



**Ministry of Justice**

**The Public Prosecutors' Guide Manual on the Investigation and Prosecution of  
the Crime of Torture**



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the Crime of Torture**

Ministry of Justice / The Public Prosecution  
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**In the name of Allah, the Merciful**

“And no doubt, we honored the children of Adam and got them ride in the land and sea and provided them with clean things and preferred them over many of Our creations”

**Verse (70) of Surah Al-Israa**

**He said peace be upon him:** "God punish those who tortured people in this world."

**Narrated by Imam Muslim and Abo Daood and Al Nisa’e**

“Justice is the base of governing and the development of societies can only be achieved through justice, equality and equal opportunities, we will not allow any person to take the right of other or infringe on such right and there will be nobody above the law”

**His Majesty King Abdullah II Bin Al- Hussein – May God Protect Him -**

## Preface

### **The Importance and Purpose of this Manual:**

There is no doubt that torture is one of the most vicious human rights' violations, it involves a flagrant and brutal aggression on human's mental and physical security and wellbeing. Thus it totally negates the human's right to personal security and his/her right to live in dignity, which requires its prohibition at all times and under all circumstances.

Today we find an unprecedented international consensus on the ban of torture, and thus it has been criminalized in all major international human rights conventions. Torture has been widely condemned and is absolutely banned by every single human rights' instrument since the adoption of the Universal Declaration of Human Rights in 1948. Despite this, a quick look at the reports issued by UN's Special Rapporteur on Torture and the reports issued by other concerned parties, shows clearly that torture is still a living phenomenon. While in our present time it is not acceptable for any official to publicly defend the practice of torture, we cannot deny the fact that torture and all the brutal and inhuman acts that accompanies it, are being practiced behind closed doors.<sup>1</sup>

Torture and other forms of ill-treatment are regularly used during criminal investigations, in combating terrorism and during armed conflicts. Torture simply became and in many places a natural and acceptable tool for enforcing the law.

There are many reasons which stands behind the use of torture, which is often used in order to extract a confession or obtain information or to punish the victim for his/her acts or certain believes or even to scare or harass a certain ethnic or religious group or certain segment/s of the population.

Since many decades we find that extensive efforts are being made on the **international level** aiming at abolishing torture, whether on the level of the international official bodies by the international human rights community.

On the national level the Jordanian Constitution in article (8) banned any form of torture whether it is physical or mental.

In addition, the Jordanian Penal Code number (16) of 1960 in article (208), outlaws the acts which constitute the crime of torture. It also adopts an extensive definition for torture derived from the definition stipulated in the Convention Against Torture of 1984, to which the Kingdom became a signatory in 1991.

The law also imposed a deterrent punishment on the perpetrators of such crime and the legislator did not give the courts the right to halt the execution of the imposed punishment or to use mitigating factors when issuing the sentence in such crime. Members of the Pubic Prosecution were also trained on how to combat and investigate the crime of torture.

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<sup>1</sup> "the Torture Reporting Handbook": How to Document and Respond to Allegations of Torture within the International System for the Protection of Human Rights', Camille Giffard, Human Rights Center, University of Essex, UK, 2000, p 3

International standards oblige judges to work on ensuring the protection of the individuals' rights and freedoms. Principle number (6) of the UN Basic Principles on the Independence of the Judiciary, states that: "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected". Furthermore, Article (15) of the UN Guidelines on the Role of Prosecutors states: "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences".

Combating torture requires the public prosecutors to use the shield and sword of law at the same time. The shield is to ensure that all the national preventive measures set for protecting persons deprived from their liberty from being subjected to torture and other similar forms of ill-treatment by some of the public authority's representatives, are in place and applied, while the sword is to ensure that the perpetrators of such crimes are pursued and brought to justice.

This Manual has been developed and amended within the framework of the Jordanian national effort and through Karama Project<sup>2</sup>, to prevent and investigate the crime of torture and bring its perpetrators to justice, in order to be held accountable for their acts. These efforts constitute crucial step in establishing the rule of law principle, which obliges every official to respect the law and abide by its provisions. Accordingly, this Manual constitutes a valuable tool in the hands of the public prosecution members that enables them to understand the dimensions of the crime of torture and thus effectively combating such crime. The Manual combines the standards and recommendations related to the prevention of torture and ill-treatment issued by the UN bodies and other related international organizations and on the other hand it contains the related Jordanian legal provisions and jurisprudence related to this matter.

