Submission

to the UN Committee against Torture for its consideration of the 2nd Periodic Report of

JORDAN

Rehabilitation and Research Centre for Torture Victims (RCT), Copenhagen, Denmark

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1.1. Introduction

The present report to the UN Committee against Torture is submitted for its consideration of the 2nd periodic report of Jordan (CAT/C/JOR/2) during the Committee's 44th session (26 April – 14 May 2010). The submission consists of an analysis of legal framework of Jordan with respect to its international obligations pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and other fundamental legal guarantees of importance for upholding the prohibition of torture.

The present submission will form part of a larger study on Jordan entitled *"Baseline study on the Prevalence, Determinants and Causes of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Jordan",* to be published in late 2010.

1.2 Ratification of international and regional instruments and cooperation with mechanisms

a. Status of ratification

Jordan is a State party to a number of international human rights treaties that are directly relevant to the prohibition and prevention of torture and ill-treatment, and which require the punishment of its perpetrators, as well as ensuring effective remedy for its victims.

Jordan has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1991. It has also recognised the competence of the Committee against Torture to initiate the inquiry procedure under article 20 so as to examine whether or not torture is being systematically practiced in Jordan. However, Jordan has not yet recognised the competence of the Committee to consider individual complaints under article 22 from persons who claim to be a victim of a violation of the Convention. Similarly, Jordan is yet to ratify the Optional Protocol to the Convention against Torture (OPCAT), which provides for a system of regular visits by independent bodies to places where people are deprived of their liberty.

With a few exceptions Jordan is a party to most other core international human rights instruments, including the International Covenant on Civil and Political Rights (ratification 1975), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (ratification 1975), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (accession 1974), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratification 1992), the Convention on the Rights of the Child (CRC) (ratification 1991) and the Convention on the Rights of Persons with Disabilities (CRPD) (ratification 2008).

However, Jordan has not yet ratified the Optional Protocol to the ICCPR, which allows individuals to submit complaints to the Human Rights Committee for violations of the Covenant by a State party, the Convention relating to the Status of Refugees (1951) or the Convention for the Protection of All Persons from Enforced Disappearance (2006).

Jordan was the first Arab State to ratify the revised Arab Charter on Human Rights of 2005.[1] It was also the first Arab state to ratify the Rome Statute of the International Criminal Court (ICC) in 2002. Jordan is furthermore a party to the four Geneva Conventions relevant to the Protection of Victims of Armed Conflict of 1949 and the first and second Additional Protocols of 1977 to the Geneva Conventions.

In 2006 and 2007, several of the above-mentioned treaties were published in the Official Gazette of Jordan.[2] By virtue of the publication, these international treaties become part of the national legislation and are thus enforceable in national courts. The status of international law in Jordan has also been affirmed by the Court of Cassation of Jordan, which has ruled that international law has supremacy over national law and that the former should be applied in case of a conflict between the two.[3]

b. Cooperation with the UN Charter Bodies and Treaty Bodies

While Jordan has ratified several international human rights instruments, the Kingdom has not fully observed its obligation under these instruments to submit periodic reports to the UN treaty bodies on the state of implementation of the treaties. For example, since its ratification of the Convention against Torture in 1991, Jordan has only submitted two reports: the initial report in 1994[4] and the second periodic report in 2008[5]. In general, Jordan's periodic reporting to most of the UN treaty bodies has been marked by several years of delay in the submission of reports.[6]

With respect to the cooperation with the bodies established pursuant to the UN Charter, Jordan has issued a standing invitation to all UN thematic Special Procedures (Special Rapporteurs, Experts and Working Groups) in April 2006.[7] However, Jordan is yet to respond to specific requests of such mechanisms to visit the country, such as the Special Rapporteur on Violence against Women.[8]

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[1] The revised Arab Charter on Human Rights entered into force on 15 March 2008, after it received 7 ratifications. It should be noted that Article 8 of the revised Charter states: "No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment."

[2] See Official Gazette no. 4815 and 4817 of March and April 2007 for the publication of the four Geneva Conventions and the Additional First Protocol. See Official Gazette no. 4764 of June 2006 for the publication of CAT, ICCPR, CERD, ICESR, and Official Gazette no. 4787 of October 2006 for the publication of the CRC.

[3] See for example Court of Cassation ruling 4211/2004 of 15 May 2005, Decision No. 2294/2006 Date 31/3/2007 and Decision No. 3569/2000 Date 20/3/2001. See also article 24 of the Civil Code.

[4] CAT/C/16/Add.5, 3 March 1995, available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.16.Add.5.En?Opendocument

[5] CAT/C/JOR/2, 3 July 2008, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/452/68/PDF/G0945268.pdf?OpenElement

[6] For further details on Jordan's periodic reporting to the UN treaty bodies, please refer to: http://www.unhchr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=88.3#88.3

[7] Please refer to http://www2.ohchr.org/english/bodies/chr/special/invitations.htm#jordan

[8] Compilation Prepared by the Office of the High Commissioner for Human Rights, (A/HRC/WG.6/4/JOR/2), 21 November 2008, Page 4, table 2, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/A_HRC_WG6_4_JOR_2_E.PDF

UN Special Raporteur on Torture

Jordan was the first Arab state to welcome the UN Special Rapporteur on Torture to conduct a visit to the country, which was carried out in 2006. In his visit report, the Special Rapporteur concludes that the practice of torture persists in Jordan because of a lack of awareness of the problem, and due to institutionalized impunity. The following findings and conclusions are summarized in the executive summary of the report:

> *"Many consistent and credible allegations of torture and ill-treatment were brought to the attention of the Special Rapporteur. In particular, it was alleged that torture was practiced by General Intelligence Directorate (GID) to extract confessions and obtain intelligence in pursuit of counter-terrorism and national security objectives, and within the Criminal Investigations Department (CID), to extract confessions in the course of routine criminal investigations. Given that these two facilities were the ones most often cited as the two most notorious torture centres in Jordan, on the basis of all the evidence gathered, the denial of the possibility of assessing these allegations by means of private interviews with detainees in GID, and taking into account the deliberate attempts by the officials to obstruct his work, the Special Rapporteur confirms that the practice of torture is routine in GID and CID.*
>
> *The Special Rapporteur concludes that the practice of torture persists in Jordan because of a lack of awareness of the problem, and because of institutionalized impunity. The heads of the security forces and of all the detention facilities he visited denied any knowledge of torture, despite having been presented with substantiated allegations. Moreover, in practice the provisions and safeguards laid out in Jordanian law to combat torture and ill-treatment are meaningless because the security services are effectively shielded from independent criminal prosecution and judicial scrutiny as abuses by officials of those services are dealt with by special police courts, intelligence courts and military courts, which lack guarantees of independence and impartiality."*[9]

The Government of Jordan provided a detailed response to the report of the Special Rapporteur on Torture to the UN Human Rights Council in 2007, where it points out that the report contains numerous inaccuracies and unsubstantiated allegations, and that the conclusions and recommendations are based on information lacking in authenticity and plausibility. [10] In its *note verbale* to the Human Rights Council, Jordan made the following statements concerning the prevalence of torture in the Kingdom:

[9] Report of the Special Rapporteur on Torture, Manfred Nowak Addendum, Mission to Jordan, A/HRC/4/33/Add.3, 5 January 2007, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/101/07/PDF/G0710107.pdf?OpenElement

[10] *Note verbale* from the permanent mission of Jordan, including Annex 1 Government's reply to the report by Mr. Manfred Nowak, Special Rapporteur on Torture, A/HRC/4/G/17, 30 March 2007, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/124/46/PDF/G0712446.pdf?OpenElement

The Government, while disagreeing with a number of the Special Rapporteur's conclusions, particularly those referring to widespread torture, lack of awareness among officials, "impunity", and routine torture in the General Intelligence Directorate and the Criminal Investigations Department (mostly based on allegations from individuals), reaffirms that there is a clear and sincere political will to continue with the plans for reform of detention, correctional and rehabilitation centres, a process that began some years ago and is still in effect.

The cases which the Special Rapporteur cites to support his conclusions are isolated cases, while the information on which he draws to substantiate his claims mostly comes from civil society organizations and individual allegations by a number of detainees and convicted persons, which cannot lead to the conclusion that torture is widespread in Jordan and routine in some cases.[11]

UN Human Rights Council

Jordan is a member of the UN Human Rights Council. Upon presenting its candidature, Jordan presented a list of its contribution to the promotion and protection of human rights as well as its voluntary pledges and commitments.[12] While this document lists Jordan's accomplishments and international obligations, it does not provide any concrete pledges related to the prohibition of torture and ill-treatment. Instead, the government of Jordan presents an account of the status of the prohibition under national law, noting that:

"Torture is prohibited, in keeping with the Convention against Torture, and severe penalties are prescribed for subjecting any person to any form of torture or cruel, degrading or inhuman treatment."

In February 2009, Jordan underwent its first Universal Periodic Review (UPR) by the UN Human Rights Council. The examination was based on the National Report of the government of Jordan submitted the same month as the examination.[13] With respect to its domestication of the crime of torture and cooperation with the UN Special Rapporteur on Torture, the government of Jordan pointed out that:

"In Jordan, torture is criminalized in a manner commensurate with the provisions of the Convention against Torture (CAT). Jordan is committed to condemning torture and never overlooks acts that could be perpetrated in this respect. However, Jordan does not deny that there are sometimes individual cases of abuse or torture and very limited cases of maltreatment. Those responsible are prosecuted for these actions and the State rejects any policies not in line with the respect of human rights."

