



Report

**To the UN committee against torture in its 56th
session**

**On the convention against torture and other
cruel, inhuman or degrading treatment or
Punishment**

Adaleh center for human rights studies

THE HASHMITE KINGDOM OF JORDAN

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1.1: Introduction

Adaleh center for human rights studies is a non-governmental organization aims to support human rights principles and analyzing the international law for human rights difficulties and to enhance cultural dialogues within the international conventions and treaties of human rights and to study and search human rights status in the Arabic world to make a change in the community and spread human rights culture.

The center focuses on many areas in its work, such as:

- Monitor human rights violations specially torture cases.
- Visiting detention places and providing legal assistance to the torture / human rights violations' victims.
- Organizing human rights and preventing torture and fair trial conferences and courses and workshops.
- Making researches and studies on the practical application of the international standards of human rights on the national levels.

On 2006 **The National Team to Combat Torture** was founded by the center to be a monitoring mechanism to execute all activities and monitor the international standards related to preventing torture and cruel inhuman or degrading treatment or punishment related to torture and cruel inhuman or degrading treatment or punishment, and to make Jordan a part of the international standards on fair trial and supporting the torture victims' right to fairness and compensation.

And the center has followed many cases on torture and mistreatment and monitoring detention centers and trails to watch the standards of fair trials.

2.1: legislations on preventing torture

a) The Jordanian constitution

Torture and other forms of ill-treatment or punishment has been prohibited by the constitution in the last amendments, which makes a true confession and an important acceptance in the highest level of legislations in Jordan of torture as a serious crime and human rights abuse, where the Jordanian constitution year of 2011 in article 8/2 states that: "everyone gets arrested or detained must be treated in away to maintain human dignity and should not be tortured in any way or hurt physically nor mentally and should not be held in places other than the legal places and anything he says under torture or any harm or threat will not be taken under consideration".

Unfortunately, this constitutional article wasn't reflected in the criminal and penal codes, there are still lots of contradictions between these laws and the constitution.

b) Penal code:

- **article 208 of Jordanian penal code:**

Article 208 has been amended in the code number (9) the year of 2014 where it states:

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 labor.

4. Notwithstanding Articles (45) and (100) of this Law, the Court can't stop the execution of the final judgment in this crimes nor take extenuating circumstances.

- Although the definition of torture in the convention has been mentioned in the penal code and the minimum punishment has been increased from 3 to 6 months, but it's still a violation to international standards since this right is an absolute right and violating it makes it a serious crime.

- this amendment is below the expectation as it considered the torture acts as a Misdemeanor not as a serious crime in addition this punishment is applicable to the amnesty / private pardon which is not fully in line with Jordan's 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.

- **article 308 of the penal code**

This article is a serious violation of Jordanian women/ girls' rights where article 308 allows marrying the rapist to escape punishment in rape crimes.

Although many legal experts and civil society institutions specially **Jordanian Women Movement** are asking to cancel the exculpatory provision in article 308 of the Penal Code and to ensure that a rapist does not escape punishment by marrying his victim, as many international judiciary entities has considered rape as a form of torture as a violation to girls' / women rights and help criminals to get away of punishment which needs a second look in this article as a matter of urgency.

c) Civil code

Jordanian civil code does not include explicit provisions on the right of torture victims to fair and adequate compensation for damages caused by torture although it can be ruled by articles 256, 266, 267 , as these articles demand the perpetrators for compensating the victims but didn't mention the state liability to compensate and that the civil code is not compatible with article 14 of the convention on the right to compensation and any

treatment and social rehabilitation services, including medical and psycho-social rehabilitation, provided to these victims.

- Domestic legislations don't admit the state liability to compensate victims for torture and ill-treatment except article 5 of Government Lawsuits Code that states the conditions to file a lawsuit of compensation from a criminal act made by any of their employees.

- And the long trial procedures and expenses to demand the compensation is an obstacle on achieving fairness and compensation to torture victims considering the financial level of the victims.

d) Criminal Procedure Code:

There are many articles in the code that guarantees preventing torture in the primary investigation as in article 100 and 63 and 64 and 159 of it.

In review, article 100 states that the person under investigation must be presented to the prosecutor within 24 hours, but if this stipulation wasn't applied courts will not issue an order of nullification for preaching this rule.

