

Forensic Examination of Torture and other Forms of ill-Treatment

Ahmad AL Taharwah¹, Hamzeh Abu Issa²

¹Faculty of Law/ Mutah University/ Jordan, ²Dean of Faculty of Law/ Applied Science Private University/ Jordan

Abstract

Forensic documentation is crucial for documenting torture, and is generally treated as a central component of any effort to prosecute torture. As a result, it is central to ending the impunity for torture which is key to its perpetuation. Forensic evidences have been the centerpiece of the judgment by the court of cassation. This shows the important of the quality, independence and impartiality of the forensic examination for any strategy for the prevention of torture in Jordan.

Keywords: Forensic Examination, Torture, ill-Treatment, Justice.

Introduction

All allegations of torture or other cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have taken place, and that national legal systems should ensure that the victims of such acts obtain redress and are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation¹.

Jordan is a party to the main treaties including the UN Convention against torture and other Cruel, Inhuman or Degrading Treatment or punishment (Convention against Torture (CAT)), but Jordan did not sign in the Optional Protocol to the Convention against Torture (OPCAT), International Covenant on Civil and Political Rights (ICCPR) and Arabian Charter for Human Rights.

Jordan ratified the CAT on 13/11/1991, entered into force on 15/6/2006².

However, concerns related to torture in detention in Jordan after the decision of the court of cassation No 4050 / 2019 on Sep 2020 against 3 of the accused, members of the Criminal Investigation Department, to imprison them for a period of 7 years. The court's decision came against the background of the case of the death of a citizen under torture at the hands of members of the Criminal Investigation Department.

Relevant International Legal Standards

a- Convention against Torture

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 given³.

b- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Any person who alleges that he has been subjected to torture or other cruel, Inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned⁴.

Corresponding Author:

Ahmad AL Taharwah

Lecturer in Public International Law, Faculty of law at Mutah University. Address: Amman- Sahab, Fafed Abd Aljawwad St.- Jordan. Email: abunaif1971@yahoo.com

c- Arab Charter for Human Rights

Article 8:

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation⁵.

The Policy against Torture in the Jordanian legislation

1- The Jordanian legislation has criminalized the practice of torture through the provision of article 208 of the Penal Code. Perpetrators of torture have been subject to various penalties based on the seriousness of the offence committed. Such penalty may ascend to temporary hard labor punishment (extended period of imprisonment) if the torture has lead to serious illness or injury. Thus, the offence of torture would be criminally classified as a felony (art. 208/3 of the Jordanian Penal Code). Torture has also been criminalized under article 49 of the Military Penal Code.

2- The Jordanian legislation currently in force, namely article 208 of the Penal Code, imposes punishments on perpetrating the crime of torture, inciting its exercise, or approval or acquiescence thereof by any official or any person acting in an official capacity. The penalties imposed on the perpetrator of this crime have been set forth under articles 208/1 and 208/3 of the Penal Code including imprisonment for six months to three years against exercising any kind of torture to obtain confession of a crime or information in connection thereof. This penalty would be increased to temporary felony with hard labor if torture has lead to illness or serious injury. Furthermore, the court may not stop the enforcement of the sentenced punishment in the crimes listed in the said article 208, and it may not consider extenuating circumstances. As to the number of such cases and the statistics of the Public Security Directorate (PSD) on complaints received by the Grievances and Human Rights Office⁶.

3- Jordanian legislation (article 100 of the amended Criminal Procedure Law No. 16 of 2001) has determined the period of detention of an accused person at police stations to be 24 hours, after which the accused shall be referred to the concerned public prosecutor as the legal authority in charge of the investigation.

4- Article 63 of the Criminal Procedure Law provides for the right of the defendant to have a defense attorney. Article 66/2 prohibits the public prosecutor from preventing the lawyer from contacting the defendant. In case the defendant claims that he has been tortured or has been subjected to physical or mental coercion by the law enforcement officer, torture being legally criminalized, the public prosecutor must register the incident in the investigation record and refer the defendant to the forensic doctor, if deemed necessary.