[11] Ibid p. 3
[12] Jordan's pledges and commitments pursuant to Resolution A/RES/60/251, 20 April 2006, available at: http://www.un.org/ga/60/elect/hrc/jordan.pdf
[13] National Report submitted in accordance with paragraph 15 (A) of the Annex to the UN Human Rights Council resolution 5/1, A/HRC/WG.6/4/JOR/1, 9 February 2009, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/A_HRC_WG6_4_JOR_1_E.PDF

"Regarding the follow-up on the recommendations of the Special Rapporteur on torture, it is difficult to follow those recommendations as they are based on undocumented and imprecise information. The cases referred to were verified according to internationally accepted procedures. Yet, the Government has taken steps to address cases related to torture and to protect the rights of those individuals in places of detention and rehabilitation. Furthermore, under the law, there are various organs that carry out inspections in the various places of detention, in addition to the fact that there is an independent Ombudsman office which carries out transparent and rapid investigations in cases of complaints"

In the final report of the Working Group on the Universal Periodic Review of Jordan[14], the rapporteurs list three sets of recommendations about the prohibition against torture, which were made during the inter-active dialogue and enjoy the support of Jordan:

(1) "Support the more effective implementation of provisions of CAT and submit its pending reports to CAT;"

(2) "Continue and strengthen efforts to eliminate and completely stem acts of torture, especially by security services and ensure that detainees have access to effective legal remedy; prioritize actions t reduce and eradicate torture and ill-treatment and that allegations of torture and ill-treatment of convicted prisoners and detainees be investigated in a timely, transparent and independent fashion; pursue its actions in preventing acts of torture and other cruel, inhuman and degrading treatments in all detention centres; ensure the punishment of persons responsible for acts of torture; take further action to prevent impunity of torture and ill treatment and give follow up to the recommendations of the United Nations Special Rapporteur on Torture; implement an independent and transparent complaints mechanism to deal with reports of prisoner ill-treatment; and that the Government and responsible authorities fully investigate all cases and reports on torture in a prompt, transparent and independent manner and do bring to justice those responsible. Undertake a comprehensive review of conditions in prisons and underline the importance of an independent, impartial complaint mechanism for the victims of torture."

(3) "Continue to improve the legislation aimed at prohibiting all forms of torture and in particular, to strengthen measures to protect the rights of detainees."[15]

[14] Report of the Working Group on the Universal Periodic Review of Jordan, A/HRC/11/29, 29 May 2009, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/136/40/PDF/G0913640.pdf?OpenElement

[15] Ibid, p.18-20, Recommendations no. 2, 18 and 19.

1.3 Prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment in national law

a. The Jordanian Constitution

The Constitution of Jordan provides the primary framework for safeguarding basic human rights and fundamental freedoms. With the Constitution of 1952, the Kingdom of Jordan introduced civil and political rights as well as economic, social and cultural rights. As such, this Constitution represents a significant step forward compared to the Constitutions of 1921 and 1947, which only provided for so-called "traditional rights".

Chapter 2 of the Constitution - "Rights and Duties of Jordanians" - contains a catalogue of human rights, including equality among citizens in rights and responsibilities and protection of personal freedoms. It safeguards equality before the law (article 6), personal freedom (article 7), detention and imprisonment shall be in accordance with the law (article 8), freedom of expression and freedom of the press (article 15), freedom of assembly and the right to establish non-governmental organizations and political parties (article 16), right to education (articles 19-20), rights of refugees (article 21), right to take public office (article 22) and right to work (article 23).[16]

While the Constitution guarantees several fundamental freedoms, it does not contain a specific prohibition against torture or other forms of ill-treatment or punishment. Article 7 states "[p]ersonal freedom shall be guaranteed." This has been interpreted by the Jordanian High Court of Justice as the essence of human life; it is a right for every individual, which cannot be limited, except within the limits of the law.[17] This article and its interpretation by the High Court of Justice have often been referred to by Jordanian lawyers, government officials and human rights activists as indicating a prohibition of torture and ill-treatment in the Constitution.

With respect to the relationship between international conventions and domestic law, the Committee against Torture and the Human Rights Committee noted in 1994 and 1995, respectively, that the Constitution does not contain specific provisions regulating this matter.[18] The Committee against Torture recommended that Jordan undertake the necessary legal measures to ensure the incorporation of the Convention in national legislation and to ensure its prompt and effective application. By virtue of the aforementioned publication of the Convention against Torture in the Official Gazette in 2006-07, this international treaty now forms part of Jordan's national legislation and is enforceable in national courts.[19]

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[16] See http://www.kinghussein.gov.jo/constitution_jo.html

[17] See Jordanian High Court of Justice Ruling 243/1997 of 15 October 1997.

[18] A/50/44, para 165; CCPR/C/79/Add.35, para 6, and Compilation Prepared by the Office of the High Commissioner for Human Rights, A/HRC/WG.6/4/JOR/2, 21 November 2008, Page 2-3, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/A_HRC_WG6_4_JOR_2_E.PDF

[19] See Official Gazette no. 4815 and 4817 of March and April 2007 for the publication of the four Geneva Conventions and the Additional First Protocol. See Official Gazette no. 4764 of June 2006 for the publication of CAT, ICCPR, CERD, ICESR, and Official Gazette no. 4787 of October 2006 for the publication of the CRC.

b. The Penal Code

International Law and Jurisprudence

Article 1 of UNCAT states:

"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."

Article 4 of UNCAT states:

"1. 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. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

Article 7 of the ICCPR states

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Article 10 (1) of the ICCPR states

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

The Committee against Torture has stated that while Article 4 does not expressly require punishing cruel, inhuman or degrading treatment or punishment, the Committee believes that the obligation to take steps in the meaning of articles 3-15 of the Convention against Torture, which includes the obligation to punish, equally applies to ill-treatment.[20]

The CAT has not specified a minimum penalty that would appropriately reflect the gravity of the crime of torture. However, through thorough analysis of the views expressed by individual Committee members, one legal scholars has concluded that

[20] Committee against Torture: General Comment 2: Implementation of Article 2 by States Parties, CAT/C/GC/2/CRP.1/Rev.1, para. 6.

"a custodial sentence of between six and twenty years will generally be considered appropriate."[21]

Further, imposition of light penalties, pardons later granted to those convicted of torture, or amnesties for crimes of torture are found by the Committee against Torture as incompatible with obligations under UNCAT.[22]

The Human Rights Committee has often recommended that states should ensure that all forms of torture and similar ill-treatment are punishable as serious crimes under its legislation, in order to comply with article 7 of the Covenant.

Criminalisation of torture

Jordan's Criminal Code no. 16 of 1960 (as amended) was modified in 2007.[23] On this occasion, the legislators amended article 208 – the "torture provision" – and explicitly made torture a criminal offense and incorporated a definition of the concept of torture:[24]

Article 208 (Obtaining Information by Force)

1. Subjecting a person to any kind of torture not permitted by law in order to obtain confession to a crime or any information thereon shall be punishable by imprisonment from 6 months to 3 years.

2. For the purpose of this Article, 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".

3. If torture caused illness or injuries, the punishment shall be temporary hard labour.

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[21] Chris Ingelse, *The UN Committee against Torture: An Assessment*, Kluwer Law International, 2001, p. 342, cited in Torture in International Law: A guide to jurisprudence, Association for the Prevention of Torture and Center for Justice and International Law, 2008, p. 19.

[22] Torture in International Law: A guide to jurisprudence, p. 19, available at: http://www.apt.ch/component/option,com_docman/task,cat_view/gid,127/Itemid,99999999/lang,en/

[23] The original text of article 208 did not refer to torture. It stated: "*(1) Anyone who inflicts on a person any form of unlawful violence or harsh treatment with a view to obtaining a confession to an offence or information thereon shall be punished by imprisonment for a period of three months to three years; (2) If such acts of violence or harsh treatment lead to illness or injury, the penalty shall be imprisonment for a period of six months to three years unless the said acts warrant a more severe penalty.*"

[24] Military Penal Code no. 30 of 2002, replaced by Military Penal Code no. 58 of 2006, equally imposes the punishment of three months to three years on anyone who abuses powers granted to him.

4. Notwithstanding Articles (45) and (100) of this Law, the Court may not stay of execution of the punishment decided in the crimes stated in this Article or take extenuating circumstances.

The law amending Article 208 remains a temporary law at the time of writing.

The definition of torture

Article 208 contains two conflicting definitions of the concept of "torture":

- One definition of the term "torture" is found in article 208(1), which speaks of "torture not permitted by law" as if torture could, in principle, be permitted by Jordanian law, although this would constitute a violation of the absolute prohibition of torture under international law. Furthermore, this definition only captures acts of torture that are inflicted for the purpose of obtaining a confession to a crime or any information on the crime.

