering arising as a result of legal penalties that comply with the applicable national law and in accordance with international law is not considered in the ruling of torture crimes."

Article 3:

"For the purposes of this law, inhumane treatment means inflicting pain and torture, whether physical or psychological, or incitement or approval by an official or any other person who acts in an official capacity."

Article 4:

a. "A public official who commits, orders, condones, or acquiesces in an act of torture shall be sentenced to imprisonment with temporary labor for a period of three to ten years.
b. If torture causes amputation, leads to the resection of any organ, or results in permanent disability, the penalty shall be imprisonment with temporary labor for a period not less than ten years.
c. Attempted torture is considered as an offense of torture, hence punishable as if the crime of torture has fully occurred.
d. A partner who incites and interferes in the crime of torture shall be punished with the same punishment of the perpetrator.
e. This law applies to all individuals without any discrimination on the basis of official status. The official capacity of a person cannot act as an exemption from any responsibility under this law, nor can it, in itself, be considered as a reason for a reduced sentence."

Article 5:

"The Suspect of torture or other cruel, inhuman or degrading treatment or punishment shall be, immediately upon suspicion, suspended from work, and dismissed from service if convicted of this crime."

Article 6:

"In the event that the public official is convicted under this law, the government must submit a written apology to the victim or his family, and a copy of the written apology should be deposited to be archived by the competent court."

Article 7:

"Despite of the provisions of Article (10) of the PC No. (16) of 1960 and its amendments, the provisions of this law remain in effect for:

a. Every foreigner residing in the Hashemite Kingdom of Jordan (Jordan), whether as an actor, partner, instigator or interferer if not requested to be deported before.

b. If the victim of an act of torture is a Jordanian citizen."

Article 8:

"Despite of what is stated in Articles (54) Bis and Article (100) of the PC No.16 of the year 1960, the Court may not suspend the execution of the sentence imposed for the crime of torture, nor may it take mitigating grounds."

Article 9:

"Despite Articles (50) and Article (51) of the PC No. 61 of the year 1960 and its amendments, a general or special amnesty does not apply to the crime of torture and cruel, inhuman or degrading treatment."

Article 10:

"Despite Article (61) of the PC, an individual cannot be exempted from criminal responsibility if the crime of torture in committed compliance with an order issued by a higher-ranking employee or by a public official, whether military or civil."

Article 11:

"Despite what is mentioned in Article (54) of the PC and in Articles (338) - (352) of the CPC, the statute of limitations cannot be applied to public prosecution cases, to civil cases, nor to penalties sentenced in association to crimes of torture."

Article 12:

"Despite what is suggested in Article (4) of the Grand Criminal Court (GCC) Law, No. 19 of 1981, and in Article (58) of the Public Security Law along with its Amended Code No. 38 of 1965, and in Article (7) of the GID Law and its Amended Code No. 24 of 1964, a crime of torture remains under the jurisdiction of the GCC, regardless of where the crime of torture is committed."

Article 13:

"Despite what is suggested in Article (4) of the State Affairs Law No. 28 of 2017, the competent court has jurisdiction over cases brought against the government, or against the perpetrators of torture in their personal capacity, at the request of the victim of an act of torture, or other cruel, inhuman, or degrading treatment or punishment, claiming redress and compensation for loss or injury."

Article 14:

a. "Any statement or confession extracted from the accused, suspect, defendant, or from anyone under the influence of torture, punishment, or cruel, inhuman or degrading treatment is invalid and shall not be admissible as evidence against the person from whom it was extracted or against others in any action or legal proceedings.
b. Any statement extracted under the influence of torture is admissible as proof or evidence against the alleged torturer.".

Article 15:

a. "It is not permissible to expel, deport, return or extradite any person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.
b. In determining whether there are such grounds (for believing that a person would be in danger of being tortured, if expelled, returned or extradited), all relevant considerations shall be taken into account, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned".
c. It is within the jurisdiction of the Court of First Instance, in which the concerned individual currently resides, to determine if the grounds for "believing" are substantial and to assess the credibility and the gravity of the potential risks that the concerned individual might be subjected to if he/she is expelled, returned, or extradited."

Article 16:

"The Council of Ministers shall issue all necessary regulations to implement the provisions of this law."

Article 17:

"The Minister of Justice shall issue all necessary instructions to implement the provisions of this law."