The same with articles 64, 63, 159 didn't mention the importance of the lawyer presence in the primary investigation and before the prosecutor as a stipulation, which need more legal articles that allows detainees to contact their lawyers and families to be with them in the primary investigation and to have the right to see his own doctor to make sure the fairness of procedures.

e) Bar association code :

The bar association code was amended in law number 25 years of 2014, where article 6 states:

The lawyers are court officers who have taken a career for them to provide judicial and legal assistance on request for a fee which includes:

- 1) Power of attorney for third parties to claim rights and defend them.
 - A. Before all of the courts of different kinds and levels, except for the Islamic courts.
 - B. The arbitrators and the public prosecutor, referees and administrators of the judicial police departments.
 - C. All the administrative bodies and public and private institutions.
- 2) Forming contracts and procedures required.
- 3) To provide Legal consultation.

As article 32 states:

The attorney and his trainee lawyer can keep track of all transactions before judicial and administrative references and are jointly and severally liable to attend the investigations before the police and public prosecutors.

Although there is a permit to attend all investigation procedures by the attorney, but in real practical life the attorneys are forbidden to proceed with investigation neither before police stations nor before the drug abuse control department, where someone can be held under custody for several days without knowing where he is, throwing away all the legal articles and rules that allows it with no reasonable reason.

f) The Prevention of Terrorism Act :

The Prevention of Terrorism Act and its amendments has a vague and overly broad definition of “terrorist activities” to include actions of trust passing and privacy and using web network as a violation for many rights where article 4 of it allowed monitoring places and suspicions movements and monitoring the calls and arrest Perpetrators.

g) Crime Prevention Act:

The Crime Prevention Act of 1954 provides for administrative governors affiliated with the Ministry of Interior to detain any person suspected of perpetrating a crime or any person considered a threat to the community, which considers to be violation to freedom and personal safety and the presumption of innocence, as the orders from administrative governors are the legal base for police to detain people for a long time without presenting them to courts, although we can appeal the arrest decision before the administrative court but it have to be filed from a 5 years experienced attorney which asks for expenses that detainers can't afford the money expenses where we should reconsider about this code for real specially that the numbers of detainers are increasing in amount of 12410 in 2012 to increase to 12766 in 2013 and it increased in 2014 to get to 20216 according to the Eleventh annual report of National Center for Human Rights about human rights situation in Jordan.

2.1 Impunity for acts of torture and ill-treatment

Although there many torture complains at the **National Center for Human Rights** and civic society foundation in this area, nevertheless till this moment no investigation caused presenting the case to component court as investigators always describe the act in deferent legal descriptions such as injury or threat not obeying orders.

One of the cases that was presented to the Special Police Court related to **Sultan Khatatbeh** death where **Adaleh center for human rights studies** through its attorneys followed the case, although article 7 of the military criminal court procedure code states that hearing sessions shall be in continues without any postponing for more than 48 hours unless it's necessary with explanation otherwise this article is not applicable.

It's a violation of the most important rule in CAT convention to investigate as an urgent matter in torture cases according to article 13.

The number of the torture and ill-treatment complaints that was registered within the torture cases files for the years of 2013 _ 2014 _ 2015 according to the prosecutors records in the ministry of justice, where it reached the total numbers to 33 cases, with no statistical data in the number of cases were presented to the component court or was issued an order in it, according to the annex 1 attached in the report.

There isn't a serious effort to pursue Perpetrators, as the court issues orders of nullification of the testimonies and evidence without any legal punishment for Perpetrators.

There must be impartial and effective investigations into all allegations of torture and ill-treatment of convicted prisoners and detainees and to bring to justice law enforcement, security, intelligence, and prison officials, who carried out, ordered or acquiesced in such practices, In particular, such investigations should be undertaken by an independent body.

Medical examination could help the Perpetrators to escape punishment which is happening in most cases, when the doctor makes an examination on the detainees without injuries' documentation and record away from police officers where these reports must be delivered to the independent investigation entity, also there are some cases of assault on doctors caused by police members and some cases of not documenting torture allegations in hospitals or in correctional and rehabilitation centers.

2.2: Refugee special situations

The hard conditions around Jordan especially with the Syrian situation where there is an increase of refugee's numbers according to the official statistics there are more than a million and two hundred thousand Syrian refugees, although there are big efforts done by the Jordanian government and the OHCHR, nevertheless there are great difficulties facing Syrian refugees especially what was mentioned in the media and journalists reports of deportation orders issued by administrative governors to Syrian refugees which were suspects on committing crimes without representing them before courts to get judgment which is a big violation for article 3/1 of CAT convention which states: Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment.