- A second definition of the term "torture" is found in article 208(2), which is identical to the definition in the first paragraph of article 1(1) of the Convention against Torture. The only difference between the article 1(1) of the Convention and article 208(2) of the Criminal Code is that the latter has omitted the second paragraph of article 1(1) of the Convention, which reads: *"It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

In other words, article 208 of the Criminal Code contains two contradictory definitions of crime of torture: A narrow definition in article 208(1), which is contrary to the requirements of international law, and a definition in article 208(2) that is in accordance with article 1 of the Convention against Torture. This in-built contradiction is very problematic as it may give rise to different interpretations of article 208 by the national courts of Jordan and thereby generate an inconsistent enforcement of article 208, which runs contrary to Jordan's international obligations.

The scope of the crime of torture: Attempts, complicity and participation

According to article 4(1) of the Convention against Torture, all acts of torture shall be offences under domestic criminal law. This also applies to an attempt to commit torture as well as complicity and participation in torture.

The Criminal Code of Jordan regulates the question of criminal liability for persons attempting to commit felonies or misdemeanours in article 68 and of "inciters and accomplices" in articles 80-82. When read in conjunction with article 208(2), the Criminal Code's provisions on attempts, complicity and participation in torture appear to honour the requirements laid down in article 4(1) of the Convention. However, as mentioned above, if one applies the definition in article 208(1) in conjunction with articles 68 or articles 80-82 this will not be in accordance with international law.

Appropriate penalties

The Convention against Torture stipulates that each State party shall make torture, attempts to commit torture as well as complicity and participation in torture punishable by appropriate penalties, which take into account their grave nature. As stated above, a custodial sentence of between 6 and 20 years will generally be considered appropriate.

According to article 208(1) of Jordan's Criminal Code, the crime of torture shall be punishable by imprisonment from 6 months to 3 years. The Criminal Code of Jordan categorises the crime of torture as a misdemeanour, cf. article 15 on penalties for misdemeanours, and not as a felony, cf. article 14 of the Criminal Code. The penalty imposed for acts of torture does not reflect the severity of the crime, and it does therefore not comply with the requirements of article 4(2) of the Convention against Torture.

Article 208(3) further prescribes that if torture causes illness or injuries, the punishment shall be temporary hard labour.[25] The minimum sentence prescribed for temporary hard labour is 3 years with a maximum of 15 years, cf. article 20 of the Criminal Code. The severity of this penalty comes closer to reflecting the serious nature of the crime of torture, although "lighter sentences" may not be compatible with the Convention.

General pardons and amnesties

The Committee against Torture has found that pardons granted to persons convicted of torture, or amnesties for crimes of torture are incompatible with the obligations under the Convention against Torture. [26]

In the case *Urra Gurudu v. Spain*, the sentences imposed on the Civil Guards, who had been found guilty of torturing a suspected member of ETA, had been reduced by the Spanish Supreme Court from four years' imprisonment to one, prior to the granting of pardons by the Council of Ministers. The Committee against Torture considered that the pardons later granted to the Civil Guards in had the practical effect of allowing torture to go unpunished and encouraging its repetition. The pardons therefore constituted a violation of Article 2(1) of the Convention, which requires that States take effective measures to prevent torture.75 By similar reasoning, the Committee considers that amnesties for the crime of torture are incompatible with States' obligations under Article 4. The Committee has stated:

> "*In order to ensure that perpetrators of torture do not enjoy impunity, [States parties must] ensure the investigation and, where appropriate, the prosecution of those accused of having committed the crime of torture, and ensure that amnesty laws exclude torture from their reach*."[27]

[25] According to article 18, the criminal penalty of "hard labour" is defined as deployment of the convicted offender to hard labour suitable to his/her state of health, age, whether inside or outside the prison.
[26] Urra Gurudu v. Spain, CAT Communication No. 212/2002, 17 May 2005, paras. 6.6 and 6.7, cited in International Law: A guide to jurisprudence, p. 19.
[27] CAT, Concluding Observations on Azerbaijan, UN Doc. A/55/44, 1999, §69(c). See also CAT,

The Criminal Code of Jordan provides for a general pardon to be issued by the legislative authority with the effect that the criminality of the act is erased. In addition, His majesty the King may grant a special pardon on the recommendation of the Council of Ministers. The special pardon is personal and may consist of dropping the penalty or replacing or reducing it in whole or in part.[28] The provisions on pardons do not specify whether there are any cases in which pardons may not be issued. Consequently, it appears that Jordan's provisions on pardons are incompatible with its obligations under the Convention.

Suspension of sentences

The Convention against Torture stipulates that the States parties shall make all acts of torture punishable by appropriate penalties, which take into account their grave nature. As mentioned earlier, a custodial sentence of between 6 and 20 years will generally be considered appropriate.

Under article 54 of the Criminal Code of Jordan, the courts may suspend the enforcement of a sentence in the following cases:

> *"When passing an imprisonment sentence of not more than one year for a felony or a misdemeanour, the court may order in the judgement a suspension of the sentence execution, according to the conditions stipulated in this law, if based on the convicted persons's character, past, age and circumstances of offence if it perceives any reason to believe that he/she will not violate the law again […].*

As article 208 (1) carries a penalty of imprisonment ranging from 6 months to 3 years, there may be cases in which the courts of Jordan can decide to suspend the execution of the sentence, if the sentence is imprisonment from 6-12 months. Such suspension may not be compatible with the "spirit" of article 4 (2) of the Convention against Torture.

Statute of limitations

The Convention against Torture does not explicitly require States parties ensure that the cases of torture can be initiated indefinitely. However, in its recent practice, the Committee against Torture has expressed concern that the offence of torture is subject to the statute of limitations in some jurisdictions as this may prevent investigation, prosecution and punishment of the crime of torture. It its final report on Denmark, Committee made the following conclusion and recommendation about the statute of limitations:

> *" […] Taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations […]."*

Concluding Observations on Senegal, UN Doc. A/51/44, 1996, §117; CAT, Concluding Observations on Chile, UN Doc. CAT/C/CR/32/5, 2004, §7b; CAT, Concluding Observations on Bahrain, UN Doc. CAT/CO/34/BHR, 2005, §6d; CAT, Concluding Observations on Cambodia, UN Doc. CAT/C/CR/31/7, 2005, §6, cited in Torture in International Law: A guide to jurisprudence, p. 19.

[28] Articles 50-51 of the Criminal Code of Jordan.

"*The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations".*[29]

According to the article 54 of the Criminal Code of Jordan (on periods of prescription), the period of prescription stated in the Criminal Procedures Law shall preclude the execution of penalties.

c. Public Security Law[30] and Law of Rehabilitation and Reform Centres

International Law and Jurisprudence

The Code of Conduct for Law Enforcement Officials (General Assembly Resolution 34/269 of 17/12/1979):

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty" (Article 3)[31]

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state:[32]

"Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
(b) Minimize damage and injury, and respect and preserve human life;
(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (Principles 4 and 5)

[29] Conclusions and recommendations of the Committee against Torture concerning Denmark, CAT/C/DNK/CO/5, 16 July 2007, para. 11, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/431/54/PDF/G0743154.pdf?OpenElement

[30] The Public Security Law no. 38 of 1965 applies to all members of the Public Security Personnel responsible for, among other things, prevention of crime, investigating and finding it, and arresting suspects. It also applies for the administration of prisons and guarding prisoners.

[31] See commentary http://wwww.ohchr.org/english/law/codeofconduct.htm

[32] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

The Special Rapporteur on Torture has stated that disproportionate or excessive exercise of police powers amounts to cruel, inhuman or degrading treatment, and is always prohibited. He clarifies that the principle of proportionality, "*which assesses the lawful use of force to fall outside the scope of [cruel, inhuman or degrading treatment], only applies in situations in which the person concerned is still in a position to use force in turn against a law enforcement official or a third person. As soon as that person ceases to be in a position to resist the use of police force, i.e. is under the control of a law enforcement official and becomes powerless, the principle of proportionality ceases to apply.*"[33]

The Public Security Law

The Public Security Law no. 38 of 1965 does not clearly prohibit torture or ill-treatment. Article 35 of the law requires officers to carry out their duties with due respect for the dignity of their office, respect and courtesy to the public, and to carry out orders given to them within the limits of the law and regulations. Article 36 of the law includes a list of prohibited acts, but none of those relate to arrest, detention, torture or other ill-treatment. The only provision that relates to the manner in which the police is to carry out its duties is article 9, which allows officials of the Public Security Directorate[34] to use force in order to perform their duties. According to the law such use of force should be limited to cases when it is the last resort. The law limits the use of force to the following cases:

- arrest: for any person convicted of a felony or misdemeanour or convicted for over three months if he/ she attempts to resist or flee;
- any person charged of felony, or caught committing misdemeanour punishable by no less then six months, if he/ she attempts to resist or flee; and
- while guarding detainees, in circumstances specified by the law.

The law provides that under all of the above circumstances, among others, use of firearms is allowed only if it is the only way available to achieve the purpose, and only after a series of warnings as specified in the same article. The law does not regulate the ways in which to determine the amount of force allowed to be used in such circumstances.

The penalty imposed for excessive use of force under the Public Security Law ranges from disciplinary measures to two months of imprisonment. The Court of Cassation has ruled that the Public Security Law is a *lex specialis*, which takes precedence over the Criminal Code, which prescribe more heavy penalties for the excessive use of force. [35] In practice this entails that public officials who use excessive force, which may amount to torture, may effectively evade responsibility under article 208 of the Criminal Code.

