

The need for dedicated anti-torture legislation in Jordan



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Jordan's accession to the convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT), reflects the Kingdom's recognition of the growing significance of human rights and its desire to both prevent torture and hold perpetrators thereof accountable. The fact that the kingdom did not make reservations when acceding to CAT reinforces this. Significantly, they are not among the state parties which declared they did not recognise the jurisdiction of the committee against torture (the Committee) according to article 20 to consider reliable information that torture is being systematically practiced in the territory of state parties, to obtain and consider information in a confidential procedure and issue a summary of its findings in its annual report (however, Jordan is yet to accept the jurisdiction of the Committee, according to Article 22, to consider individual complaints.) Despite this, a comprehensive review of Jordanian law reveals that significant deficiencies remain, which would be most effectively remedied by the adoption of a comprehensive, domestic anti-torture law.

Jordan has taken some steps to fulfil the Convention's requirement that all acts of torture be criminalised in its domestic law, including:

1) the amendment of the constitution in 2011 by adding a new article (N°8 which prohibits torture in detention facilities. Unfortunately, experts are divided as to whether the reference to 'torture' prohibits all forms of torture and ill-treatment. Additionally the article does not prohibit torture in places outside of detention facilities, nor

does it mention redress for victims of torture as recommended in Mizan's letter to the royal committee to draft the constitution).

2) The amendment of the penal code in 2007 to designate torture a criminal act. While this was a positive step, the amendment to the penal code that criminalizes torture does not do so in a manner fully consistent with article 4 of the convention and it's defective in several aspects. Firstly, the opening clause of article 208 provides for the criminalisation of torture and the punishment of those who perpetrate it only when the perpetrator's intention is to obtain a confession or information relevant to a crime. Article 208 also includes the disconcerting phrase "any type of torture impermissible according to the law". This phrase is troubling because it implies the existence or instances of torture that are permitted by law, in clear contravention with the Convention. Moreover, not only are the sanctions provided for those found guilty of torture pursuant to article 208 are manifestly inadequate and not proportionate to the seriousness of the crime of torture (torture is a minor offence punishable by imprisonment for a period of 6 months to a maximum of 3 years, which only becomes a crime if it causes death), but there is also no provision in the penal code or the penal procedures law that excludes the crime of torture from general or special amnesty or prescription.

Clearly, then, radical amendments to article 208 are necessary to bring Jordan into conformity with its obligations under the Convention. However, Mizan's position is that seeking the adoption of a comprehensive anti-torture law is a more effective means of remedying existing deficiencies regarding the implementation of the prohibition against torture and other forms of ill-treatment in the Jordanian legal system.

This position is supported by the following justification:

1. Any benefits gained from the process of drafting and lobbying for amendments to strengthen article 208 would be severely compromised by other pieces of domestic Jordanian legislation that also undermine the prohibition against torture and other forms of ill-treatment. Research undertaken



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of torture

This article was originally published in the Middle & East-North Africa e-bulletin N°1 of spring 2012, published by the Association for the Prevention of Torture (APT). The article reflects the view of the author alone and not necessarily those of the APT. For a full archive of MENA e-bulletins see www.apr.ch/en/resources/mena-e-bulletin/

by the National Centre for Human Rights indicates that at least 18 laws, apart from the Penal Code, require amendment in order for Jordan to fully comply with its obligations under CAT. In Mizan's long experience of involvement in the law reform process, efforts can more effectively be employed in drafting and lobbying for one comprehensive anti-torture law than in seeking amendments to more than 18 separate pieces of legislation.



2. A number of countries have taken the step of drafting and adopting specific legislative instruments regarding the prohibition of torture and other forms of ill treatment. These include:

- Brazil: Law on the crimes of torture and other provisions of 1997 (Law N°9.455, 7 April 1997)
- India: Prevention of Torture Bill 2010
- Ireland: Criminal Justice (United Nations Convention against Torture) Act of 2000 (Act N°11, 2000)
- Madagascar: Law against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (Law N°2008 – 008 Of 25 June 2008)
- Mexico: Federal Law to Prevent and Sanction Torture of 21 December 1991
- New Zealand: Crimes of Torture Act of 1989 (Act N°106, 12 November 1989)
- Philippines: Anti-Torture Act of 2009 (Republic Act N°9745, 10 November 2009)
- Sri Lanka: Torture Act 1994

3. As noted above, the publication of CAT in the Official Gazette rendered it applicable in litigation before Jordanian courts. Despite this, members of the judiciary have been slow to embrace the Convention. The enactment of new legislation, specifically devoted to the prohibition and eradication of torture, gives greater impetus to judges to better ensure an appropriate response to allegations of torture and other forms of ill-treatment, and support the facilitation of fair trials in related cases. Therefore, while amendments to existing laws could produce the same outcome as the adoption of a new law in theory, in practice the latter option offers far greater potential for effective implementation of legal prohibitions against torture and ill-treatment than the former.

4. Meaningful implementation of Jordan's obligations under CAT requires not only judicial readiness to punish torture and ill-treatment but also the appropriate supporting mechanisms envisaged by the Conventions' drafters. For example, Art. 3 of CAT prohibit the return of persons to another State where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. In Jordan there are currently no measures for considering whether persons facing deportation are at risk of torture in the country of return, or mechanisms of independent investigation. The administrative tribunal that decides the deportation issue does not take into account Jordan's obligations under CAT or torture-related issues more generally. The enactment of a comprehensive anti-torture law is also needed to facilitate the importation of international standards into the Jordanian litigation environment. This need is highlighted by the fact that, internationally, civil claims based on prior acts of torture remain possible even after the alleged perpetrator had been acquitted on related criminal charges, or these have been dismissed. Currently in Jordan, civil claims cannot succeed in matters that have already been the subject of criminal proceedings that did not result in a guilty verdict. This unfairly restricts torture victims' right to redress as outlined in the Convention, especially because of the difficulty of meeting the burden of proof in criminal cases when State authorities are uncooperative.

5. Finally, during Mizan's involvement in the preparation of torture related cases for litigation, there has been substantial debate among lawyers regarding the best approach to be taken in the drafting of court documents and the content that should be included. So far, a number of issues remain unresolved, including:

- Whether it is possible to sue the Public Security Directorate (PSD) directly, as an institution, rather than individual offices/office bearers
- Whether there is a mechanism in Jordanian domestic law that lawyers can use to compel the production of medical reports that could provide evidence of torture
- How we can ensure that witnesses to torture or other ill-treatment, who are also detainees, are secure from witness tampering and guarantee witness protection (including both promises of beneficial treatment while detained and threats/intimidation)
- Whether the burden of proof remains on PSD to prove that torture did not take place in civil, as well as criminal trials
- How we can file criminal cases against police before ordinary courts, not before the Police Court, which is a special court where judges and prosecutors are mostly police and so it lacks independence.

In short, far reaching changes to the administration of justice in Jordan are consequent upon efforts to implement Jordan's obligations under CAT. These can best be supported by a comprehensive anti-torture law that not only prohibits torture and other forms of ill-treatment but also provides the ancillary procedures necessary to give this prohibition substance.

In its campaign and in order to adopt anti-torture law in Jordan; Mizan has published a study relating to the justifications and legal system in Jordan and proposed articles of the law, which was submitted to the governments. Additionally, discussions have taken place through roundtables organised by Mizan, and covered by national media, attended by representatives of the government, ministries and others. The participants discussed the recommendations of CAT, a proposal for an anti-torture law and the European Court of Human Rights decision in Abu Qatada. Mizan expects to engage in discussions with the National Centre for Human Rights in the future regarding the proposed anti-torture law.