2.3: Withdrawals of nationality

There is still withdrawal of nationality from its nationals of Palestinian origin based on **Disengagement decision** and not issuing clear regulations for the withdrawal cases, so the only base is the decision which has suspicion all over it.

And we have to point to the legal or constitutional need to reform the privet committee to study the application of nationalities with impartial experts to look into complains of the illegal withdrawal of nationalities.

In the other hand, there must be activation to the committee to study the applications of residence in north desert to find a solution for these people.

2.4: Death penalty

- Jordan started death penalty to eleven prisoner on 21/12/2014 after it was on hold since 2006 which is a big hold off on the human rights track considering its crucial penalty and a huge violation to human right to life, so the government must take a second look before

executing death penalty because it's against their liability to the international conventions of human right.

- And the governmental justified executing the penalty is the increase of crime rates and murders without finding the solutions, where official statistics data shows the increase of murder cases till the first half of 2015, which shows that death penalty didn't affect decreasing murders rate as the government justified.

- Also issuing final court orders in death penalty when it wasn't executed for a long time is a kind of abuse and sociological torture for the prisoners.

2.5: Human trafficking and Migrant and Domestic Workers

Jordan is in its way to reserve migrant workers rights through Legislations amendments seeking to get justice for them, nevertheless through monitoring MW situation there are still Legislations that need amendments as so many practices from official parties or employers or agencies that violates and an obstacle in affecting their rights.

Some of the rights in domestic Legislations weren't in line with the international rights for migrants and domestic workers which opened a door for violations, as it was pointed to in the international reports since Jordan is not a part of the most important convention related to MW.

- Jordan has ratified on the basic human rights conventions without ratifying the international Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, which make it lose one of its supporting.

- Jordan issued code of 2009 on Anti-human trafficking to reach the international liability for ratifying on the United Nations Convention against Transnational Organized Crime and its protocols to be the third state to issue a code in human trafficking after Emirates and Bahrain.

- The law came in a general form in particular in both; articles criminalization and other related activities, and the responsibilities of the National Committee for Human Trafficking as it is the administrative structures which is responsible for law execution, which is a joint thing between states in the area.

- With executing this article it will be clear to everyone including interested observers that this article needs amendment, since penal code contains both individuals and companies committing this crime, which make it not applicable.

We shall name some of observations on the human trafficking Legislations and **MW** and **DW** Legislations and the practical violations which were caught through the years such as holding the passports and abusing domestic workers, as follows:

1. The Jordanian legislator used the same terms of the protocol to identify human trafficking crime, although in international law it has different meaning which is not available in domestic level, which makes it a general and mysteries definition, so coping the definition from the international convention to the domestic law caused lots of problems both in explanation and practical life.

2. There are some terms were missed in Slavery where we can find a definition to it in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956, where the state took litigation and non-litigation procedures for the practical execution to get to the Abolition of the practices mentioned or not by the definition of slavery.
3. Some practices in the definition may form an independent crime according to the penal code such as; kidnapping, fraud, prostitution, which makes the chances of describing the act as slavery in the presence of more clear descriptions like injury and sexual molestation, deprived of freedom and other crimes.
4. Although there is an article in the domestic law that matches the protocol which declares to establish a shelter for human trafficking victims to help them rehabilitate physiologically and socially, but the transfer order must be issued by the prosecutor not just the case of a possible human trafficking victim, **ALWEFAQ** home regulation for human trafficking victims 2012 must be amended where the transfer for the victims happen without the stipulation of prosecutor order, and above of all of this the limited abilities of **ALWEFAQ** home.
5. The domestic law doesn't guarantee the right to have legal aid for human trafficking victims.
6. The Jordanian code didn't talk about the right to compensation in line with the protocol and basic principles in a way that fits the case.
7. The absence of legal articles to criminalize and punish forced labor although the constitution band it.
8. Crimes Prevention code was used by many employers to threaten some workers by, which makes the code away to enhance forced labor practice through the authorities of the administrative governor which makes it an obstacle in individual activities to protect the public order.
9. The domestic workers and chiefs and gardeners regulation number 90 of 2009 guarantees the workers' right to obtain his/her passport and to avoid any legal problems there must be an article that punishes employers once they hold the workers' passport to finish any deference's and bring the passport back.

2.6: Monitoring Detention Places

Although some civil society foundations are allowed to visit correctional and rehabilitation centers, but there are legislations and practical obstacles facing them to make these visits in a regular basis; such as getting pre-authorization and since these visits are limited to the correctional and rehabilitation centers without the custody centers and with a previous arrangement.