[33] Report of the UN Special Rapporteur on Torture, (E/CN.4/2006/6), 23 December 2005, para. 38.
[34] Created by Law number 38 for Public Security of 1965 to separate the Public Security Forces from the Army, and linking them to the Ministry of Interior. Section Four of Law number 38 specifies the duties of the Public Security Force, including: preservation of order and security and the protection of lives, honor and properties; prevention and investigation of crimes; administration of prisons and guarding of prisoners. The Directorate includes the Grievances and Human Rights Office and Preventative Police.
[35] See Court of Cassation Decision no. 561 for the year 2006, 25 July 2006

The Law of Rehabilitation and Reform Centres (The Law on Prisons)

The Law of Rehabilitation and Reform Centres no. 9 of 2004[36] prohibits the use of force against detainees unless necessary, and only to the extent necessary after having exhausted "normal methods".[37] The law further provides that the use of firearms is restricted and lists the situations in which firearms may be used. In these cases, the law requires that a warning is given and that firearms are used only after superior orders. Such use should aim only to disable the movement of the detainee as much as possible.

The language found in the law of Rehabilitation and Reform Centres lacks the important specificity that is required to ensure that law enforcement officers do not engage in acts of torture or other forms of ill-treatment. The Law does not specify the terms "unless necessary" or "to the extent necessary". Furthermore, the Law does not clearly require the legitimate use of force by law enforcement officers to be proportionate to the danger that can possibly result from the person against whom force is used, minimize damage and injury, ensure that medical aid is provided as early as possible without restrictions, or ensure that relatives are notified, in accordance with international standards. The Law's lack of specificity also applies to the provisions on use of firearms.

d. Military Criminal Code

The Military Criminal Code no. 43 of 1952[38] was replaced by Military Criminal Code no. 30 of 2002 and by the law no. 58 of 2006. After amendment, this law provides that in areas where the Military Criminal Code is silent, the civilian Criminal Code shall apply.

In effect, all the provisions of the civilian Criminal Code of 1960 concerning acts that are degrading or causing harm or death apply to any interrogator, policeman, member of the intelligence, and to those who are delegated by them, if committed in peace time. When such crimes are committed by the aforementioned personnel, they are punishable under the Criminal Code. With regards to acts of torture, such crimes are punishable under article 208 of the civilian Criminal Code.

Article 41 of the Military Criminal Code considers the following acts of torture and ill-treatment as war crimes, if committed during an armed conflict:

- Torture and ill-treatment
- Wilfully causing great suffering;
- Serious physical or mental injury;
- Any commission or omission that affects physical or mental integrity of protected persons who are detained or deprived of their liberty.[39]

[36] This is the official name in Jordan to refer to prisons.
[37] Article 6 of the Law of Rehabilitation and Reform Centres.
[38] This law applies to all members of the military, Public Security and general intelligence (see article 3 of the Military Criminal Code and Article 38 of Public Security Law.)
[39] Article 44 of the law states that this is not limited to the military personnel covered by the law, but equally applies to civilians

These provisions were amended in connection with Jordan's accession to the Rome Statute of the International Criminal Court in order to bring Jordan's Military Criminal Code in accordance with Jordan's international obligations.

Article 41 of the Military Criminal Code is compatible with article 8 of the Rome Statute. However, unlike the Rome Statute, the Jordanian law imposes the death penalty for some of the listed war crimes, notably crimes related to arrest, detention, torture and inhuman treatment, if these offences lead to the death of the victim.[40] The death penalty is also prescribed as the penalty for persons who incite and participate in the listed war crimes.

e. Juvenile Law No. 24 of 1968

International Law and Jurisprudence

The Convention on the Rights of the Child, prescribes in article 37 that:

"no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"; that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age".

It should be noted that the UN Special Rapporteur on Torture has previously highlighted the vulnerability of children in detention, stating that

"the resulting lack of appropriate attention to the medical, emotional, educational, rehabilitative and recreational needs of detained children can result in conditions that amount to cruel or inhuman treatment."[41]

The Special Rapporteur on Torture has warned against the particular grave consequences of torture and ill-treatment against children, which "derives from the consideration that children are necessarily more vulnerable to the effects of torture and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly ill-treated adults."

The Rapporteur furthermore points to the negative impact of conditions of detention, including over-crowding, and the absence of re-creational and educational facilities.[42]

The Juvenile Law (as amended) does not explicitly prohibit torture or ill-treatment of children. Consequently, persons who are found guilty of torture or ill-treatment of children will be punishable under the Criminal Code.

[40] See Articles 41 and 42 of the Military Criminal Code.

[41] Report of Special Rapporteur on Torture, (A/55/290), 11 August 2000, para. 10.

[42] Report of the Special Rapporteur on Torture, (E/CN.4/1996/35), 9 January 1996, Para. 12-17.

The Juvenile Law is currently under review, and the proposed amendments are expected to be presented to Parliament in its next session in 2010. While the proposed amendments purport to introduce principles of restorative justice, additional legal guarantees and alternative measures to deprivation of liberty, the draft law does not propose to incorporate the international prohibition of torture into the Juvenile Law.

1.4 Basic legal guarantees in connection with arrest, detention and interrogation

a. Right to liberty and security of person

International Law and Jurisprudence

Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) is the key provision concerning lawful arrest and detention, and it states:

"*Everyone has the right to liberty and security of person.No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"*.

Article 9 (4) of the ICCPR further states

"*Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."*

The Jordanian Constitution provides in Article 7 that "*Personal freedom shall be guaranteed.*" Article 8 adds that "*No person may be detained or imprisoned except in accordance with the provisions of the law.*" Article 6(i) states that: "*Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.*"

The Jordanian Criminal Procedures Code provides several important legal guarantees in relation to arrest and detention. First of all, arrest and detention may only take place in cases stipulated by law. Secondly, no one may be deprived of his/her liberty without a judicial warrant or decision, nor may he/she be kept in detention after the expiration of the legal detention period. Thirdly, any detainee or prisoner shall be presented before a court or judge. In case any of these legal guarantees are violated by a public official, such acts are punishable under article 178-180 of the Criminal Code. The penalties range from imprisonment from one month to one year or, as regards article 180, a fine.

While Jordanian law guarantees several aspects of the right to liberty and security of person, the law does not provide the right to anyone deprived of his/her liberty to take proceedings before a court in order to determine the lawfulness of the detention.

b. Lawful arrest and detention

International law and Jurisprudence

Article 9 (1) of the ICCPR states

" […] No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Article 14 (2) of the ICCPR adds

"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

The Human Rights Committee has held that this provision "is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation"; in other words, the grounds for arrest and detention must be "established by law".[43]

Principle 12 (1.a) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[44] requires that arrest or detention shall be duly recorded and the following information included:

(a) The reasons for the arrest;
(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
(c) The identity of the law enforcement officials concerned;
(d) Precise information concerning the place of custody.

The presumption of innocence – being considered *innocent unless proven guilty* – is a legal right that the accused has in criminal trials in Jordan. This follows from article 147 of the Criminal Procedures Code. Procedures and treatment during arrest and detention should therefore be based on and follow this important presumption.

Article 33 of the Criminal Procedures Code requires the Public Prosecutor to issue an arrest warrant in case crime is being witnessed if there is strong evidence that the person in question committed the crime. Otherwise, a summoning order can be issued.

Article 100 of the Criminal Procedures Code requires that when a person is arrested his/ her statement has to be heard immediately after detention and he/she has to be referred to the General Prosecutor within 24 hours, with a report which is supposed to be prepared by the officer who is responsible for the arrest.

[43] Human Rights Committee, Communication No. 702/1996, *C. McLawrence v. Jamaica* (Views adopted on 18 July 1997), in UN doc. *GAOR*, A/52/40 (vol. II), pp. 230-231, para. 5.5.
[44] General Assembly resolution 43/173 of 9 December 1988.

The detained person and his/her lawyer shall be informed of the contents of the report. The following information shall be included in the report:

- Details of the officer who issued the arrest order;
- Details of the suspect, place and time of arrest, and the reasons of arrest;
- Place of arrest and detention
- Name of person who initiated the report and heard the information and response of the suspect; and
- The report has to be signed by the detained person and the person who prepared the report.

Interrogation by the Public Prosecution shall commence within 24 hours. The General Prosecutor shall note the date and time of the interrogation in the report. The Criminal Procedures Code stipulates in Article 100 that unless the prescribed procedures for arrest, bringing before the prosecutor, and preparing the report are followed in detail, the information gathered by the police is null. The Court of Cassation has ruled that if these procedures are not followed, any statement taken from the detainee becomes null and cannot be used as evidence in court.[45]

The principle of appearing before the Public Prosecution within 24 hours of arrest also applies if the person is summoned. Articles 111 and 112 of the Criminal Procedures Code state that the General Prosecutor can initiate a detention by issuing a summoning order. If the summoned person does not follow the order, the prosecutor can issue an order for him/her to be brought before the prosecutor. If the person is brought, as opposed to summoned, the prosecution should initiate investigation within 24 hours of detention. A summoned person who turns up accordingly should be interrogated immediately. If the 24 hours period expires, the director of the prison must take the detained person himself to the General Prosecutor for questioning.