5- Also, no person with signs of any type of injury may be admitted to correctional and rehabilitation centers except after being examined by the forensic doctor to obtain a legal medical report and conduct the necessary investigations. The centre's doctor must examine the detainee and provide a report on his medical condition when he is admitted to the centre and before he is released there from, and when he is transferred from one centre to another pursuant to article 24 of the Rehabilitation Centers Law.

6- Article 159 of the Criminal Procedure Law stipulates that any evidence or statement obtained by physical or mental coercion and in the absence of the public prosecutor is considered void, and of no legal effect. It will not be accepted unless the prosecution provides evidence of the circumstances under which it was obtained and the court is convinced that the indicted, suspect or defendant has provided such evidence or statement voluntarily. The defendant may also dispute, before the public prosecutor and the court, the statement obtained from him by the law enforcement officer on the grounds that it was obtained under pressure or through physical or mental coercion.

Complaints of Torture and other Forms of ill-Treatment in Jordan

In 2018, the total number of cases registered against employees of the Public Security Directorate related to complaints of torture and other forms of ill-treatment reached 332 cases, of which 10 cases were referred to the Police Court, and the cases in which the conviction was made reached 51 cases, while it was decided to prevent

the trial of the defendant in 240 cases by the police public prosecutor, while 31 cases are still pending.

Compared with the year 2017, the total number of cases reached 45 cases, of which 4 were referred for trial before the unit commander, and 12 cases were decided to prevent the trial of the defendant by the police public prosecutor, while 2 cases were referred to the police court, and 27 cases are still pending, compared to 269 cases in 2016, 239 cases in 2015 and 140 cases in 2014.

As for the cases of ill-treatment committed against inmates in correction and rehabilitation centers in 2018, it amounted to 29 cases, in which 6 people were convicted, while the prosecution of 9 people was prevented by the police public prosecutor, and 14 cases are still pending, compared to 17 cases in 2017, and 12 cases in 2016, 8 cases in 2015.

As for the complaints that the National Center for Human Rights received from citizens related to allegations that they or their families were subjected to torture and ill-treatment at the hands of law enforcement officials and various security departments, whether in the preliminary investigation centers or in the reform and rehabilitation centers during periodic visits by its delegates to these places or through Complaints received by the center, as of 2018, 68 complaints were caught, including allegations of torture and ill-treatment at the hands of law enforcement officials and the various security departments, compared to 85 complaints in 2017, 63 complaints in 2016, 92 complaints in 2015 and 87 complaints in 2014.

As for the allegations of beatings, torture and other ill-treatment and complaints related to the rights of inmates in the correction and rehabilitation centers, the center received 39 complaints in 2018, compared to 17 complaints in 2017, 12 complaints in 2016, 8 complaints in 2015, and 11 complaints in 2014⁷.

From the above statistics the forensic documentation is crucial to all factors of the fight against torture and ill-treatment, including prevention; denunciation, investigation, prosecution, punishment of perpetrators; and rehabilitation of victims and their families.

The failure to investigate allegations of torture by independent and impartial bodies and the lack of adequate guarantees in these investigations, in fact, means the existence of a climate of impunity resulting from the weakness of disciplinary or criminal prosecution against

persons accused of committing torture. Prosecutions are currently being carried out under Article 37 of The Public Security Act of 1965, through disciplinary measures only. Although the Public Security Directorate formed 60 committees in 2012 to investigate allegations of torture, none of these committees has sent its investigations by referring any person to the Police Court under Article 208 of the Penal Code⁸.

The Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1- Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials⁹.

While medical personnel may be capable of identifying injuries or marks on the body during an examination, there may be need to consult health care personnel who specialize in the identification of the likely type(s) of torture or ill treatment inflicted on victims. Such specialists can deduce the specific type of torture or ill treatment by the injuries or marks inflicted on a given person that other doctors or other health care specialists may not be able to identify¹⁰.

The victim may have injuries or marks visible on the body on admission that do not necessarily arise as a result of torture or other cruel, inhuman or degrading treatment or punishment, and the nature of these injuries or marks should be recorded, as well as any medical treatment, including types of medication, that is needed to maintain and protect a prisoner's health.

2- The medical expert shall promptly prepare an accurate written report, which shall include at least the following¹¹.

a- Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances

of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanor of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

b- History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms; Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, color photographs of all injuries;

c- Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

d- Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

3- The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer¹².