Adaleh Center for Human Rights Studies has been denied access to the correctional and rehabilitation centers after applying for many visits applications since the first half of 2013 till this moment, with no reasons for rejection although there was pre-organized arrangement with the concerned entities according to annex 2 attached with the report.

And the visits made by the **National Center for Human Rights** based on MOU or contracts between the center and the general security without a clear article that allows visiting

correctional and rehabilitation centers and detention / custody centers without announcements.

While noting that prison and detention centre conditions have improved, nevertheless there are still some centers suffering from overcrowding and understaffing, inadequate food and health care specially the physiological part of not have physiologists and no medical files for them and even if there is a file it isn't a private thing and it's in the hand of police officers, and it was noticed that many centers doesn't provide the convicts of the rules and regulations of each one of them maybe just put it in the hall of the center.

There were many convicts of religious formulations complaints from the mistreatment and forcing regulations only on them whether it's about visits or phone calls which is a violation to the right to contact the outside world.

2.7: The victims' right to have legal aid

Having a lawyer helps the victims to have an impartial and independent part in the investigation which guarantees the victims right to not to cross the legal authorities and evaluate the role of the police procedures to get fair trial.

Articles 2, 16 of CAT convention states that: each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, as in reaching an attorney and investigations.

Adaleh Center for Human Rights Studies and other civil society institutions provide legal aid to human rights violations' victims specially victims of torture and ill-treatment through attorneys, by applying for an information form to proceed with the legal work to file cases as to the physically assaulted **DW** and **MW** to limit the violence activities on these vulnerable people, but there are some difficulties facing the centers' lawyers following up with the torture and abuse cases as:

1. The victim gets scared to continue with the complaint.
2. Witnesses get scared and refuse to make testimonies.
3. There isn't any serious action in following with the complaint at the police prosecutor.
4. Hard to collect evidence because torture happens in hidden places or hard to get into.
5. Long court procedures.
6. Hard to reach violated migrants/domestic workers for the close work places they work in.

3: Recommendations

3.1 Amend article 208 of the penal code to line in with CAT convention and shall be punished without time limitations or Impunity.

3.2 Cancel the exculpatory provision in article 308 of the Penal Code and make sure that a rapist get the punishment and doesn't escape by marrying his victim;

- 3.3** Ratify the optional protocol of CAT convention.
- 3.4** Deleting crime prevention code.
- 3.5** Move the specialty of torture crime from the special courts (the Special Police Court) to the regular courts.
- 3.6** Reconsider Anti – terrorism code to bring it in line with international human rights.
- 3.7** Activate punishments for torture criminals through real and serious peruse for them.
- 3.8** Amend the Penal Procedures Law which talks about fair trial guarantees which declares there must be a lawyer presence during the primary investigations and medical investigation for the under custody people in investigation stage.
- 3.9** The government should Sign and ratify to the migrants the international Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 and conventions issued by **ILO** such as convention number 87 year of 1946 and number 154 year of 1981 and **DW** convention number 189.
- 3.10** Redefine human trafficking crime to be more clear and precise considering the legislation environment of Jordan which doesn't match the protocol definition, and to add terms such as slavery and similar practices.
- 3.11** Criminalize forced labor with hard punishments.
- 3.12** Add a clear article for criminalizing abuse and hard, inhuman punishment.
- 3.13** Add a clear article for victims' right to compensation and fairness and the liability of the state to compensate.

Annex (1)

The Ministry of Justice

According to the prosecutors' records the number of torture and other cruel punishment cases in the period of time mentioned, are as follows:

<i>Court</i>	<i>Case number</i>
Amman	14 case
Karak	None
Alqaser	None
Aen Albasha	None
South of Amman	10 + 14 this current year
Ma'an	None
Irbid	5 cases

Annex (2)

Directorate of general security

No.: q/6/4/35292

Date: 5.July.2015

To Adaleh center for human rights studies

Subject: visits

According to your letter no. 97/2015 date 16/8/2015,

1. Please accept our apology to accept your request in the letter above mentioned.
2. for your consideration.

Regards

Annex (2)

Directorate of general security

No.: q/6/4/45685

Date: 30.August.2015

To Adaleh center for human rights studies

Subject: visits

According to your letter no. 97/2015 date 16/8/2015,

1. Please accept our apology to accept your request in the letter above mentioned.
2. for your consideration.

Regards