Ensuring that an arrested or summoned person appears before the prosecution within 24 hours is a very important guarantee to ensure that the arrest is lawful. The Jordanian law also includes many other guarantees to ensure lawfulness of arrest or detention. The details to be included in the arrest report as well as ensuring that there is an arrest warrant issued by a prosecutor are examples of such guarantees.

[45] Jordanian Court of Cassation ruling 2007/50, issued on 11 March 2007. Human Rights Committee, March 1996), in UN doc. *GAOR*, A/51/40 (vol. II), p. 80, para. 11.2. Office of the High Commissioner for Human Rights: "Human Rights in the Administration of Justice: a Manual on Human Rights for Judges, Prosecutors and Lawyers", Professional Training Series no. 9, Chapter 5, Section 4.9: The Right to be promptly brought before a judge or other judicial officer, p. 185. Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(15). Adopted by General Assembly resolution 43/173 of 9 December 1988. See Jordanian Court of Cassation, ruling no. 1513/2003, 4 may 2004. Report of the Committee against Torture to the General Assembly, A/50/44, 1995, Jordan, para.176.

c. Right to be informed of the reasons of arrest and detention

International Law and Jurisprudence

Article 9 (2) of the ICCPR states:

"Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

Article 63 of the Criminal Procedures Code requires that when appearing before the General Prosecutor, the arrested person must be informed of the reasons for his arrest or the charges brought against him/her.

This fundamental guarantee has been emphasised by the Court of Cassation, which ruled against some prosecutors for not observing the guarantee embodied in article 63.[46]

d. Prohibition of arbitrary arrest and detention

International law and Jurisprudence

Article 9 (1) of the ICCPR states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention."

The Human Rights Committee has stated that "arbitrariness" is not to be equated with *"against the law," but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."*

According to the UN Working Group on Arbitrary Detention, deprivation of liberty is arbitrary if a case falls into one of the following three categories:

A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);

B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR (Category II);

C) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

[46] Court of Cassation, resolution No. 483/2003 of 29 May 2003.

According to Article 113 of the Criminal Procedures Code detention is considered arbitrary, if the person spends more than 24 hours in detention before being brought before a Public Prosecutor (or questioned according to the law). The police officer responsible shall be held responsible for illegal holding of a person against his or her will, according to the Criminal Code.

Article 105 of the Criminal Procedures Code stipulates that no one shall be detained, except in places of detention specified for that. Furthermore, prison directors shall not accept anyone, unless there is an order signed by the relevant authority.

Article 21 of the Military Criminal Law (also applicable to the General Intelligence Department) provides that anyone who fails to release a person from detention after a release order has been issued, or fails to bring a person before the court at the right time, or fails to bring his/ her case before appropriate authorities without any legitimate reason shall be punished by three months to two years imprisonment.

The Police Honour Charter of 1997 imposes penalties in these cases of abuse of power:

- Arrest or detention against the law and without a judicial warrant
- Refusal or delay to bring a detained or imprisoned person before a court or judge.

Jordanian law seems to consider detention as arbitrary only in the limited cases of Category I (violations of fair trial guarantees). While the law penalises other forms of arbitrary detention, like for example detention in unlawful places of detention or detention that cannot be justified on legal grounds, these types of detention are not clearly identified as arbitrary detention by law. Furthermore, the law does not consider detention to be arbitrary, if it is related to the exercise of rights and freedoms as identified by the Working Group on Arbitrary Detention under category II.

e. Right to silence

International law and Jurisprudence

The right to remain silent is an important guarantee that goes closely with the right to presumption of innocence and the privilege against self-incrimination. Article 14 (3.g) of the ICCPR requires that:

"No one should be compelled to testify against himself or to confess guilt."

Article 63 of the Criminal Procedures Code prescribes that a detained person must be cautioned that he/she has the right to remain silent until his/her legal counsel is present. If the person refuses to appoint a lawyer, or the lawyer does not appear within 24 hours, interrogation takes place without him/her.

f. Right to promptly be brought before judicial authority

International law and Jurisprudence

Article 9 (3) of the ICCPR requires that:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

The Human Rights Committee has noted that the first sentence of article 9(3) *"is intended to bring the detention of a person charged with a criminal offence under judicial control"*, and that *Furthermore, "a failure to do so at the beginning of someone's detention, would thus lead to a continuing violation of article 9(3), until cured."*[47]

The UN Office of the High Commissioner for Human Rights notes that:

"Although the term "promptly" must, according to the jurisprudence of the Human Rights Committee, "be determined on a case-by-case-basis", the delay between the arrest of an accused and the time before he is brought before a judicial authority "should not exceed a few days"…. "In the absence of a justification for a delay of four days before bringing the author to a judicial authority", this delay violated the notion of promptness in article 9(3)…. Furthermore, a one-week delay in a capital case before the author was first brought before a judge "cannot be deemed compatible with" article 9(3)…. Afortiori, where the complainant has been held for two and a half months or more before being brought before a judge, article 9(3) has also been violated…."[48]

The Human Rights Committee has expressed concern over the possibility of renewal of detention before the person is being brought before a judge. In the case of Morocco, the Committee considered *"the period of custody during which a suspect may be held without being brought before a judge - 48 hours (renewable once) for ordinary crimes and 96 hours (renewable twice) for crimes related to terrorism - to be excessive."*[49]

The Law of the State Security Court No. 17 of 1959 allows the prosecution to hold a person for a maximum of 7 days before they are referred to the General Prosecutor from the General Intelligence Department, as opposed to the 24 hours under the Criminal Procedures Code. The law allows the General Prosecutor, who is a military prosecutor, to hold a detainee for 15 days renewable for a total of 2 months, in cases that fall under the jurisdiction of the State Security Court (Article 7).

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[47] Human Rights Committee, Communication No 248/1987, *G Campbell v Jamaica*, (March 1992) para 6.3, and Communication No 521/1992, *Kulomin v Hungary* (March 1996) para 11.2

[48] Office of the High Commissioner for Human Rights: "Human Rights in the Administration of Justice: a Manual on Human Rights for Judges, Prosecutors and Lawyers", Professional Training Series no. 9, Chapter 5, Section 4.9: The Right to be promptly brought before a judge or other judicial officer, p. 185.

[49] Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(15).

The Court of Cassation has ruled that the detained person shall be referred to the General Prosecutor as soon as possible, unless absolutely necessary. In the absence of necessity there is no reason for a person to wait until the 7 days period has expired.[50]

The Public Prosecution has the powers to investigate crimes, collects evidence, initiate action, investigation and indictment, arrest suspects and refer them to the relevant courts, pursuant to article 8 of the Criminal Procedures Code. The Public Prosecution may authorize an extension of detention without charge for repeated periods of 7 days up to a maximum of 3 months in felony cases and up to 1 month in misdemeanours cases.[51]

The detainee must then be released unless further detention is ordered by a court, on request of the prosecutor, if he determines that an extension is required for the completion of interrogation. The court can then order extensions for no more than one month each time and for a maximum period of two months. The court makes its decision after listening to the prosecution and to the detainee and/ or his lawyer.

g. Release pending trial

International law and Jurisprudence

Article 9 (3) of the ICCPR requires that

"It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

The Human Rights Committee stresses that pre-trial detention should be an exception and as short as possible.[52]

The Human Rights Committee adds

"*In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.*[53] *This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal.*[54] *All stages, whether in first instance or on appeal must take place "without undue delay*."[55]

[50] General Assembly resolution 43/173 of 9 December 1988. See Jordanian Court of Cassation, ruling no. 1513/2003, 4 may 2004.
[51] Article 114 of the Criminal Procedures Code
[52] Human Rights Committee, Genera Comment 8: Right to liberty and security of persons, 30 June 1982, para. 6.
[53] Communication No. 818/1998, *Sextus v. Trinidad and Tobago*, para. 7.2.
[54] Communications No. 1089/2002, *Rouse v. Philippines*, para.7.4; No. 1085/2002, *Taright, Touadi, Remli and Yousfi v. Algeria*, para. 8.5.
[55] Human Rights Committee, General Comment 32, para. 35.

Jordanian law allows courts and the General Prosecutor to release a person on bail, depending on various factors, including whether the case is at the investigation or the trial stage, cf. articles 121-123 of the Criminal Procedures Code. With the most recent amendment of the Criminal Procedures Code, not only the court, but also the General Prosecutor may release a person on bail in cases that would be punishable by the death penalty, or life sentence, or life sentence with hard labour.

h. Administrative detention

International Law and Jurisprudence

Administrative detention is not outlawed by international law, but the safeguards in ICCRP article 9(1) also apply to administrative detention.[56]

Some parts of Article 9 of the ICCPR mainly relate to persons against whom charges have been brought and are awaiting trial. However, Articles 9 (1) of the ICCPR states "*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention"*; and Article 9 (4) states *"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful"*. These provisions apply to all cases of detention including administrative detention.