4- The health-care services should include somatic and mental health care⁴⁰, including specialized services for persons with mental illness of either acute or longer term character.

5- A broad range of gender-specific health-care services should be available to women prisoners, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)¹³.

Recommendations

1- The state has to provide a sufficient number

of medical staff trained on the management of inter-prisoner violence, as well as in the identification and documentation of all forms of torture or ill-treatment, including sexual violence, is also essential to prevent violence. State should also monitor and document incidents of violence with a view to revealing the root causes and designing appropriate prevention strategies.

2- The states in numerous occasions to ensure that there are sufficient mental health professionals; Health-care should be available and accessible, without discrimination and without cost, to all victims. The health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facilities, in order to fulfill the victims' basic needs

3- Access to an independent doctor is of particular importance in the context of complaints and allegations on torture or ill-treatment, where there may be a need of request for assessment and documentation of injuries or other health related consequences stemming from torture or ill-treatment, including forms of sexual violence and abuse. Available and qualified medical personnel trained in and applying the Manual on effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment ("the Istanbul Protocol") is required in places where persons are kept deprived of their liberty.³²

4- Medical confidentiality should be observed in prisons and places of detention in the same way as in the community at large. Keeping victims' medical files should be the doctor's responsibility.

5- The state has to initiate prompt and impartial investigations in such circumstances, particularly in prison settings, irrespective of whether a complaint has been received. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol.⁵⁷

6- Amending Article 208 of the Jordanian Penal Code to stipulate that torture is a criminal offense, and granting regular courts specific jurisdiction over torture cases.

7- Providing explicitly for compensation for victims of torture in accordance with the provisions of the Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment.

- 8- Establishing specialized centers for the rehabilitation of victims of torture in a way that guarantees the comprehensiveness of the concept of torture, as contained in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.
- 9- Transferring the supervision of reform and rehabilitation centers from the Ministry of Interior to the Ministry of Justice.
- 10- The state to sign in to the optional protocol to the Convention Against Torture (OPCAT, which allows the establishment of a system based on regular visits by independent international and national bodies to places of deprivation of liberty.

Acknowledgments: The authors would like to thank Applied Science Private University/ Jordan.

Conflict of Interest: Nil

Source of Funding: Self

Ethical Clearance: Ethical clearance was not necessary as it was a legal study.

References

- 1- UN, Resolution No A/RES/55/89, adopted by the General Assembly,[on the report of the Third Committee (A/55/602/Add.1)], On 22 February 2001.
- 2- The Hashemite Kingdom of Jordan, Ministry of Justice. [Human Right Links]. Amman; updated 2020-10-31 cited 2020-10-31. Available from: <http://www.moj.gov.jo/Pages/viewpage.aspx?pageID=141>
- 3- UN, General Assembly resolution 39/46 adopted on 10 December 1984.
- 4- UN, General Assembly resolution 3452, Adopted on 9 December 1975.
- 5- Refworld. [Arab Charter on Human Rights], Adopted on 15 September 1994. League of Arab States. updated 2020-10-29 cited 2020-10-30. Available from: available at: <https://www.refworld.org/docid/3ae6b38540.html>
- 6- The Hashemite Kingdom of Jordan, Public Security Directorate. [Transparency and Human Rights Bureau]. Amman; cited 2020-10-28. Available from:<https://www.psd.gov.jo/index.php/en/transparency-bureau>
- 7- The fifteenth annual report on the human rights situation in the Hashemite Kingdom of Jordan for the year 2018.
- 8- The ninth annual report on the human rights situation in the Hashemite Kingdom of Jordan for the year 2018.
- 9- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 10- Islamic Code Medical Ethics Kuwait Document, Islamic Organization for Medical Sciences, 1981.
- 11- World Medical Association Declaration of Geneva, Adopted by the 2nd General Assembly of the World Medical Association, Geneva, Switzerland, September 1948
- 12- Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Istanbul Protocol Submitted to the United Nations High Commissioner for Human Rights on 9 August 1999.
- 13- Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), Distr: General, 16 December 2013, CAT/C/1/4