The Special Rapporteur on Torture raises concern that *"[a]dministrative detention often puts detainees beyond judicial control."* He recommends that *"persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention."*[57]

The Human Rights Committee has expressed concern over cases when *"a person may be placed under administrative arrest for up to 15 days, and that such detention is not subject to judicial supervision" It recommended that measures should be taken to ensure that administrative detention is subject to the same right to challenge the lawfulness of the detention as ought to pertain to other forms of detention."*[58]

Article 3 of the Law of Prevention of Crimes of 1954 gives the Governor the authority to conduct administrative detention by issuing summoning orders to anyone suspected of having committed a crime or deemed to be a danger to society, on basis of information received from any source. The law requires the governor to investigate the validity of the

[56] UN Human Rights Committee, General Comment 8 – Right to liberty and security of persons (article 9), adopted on 30 June 1982, para. 1.
[57] General Recommendations of the Special Rapporteur on torture, (E/CN.4/2003/68), para. 26 (h).
[58] Human Rights Committee: Concluding Observations: Tajikistan, A/60/40 vol. I, (2005) 70 at para. 92(13).

claim and information.[59] If there is reason to believe that the claim is valid, the Governor can release the person under an undertaking, or a fine, or put him under the supervision of the police for a period up to a year (article 12),[60] or to refer the person to trial within a week (Article 4). Pending trial, the person is kept in detention. The law provides the Governor with the authority to initiate investigation into crimes and to detain although it is not a judicial authority.

The Jordanian courts have ruled that the authority of the governor to summon is limited to those cases specified by law, and that the governor may not maintain the person or take measures so as to put the person under the supervision of the police, unless a thorough investigation into the case is carried out.[61] The Jordanian court also requires that the summoning and preventative measures should follow the procedures in the Criminal Procedures Code, and should show clear reasons for this.[62] Prior involvement in crime is not an adequate ground for preventative measures, unless there is ground to believe that the person is about to commit a crime or is a danger to the public.[63]

In ordinary cases, the detained person shall appear before a public prosecutor within 24 hours, and has to be brought before court for trial either 2 months or 6 months, depending on the type of case. However, persons held in administrative detention in Jordan lack these fundamental safeguards.

i. Juveniles in detention

International Law and Jurisprudence

Article 19(b) of the ICCPR states that

"*Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*"

Article 37 of the CRC provides

"*every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so*".

[59] The governor's authority to issue arrest orders is also used to put women in what is called "protective" or "preventative" detention in order to protect them against what is called "crimes of honour". The Special Raporteur on Torture, referring to cases of prolonged detention in these cases, states that "depriving innocent women and girls of their liberty for as long as 14 years can only be qualified as inhuman treatment, and is highly discriminatory." Report of Special Rapporteur on Torture: Mission to Jordan, para. 39.

[60] Special Rapporteur on Torture in his report on Jordan (FN. 4) states that law on Crime Prevention, 1954, which allows provincial governors to administratively detain, without charge or trial, anyone suspected of committing a crime or deemed to be a danger to society for a period of one year, indefinitely renewable."

[61] High Court of Justice, decision 558/1999, 20 January 2000; High Court of Justice, decision 315/2000, 31 October 2000.

[62] Published on Page 1350 of the Bar Association magazine issue published on 1 January 2001.

[63] See High Court of Justice, 479/2005, 30 November 2005.

In its General Comment 10 on Children's rights in juvenile justice, the Committee on the Rights of the Child recommends that States should increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.[64]

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) require in Rule 17 that

"the detention of children before trial shall be avoided to the extent possible and limited to exceptional circumstances."

The Juvenile Law No. 24 of 1968 sets the age of criminal responsibility at 7 years. It provides for many rights of detained juveniles (any person between the age of 7 and 18.[65] For example, the law considers juvenile cases as urgent cases (Article 5), does not allow taking into account the juvenile's precedents in the proceedings and ruling (Article 6), prohibits and criminalizes the publication of details of trials of juveniles, including names, pictures and any such details. According to Article 3 of the Juvenile Law, it is prohibited to place restraints on a juvenile, unless he/she demonstrates aggression that justifies that. Article 3 also requires the separation of juveniles from accused or sentenced adults. Article 4 requires that juveniles can be detained only after a judicial order and shall be held in special place of detention. Trials of juveniles are not public, and should happen behind closed doors. Only those directly related to the juvenile or the case, including family, lawyer, and behaviour supervisor may attend the trial (Article 10).

A special juvenile court is created by the law and empowers courts of first instance to sit as juvenile court. Juveniles can be brought before adult courts if the case is linked to another adult, but the proceedings related to the juvenile are governed by the Juvenile Law. Interrogation of the juvenile is allowed only in the presence of one of his/her parents, guardians, or lawyer. If it is not possible to get any of these, interrogation is allowed only in the presence of behaviour supervisor (Article 15). Release with certainty to appear for interrogation or court is mandatory in all misdemeanours (Article 16). The law reduces the punishments, depending on the age of the juvenile and the type of case.

While welcoming the Juvenile Justice Reform Programme in Jordan, the Committee on the Rights of the Child has noted with concern the very low age of criminal responsibility, namely 7 years. The Committee has recommended Jordan to "urgently raise the minimum age of criminal responsibility to an internationally acceptable level". Finally, the Committee has expressed concern that in Jordan, deprivation of liberty is not used as a last resort.[66]

[64] Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, (CRC/C/GC/10), 25 April 2007, para 32.

[65] It should be note that in the proposal for amending the Juvenile Law, it is suggested to raise the age of criminal responsibility to 12 years.

[66] Committee on the Rights of the Child, Concluding Observations: Jordan, (CRC/C/JOR/CO/3), 29 September 2006, para. 94-95.

1.5 Safeguards against torture and other ill-treatment

a. Access to the outside world

International Law and Jurisprudence

Access to the outside world is one of the most important safeguards against enforced disappearance, arbitrary detention, torture and ill-treatment. This has been emphasized repeatedly by many UN human rights bodies.

Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[67] states:

"A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."

Principle 15 stipulates that:

"[…] communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."

The right to notify one's family applies whenever a person is moved from one place of detention to another. Principle 16 of the Body of Principles require that

Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."

The Committee against Torture stresses the importance of legal guarantees that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families, at all stages of detention. [68]

The Human Rights Committee has repeatedly stressed that all arrested persons should have an opportunity to immediately inform the family about the arrest and place of detention.[69]

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[67] Adopted by General Assembly resolution 43/173 of 9 December 1988.

[68] See Yemen, CAT, A/59/44 (2003) 64 at paras. 146 (c).

[69] See for example recommendations of the Human Rights Committee on Thailand, A/60/40 vol. I (2005) 83 at para. 95(15).

Article 66(1) of the Criminal Procedures Code allows the public prosecutors to prohibit all contact with a detainee for renewable periods of up to 10 days at a time. The law does not specify a maximum period for this prohibition of contact with the outside world.

Similarly, Article 38 of the Rehabilitation and Reform Centres Law no. 9 of 2004 allows the Director of a prison to impose a ban on visits for up to 30 days, which can be repeated for another 30 days period after a gap of one week, as a disciplinary measure.

The prolonged period before a person under arrest or detention is allowed to contact his or her family is not consistent with international law since it may not exceed a few days.

Article 13 of the Law of Reform and Rehabilitation Centres provides many guarantees for the detainee to have access to the outside world, which applies to all detainees in the Reform and Rehabilitation Centres, including pre-trial detainees and prisoners. Such rights include contact with the lawyer and meeting with the lawyer as necessary; informing his or her family of the place of detention; writing letters to family or friends; and receiving regular visits from lawyers, family or others, unless there is a decision issued by the prison director not to have a visit.[70] Foreign nationals also have the right to contact with representatives of their country. The law also provides in Article 15 that pregnant detained women should be treated appropriately in accordance with the instructions of the doctor. It is prohibited for prison officers to enter places where persons in solitary confinement are held, unless accompanied by another person (Article 16), and prison director should release a person upon the expiry of his sentence or detention period (Article 19).

b. The right to legal counsel

International Law and Jurisprudence

Article 14 (3 –b) of the ICCPR states:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:[…]
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

The Basic Principles on the Role of Lawyers[71] stipulates:

- *"All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." (Principle 1)*

[70] See article 13 (3-5) of the Law of Reform and Rehabilitation Centers no. 9 of 2004. The law allows for the imposition of ban on visits for up to 30 days, which can be repeated for another 30 days period after a gap of one week (See article 38 (b) of the law).

[71] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

- *"Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence." (Principle 5)*
- *"Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." (Principle 8)*

The Committee against Torture has expressed its concern over restrictions on the right of an arrested person to have counsel present during interrogation. The Committee recommends that all necessary legal and administrative guarantees should be taken to ensure that restrictions to legal counsel will not be misused, that it is used only in the case of very serious crimes, and that it is always authorized by a judge.[72]

The Special Rapporteur on Torture has stated that

"In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association."[73]

Further, the Special Rapporteur on Torture recommends that

"provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. In accordance with the Basic Principles on the Role of Lawyers, all persons arrested or detained should be informed of their right to be assisted by a lawyer of their choice or a State-appointed lawyer able to provide effective legal assistance."[74]

The Jordanian law expressly recognizes the right to access a lawyer after the person appears before a prosecutor. However, an arrested person does not have the right to a lawyer from the moment of arrest, and especially during the initial stage between arrest and being presented to the prosecutor.

Article 63 (2) of the Criminal Procedures Code provides that when a person appears before a General Prosecutor and after his/her identity is ascertained, he/she is told the charges against him/her and are asked to respond to that, after being informed that he/she has the right not to respond, except in the presence of his or her lawyer.

Article 66(2) of the Criminal Procedures Code provides a crucial guarantee against torture and other ill-treatment stating that while the public prosecutor may prohibit contact between the detainee and the outside world, this does not apply to lawyers.

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[72] Austria CAT, A/61/44 (2005) para. 26 (11)

[73] General Recommendations of the Special Rapporteur on torture, contained in Report of the Special Rapporteur on Torture, E/CN.4/2003/68, para. 26 (g).

[74] General Recommendations of the Special Rapporteur on Torture, (E/CN.4/2003/68), para. 26 (g).

Contact with the lawyer may take place at any time and without any supervision.[75]

Article 64 of the Criminal Procedures Code also allows the legal representative of the defendant to be present during interrogation, except for the interviews of witnesses. The lawyer is allowed to see the interrogation information that was obtained in his/her non-attendance. Article 65 furthermore allows the lawyer to speak during interrogation after receiving permission from interrogator. If such permission is not received, the lawyer is allowed to submit a memorandum of his or her remarks to be included in the file.

Notwithstanding these safeguards, the law also imposes certain restrictions with regard to the lawyer. Article 64 allows the General Prosecutor to restrict lawyers from being present during interrogation, if this is necessary in order to speed up the interrogation or to reveal the truth. His decision is not subject to review. This decision is taken by the prosecutor himself and not by an independent authority, such as a judge. However, at the end of such interrogation, the concerned parties have the right to view the information. Articles 63 and 64 of the Code of Criminal Procedure also allow the prosecution to initiate the interrogation without the presence of the lawyer and before the expiration of the 24 hours when the detainee is still at the hands of the police and before he normally appears before the prosecutor, in case of risk of loss of evidence and urgency.

In conclusion, a detained person has the right to contact his/her lawyer as a general rule, but the law provides for many exceptions that are authorized by the General Prosecutor, and not by an independent judicial authority as recommended under international law.

c. Medical examination

International Law and Jurisprudence

Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[76] states that

"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."

The Special Rapporteur on Torture recommends that

"*at the time of arrest, a person should undergo a medical inspection, and that medical inspections should be repeated regularly and should be compulsory upon*

[75] Prior to an amendment in 2001, Article 66(2) did specify that this prohibition did not apply to lawyers, but with the critical qualifier "unless the public prosecutor determines otherwise". The 2001 amendments then abolished that qualifying clause, which therefore means that lawyers should have the right to contact the detainee at any time without supervision.

[76] Adopted by General Assembly resolution 43/173 of 9 December 1988.

transfer to another place of detention."[77]

Rule 12 of the Standard Minimum Rules for the Treatment of Prisoners also recommends that the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary.

Several bodies of the UN have repeatedly recommended that systematic medical examination should be made at the time of the person is taken into custody and at the end of detention. There should also be free access to doctors at all stages of detention.[78]

A medical examination is supposed to be carried out when a person is referred to a rehabilitation and reform centre (a prison), before he/she leaves the centre, and when he/she is transferred to another centre, before and after being put in solitary confinement, and if a judicial body or the centre's director or the detainee requests that (Article 24 of the Law of Reform and Rehabilitation Centres).

The Jordanian law requires medical examination and details recorded when a person is referred to a rehabilitation and reform centre. It seems that the law does not require a medical examination upon arrest as well as before and after interrogation, or the documentation of the details of the health condition of the detainee in the police report. This would otherwise be a very important step to ensure that torture and other ill-treatment does not take place during arrest or interrogation.

d. Prohibition of use of evidence extracted under torture

International Law and Jurisprudence

Article 15 of the Convention against Torture requires 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."

As provided earlier, article 100 of the Criminal Procedures Code details procedures for arrest. Article 100 (1) provides that unless these procedures are followed, the information obtained by the police, such as the confession, is null.

Similarly, Article 63 (4) of the Criminal Procedures Code requires that unless the procedures are followed in the questioning and procedures by the General Prosecutor when a person against whom a complaint has been made, the statement obtained is null.

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[77] Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, (A/57/173), para. 20.

[78] See for example Georgia, ICCPR, A/57/40 vol. I (2002) 53 at para 8 (d); Philippines, ICCPR, A/59/40 vol. I (2003) 15 at para. 63(12); Thailand, ICCPR, A/60/40 vol. I (2005) 83 at para. 95(15); Russian Federation, CAT, A/57/44 (2002) 42 at para. 94 (b); and Albania, CAT, A/60/44 (2005) 34 at para 83 (m).

Furthermore, article 159 of the Criminal Procedures Code provides that any statement taken from a detained person, accused or suspect, without the presence of the General Prosecution can be accepted only if the public prosecution provides information about conditions under which that statement was taken. The Court has to be convinced that the statement was provided voluntarily.

Although the law provides for situations where evidence could be deemed null for procedural errors, the Jordanian law is not consistent with Convention against Torture, since it does not clearly and expressly prohibit the use of evidence that may have been extracted under torture in any proceedings against the detainee.

e. Regular visits to places of detention by independent bodies

International Law and Jurisprudence

Article 2 of UNCAT requires state parties to

"take effective legislative, administrative, judicial and other measures to prevent acts of torture."

The Committee against Torture has stated that this applies equally to preventing ill-treatment (Article 16 of the UNCAT), and that the obligation to prevent torture and ill-treatment are indivisible.[79]

Regular, independent visits to places of detention are not explicitly prescribed in the Convention against Torture. However, the Committee against Torture emphasizes that the need to establish impartial mechanisms for inspection and visits to places of detention and confinement apply to all persons deprived of their liberty.[80]

The objective of the Optional Protocol to Convention against Torture[81] is to

"establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."[82]

Regular visits to places of detention is one the most important safeguards against torture and ill-treatment. The UN Special Rapporteur on Torture has explained the importance of preventive visits as follows:

"The very fact that national or international experts have the power to inspect

[79] Committee against Torture, General Comment 2, para. 3.
[80] Committee against Torture, General Comment 2, para. 13.
[81] OPCAT, General Assembly resolution A/Res/57/199, 18 December 2002, available at: http://www2.ohchr.org/english/law/cat-one.htm
[82] Article 1 of the Optional Protocol to the UN Convention aganst Torture.

every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private and to carry out medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention. ... Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed."[83]

Article 3 of the OPCAT provides that state parties shall set up, maintain or designate at the national level visiting bodies to places of detention.

Article 16 of the Criminal Procedures Code provides that the General Prosecutor is responsible for prisons and detention centres in general. The head of the General Prosecution, the Public Prosecutor, heads of the courts of first instance and appeal have the right to visit places of detention under their jurisdiction so as to ensure that no one is held illegally. They can review files and contact any detainee or prisoner and hear from them any complaint that he/she might have.[84] The General Prosecutor or the first instance judge, in areas where there are no prosecutor, should visit places of detention at least once a month (Article 106).

The Law of Rehabilitation and Reform Centres requires directors of these centres to submit regular reports every three months to the Minister of Interior about the situation of the detention centre or prison and prisoners, services provided to them and any recommendations he/ she has. The Minister, or his delegate, can inspect places of detention to ensure that the law is respected and implemented. Minister of Justice, heads of courts of the different levels as well as general prosecutors can also inspect places of detention so as to ensure that no one is being held illegally; follow up on any complaint received and ensure appropriate implementation of court decisions.

While the provisions in the law providing for the Public Prosecutors to inspect places of detention are important, they are not sufficient. The provisions for visits and inspections by judges are one step in the right direction. However, there is no provision in the Criminal Procedures Code providing for independent inspections of places of detention.

Under the Law no. 51 of 2006 on the National Center for Human Rights (the National Human Rights Institute of Jordan)[85], this institution has the powers to conduct visits to certain places of deprivation of liberty pursuant to article 10:

"The Center has the right to:

[83] UN Special Rapporteur on Torture, 2006, UN Doc. A/61/259 (14 August 2006), paragraph 72.

[84] This also applies in the case of State Security Court and the military prosecutor attached to it. See below.

[85] The National Center for Human Rights of Jordan was established by Royal Decree/provisional Law on 19 December 2002, under article 94(1) of the Constitution of Jordan and the decision of the Council of Ministers (the Executive) of 3 December 2002. The law has since been made permanent: Law no. 51 of 2006 on the National Center for Human Rights: http://www.nchr.org.jo/pages.php?menu_id=31

(A) Visit Reform and Rehabilitation Centers, detention centers and juvenile care homes and shall do so according to proper rules […]."

While such visits are envisaged to be preventive in nature, the Law on the National Center for Human Rights does not provide the legal basis for such visits to be fully independent as required under the Optional Protocol to the Convention against Torture (to which Jordan is not yet a State party).[86] In fact, the National Center for Human Rights (NCHR) may be accompanied by the Public Security Directorate (PSD) on visits to places of detention following the Memorandum of Understanding concluded between the PSD and the NCHR in March 2009 where the parties agree to:

"[…] Support the control role of the National Center for Human Rights and agree on the mechanisms of control on the Correction and Rehabilitation Centers, temporary detention sections, including the temporal juvenile detention centers in accordance with applicable principles."

For further details on the monitoring of the National Center for Human Rights and the National Monitoring Team under the auspices of the NCHR, please refer to chapter 3.

1.6 Investigation of acts of torture and ill-treatment

a. Right to complain, duty to investigate

International law and jurisprudence

Article 12 of UNCAT requires States parties to

"ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."
Article 13 adds:

Article 13 of UNCAT adds

"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."

The Committee against Torture stresses that one of the basic guarantees against torture

[86] According to Article 18 of the OPCAT, the States parties shall guarantee the functional independence of the national preventive mechanisms as well as independence of their personnel.

is ensuring the availability of "judicial and other remedies that will allow [detainees] to have their complaints promptly and impartially examined …."[87]

The Human Rights Committee has emphasised that States

"… should also ensure that all allegations of torture are effectively investigated by an independent authority,"[88] *and that states "should ensure that independent bodies with authority to receive and investigate effectively all complaints of excessive use of force and other abuses of power by the police are established…. The powers of such bodies should be sufficient to ensure that those responsible are brought to justice or, as appropriate, are subject to disciplinary sanctions sufficient to deter future abuses and that the victims are adequately compensated (article 7 of the Covenant)."*[89]

The Special Rapporteur on Torture recommends that when a detainee or relative or lawyer lodges a torture complaint,

"an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings."[90]

The Special Rapporteur on Torture furthermore stresses that

"[w]here allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment."[91]

Right to complain and duty to report

Article 107 of Criminal Procedures Code provides any detained or imprisoned person with the right to submit a written or oral complaint to the prison director and ask for it to be submitted to the public prosecution. The director must accept it, record it in a file especially intended for that and transmit it immediately. The Department of Public Prosecution must register the complaint in an investigation report and, if necessary, refer the person to a forensic doctor.

Article 108 of the same Code provides that anyone who knows of a person who is imprisoned or detained illegally is under the obligation to inform the Public Prosecution

[87] Committee against Torture, General Comment 2, para. 13.
[88] Human Rights Committee: Concluding Observations: Ukraine, A/57/40 vol. I (2002) 32 at para 15.
[89] Human Rights Committee: Concluding Observations, Switzerland, A/57/40 vol. I (2002) 44 at para 11. also in Azerbaijan, ICCPR, A/57/40 vol. I (2002) 47 at para 9.
[90] General Recommendations of the Special Rapporteur on torture, (E/CN.4/2003/68), para. 26 (k).
See also the UN Special Rapporteur recommendation on Jordan, A/HRC/4/33/Add.3, 5 January 2007, para. 72 (n)
[91] General Recommendations of the Special Rapporteur on torture, E/CN.4/2003/68, para. 26. (g).

office, which in turn should investigate the matter and order release. If they fail to do so they are considered accomplices in the crime of unlawful deprivation of liberty (punishable by articles 178 and 182 of the Criminal Code). Article 25 requires every authority and its employees, who are carrying out official duties and who gain knowledge that a felony or misdemeanour is taking place, to inform the prosecutor.

Investigation of the police

According to Article 80 of Public Security Law, the duties of the general prosecution of the PSD include investigating cases against members of the Public Security Department. This is to be carried out by head of the legal department, his deputies, general prosecutors and investigation teams. The head of the legal department appoints the body to carry out prosecution. According to Article 82 of the law, the Regional Commander or head of unit of the accused has the authority to form the investigation team. He himself has the authority to make the decision in cases of minor offences. The head of the legal department can also take decisions in the same kind of cases.

The current system under which police officials suspected of having committed torture or ill-treatment are investigated and prosecuted by the Public Security Directorate is currently being reviewed by the Ministry of Justice. Possibilities for transferring these powers from the PSD prosecution (Ministry of the Interior) to the Public Prosecution (Ministry of Justice) are being considered so as to ensure independence and impartiality.

Investigation of the intelligence

In the case related of the officers of the General Intelligence Department (GID), they are to be investigated and tried under the Military Criminal Procedures Code where a military prosecutor has the jurisdiction to bring charges and proceed with trials. In this case, the independence of the system is questionable since both the GID prosecutors and the officers to be brought to trial are all military and under the same department.

It is not clear from the law in all these cases what happens with the official who is suspected or accused of torture or ill-treatment. For example, the law does not require clearly that the suspected or accused person of torture or ill-treatment must be suspended from duty until the end of the investigation. This is particularly important since the system of detention in Jordan allows detainees to be held in the same place where they are interrogated and be in contact with the same persons who interrogated them and may be involved in inflicting torture. This might cause reprisals against anyone who may file such complaints or a at least causing chilling effect fearing such reprisals.

b. Redress and reparation

International Law and Jurisprudence

Article 14 of the Convention against Torture 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 torture, his dependants shall be entitled to compensation."

Article 9 (5) of the ICCPR provides that

"Anyone who has been the victim of unlawful arrest or detention shall have the enforceable right to compensation."

The UN Special Rapporteur on Torture states that Article 14 of the Convention against Torture provides for right to victim to remedy and that this

"should be interpreted in light of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."[92]

These Basic Principles and Guidelines require adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice. It states in Principle 11 that:

"Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:(a) Equal and effective access to justice; (b) Adeququate, effective and prompt reparation for harm suffered;(c) Access to relevant information concerning violations and reparation mechanisms." The Principles provide that the forms of Reparation to be provided include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."[93]

Jordanian law does not grant victims of torture an explicit the right to compensation. However, victims of torture may pursue private claims following a court decision in their favour. According to article 256 of the Civil Code, the party responsible for damage of any kind, even if he lacks capacity, must make restitution for the damage caused.

[92] Report of the Special Rapporteur on Torture, A/HRC/4/33, 15 January 2007, para. 61.

[93] The details and explanation of each of the elements of reparation is provided in Principles 19-23 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The Court of Cassation has recognised the right to compensation for damage to victims of torture and ill-treatment and ordered the state treasury to pay such compensation.[94] Similarly, the Supreme Court of Justice ruled in favour of a right to compensation for unlawful detention under the Crime Prevention Law.[95] However, such rulings cannot be interpreted as establishing a general right to compensation for the damage suffered by individuals as a result of torture, ill-treatment or unlawful detention.

In conclusion, the penal legislation does not oblige the state to provide compensation or other forms of reparation for acts of torture or other forms of miscarriage of justice.

c. Punishing acts of torture

International Law and Jurisprudence

Article 4 of UNCAT requires States Party to

"1. … 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. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

The Committee against Torture has not specified a minimum penalty that would appropriately reflect the gravity of the crime of torture. However, through thorough analysis of the views expressed by individual Committee members, one legal scholars has concluded that

"a custodial sentence of between six and twenty years will generally be considered appropriate."[96]

As mentioned earlier, torture is punishable pursuant to article 208 of the Criminal Code.

According to article 208(1) of Jordan's Criminal Code, the crime of torture shall be punishable by imprisonment from 6 months to 3 years. The Criminal Code of Jordan categorises the crime of torture as a misdemeanour, cf. article 15 on penalties for misdemeanours, and not as a felony, cf. article 14 of the Criminal Code. The penalty imposed for acts of torture does not reflect the severity of the crime, and it does therefore not comply with the requirements of article 4(2) of the Convention against Torture.

Article 208(3) further prescribes that if torture causes illness or injuries, the punishment shall be temporary hard labour.[97] The minimum sentence prescribed for temporary hard

[94] Court of Cassation decision no. 787/1999 of 23 October 1999
[95] Supreme Court of Justice decision no. 30/1997 of 27 May 1997.
[96] Chris Ingelse, *The UN Committee against Torture: An Assessment*, Kluwer Law International, 2001, p. 342, cited in Torture in International Law: A guide to jurisprudence, Association for the Prevention of Torture and Center for Justice and International Law, 2008, p. 19.
[97] According to article 18, the criminal penalty of "hard labour" is defined as deployment of the convicted

labour is 3 years with a maximum of 15 years, cf. article 20 of the Criminal Code. The severity of this penalty comes closer to reflecting the serious nature of the crime of torture, although "lighter sentences" may not be compatible with the Convention.

The UN Special Rapporteur on Torture, has expressed concern that torture in Jordan

> "*is not treated as a significant crime but rather as a misdemeanour, and is not subject to penalties appropriate to its gravity*."[98]

The Special Rapporteur has furthermore noted that a public official sentenced for a misdemeanour is not automatically dismissed, according to article 37 of the Public Security Law, while if a public official is convicted for having committed a felony he or she faces dismissal from service.[99]

The Police Honour Charter of 2007,[100] which came to complement Public Security Law No. 38 of 1965 (see above), provides for some improvements of the national legislation. The Police Honour Charter regulates the professional behaviour of police officers. The law imposes punishment (as defined in the Public Security Law article 37) in any case of violations of personal freedoms, including arrest or detention against the law; and extraction of confession or information by use of violence and coercion (Provision 15). Provision 35 requires officers to behave courteously to the general public. Article 37 (8) of the Public Security Law imposes penalties, if harm is caused by an illegal use of power. Such punishment consists of lowering the rank of the concerned officer, withholding the salary of no more than two months, or detention or imprisonment for not more than two months.

In conclusion, the penalties under the Police Honour Charter, which consist of disciplinary measures and exceptionally light prison sentences, cannot be considered as appropriate penalties, which reflect the gravity of the crime, under international law.

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offender to hard labour suitable to his/her state of health, age, whether inside or outside the prison.

[98] Report of the Special Rapporteur on Torture: Mission to Jordan, paras. 13, 15 and 66.

[99] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Jordan, (A/HRC/4/33/Add.3), 3 January 2007, paras. 13, 15 and 66.

[100] Issued by the Public Security Directorate.