This Manual encompasses the procedures which when followed by members of the public prosecution, will effectively contribute to process of combating torture, through the following:

1. **Prevention:** this is done through the unannounced and sudden inspection visits to detention places, which falls within the duties of the public prosecution according to the provisions of the law. The Manual explains how to prepare for such visits and how to conduct them, in addition it illustrates the aspects such visits shall cover as it is an "interactive visit" that needs the coordination and cooperation between the public prosecution and the authorities responsible for administrating the detention places and it aims at making sure that the law is strictly applied in such places, in addition to enhancing the respect for human rights among the related officials. The Manual also provides the public prosecutor with a "checklist", which includes a variety of extensive questions that cover all the detention aspects and the answers to which reflect the true conditions of the detainees. It also points out

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<sup>2</sup> Guide on the Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adalah Center for Human Rights Publication / Jordan 2008.

to the important preventive role carried out by the National Center for Human Rights and the National Monitoring Team through the visits both entities make to detention places.

- 1- **Investigating Torture Cases and Pursuing its Perpetrators:** The Manual illustrates the procedures that should be followed when a case of torture is revealed through an inspection visit or after a complaint or information related to such crime reach the public prosecution or when such crime is revealed through the reports of the National Center of Human Rights or the National Monitoring Team. The Manual emphasizes on the importance of the speed in implementing the prescribed procedures, including subjecting the victim to medical examination, documenting the witnesses' statements and collecting the evidences and keeping it. All these procedures shall be carried out with special care being given to the victim due to the sensitivity of this crime. The role of the Transparency and Human Rights Office at the General Security Directorate is highlighted in the Manual, where it works closely with the public prosecution in order to reveal crimes of torture and pursue its perpetrators.

The content of this Manual is divided into two main parts: the first one deals with the legal framework of the crime of torture, while the second one deals with the public prosecution's role in combating such crimes.

There are five annexes attached to the Manual, due to its practical importance. These annexes are:

Annex number 1: Detention Place Inspection Visit's Report Form.

Annex number 2: Investigating Torture or Ill-treatment Allegations' Form.

Annex number 3: Judicial Precedents.

Annex number 4: Convention Against Torture and other Cruel, Inhuman or Degrading Treatment.

Annex number 5: Istanbul Protocol- The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **First Section: The Legal Framework of the Crime of Torture:**

The legislative framework constitutes the mechanism through which the state can provide the protection for the individuals' dignity and rights. This section will deal with the following topics:

- The International Legislative Framework for Combating Torture.
- The National Legislative Framework for Combating Torture

### **First: The International Legislative Framework for Combating Torture:**

The right of humans not to be subjected to torture or other forms of ill-treatment constitutes a basic rule of customary international law and it also constitutes a strict standard in public international law, thus it is an obligatory rule that all states whether a state is a party to the conventions that prohibit torture or not, have to abide with. This right cannot be undermined and shall not be suspended and no exceptional circumstances shall be invoked as a justification to torture.

In 1948 and after the end of World War II, the United Nations has condemned torture as a flagrant violation of human rights and fundamental freedoms, which are enshrined in the Universal Declaration of Human Rights, that states in article (5): "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This ban was followed by many other international conventions:

- **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment**, (published in issue number (4764) of the Official Gazette, page (2246), 5/6/2006):

It's first article states : " 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".<sup>3</sup>

The most important aspects of this Convention can be summarized as follows:

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<sup>3</sup> We would like to point out here that the Arab text corresponding to the English one, which defines torture, stated in Article (1) of the "Convention against Torture," published in the Official Gazette No. 4764, which was quoted by the Jordanian legislator in Article 208 of the Penal Code, is not accurate, and the latter part of it lacks clarity. Thus we state the English text of the definition with the translation we deem as being more clear and gives a more accurate meaning:

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 e 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, wen such pain or suffering is inflicted by or at the instigation of or with the consent or acting in an official capacity".



- All persons deprived from their freedom shall be treated in a human manner and their dignity shall be preserved as a fundamental obligatory rule.
- Prisoners shall be treated properly in a manner that ensures their rehabilitation according to the related international standards which are stipulated in the Standard Minimum Rules for the Treatment of Prisoners of (1957).
- Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- Each State Party shall ensure that all acts of torture are offences under its criminal law. State parties are also obliged to issue legal provisions, which punishes state official who commit acts of tortures and ensure their trial before a just court.
- 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.
- 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 dependents shall be entitled to compensation.
- Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.
- 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.
- **The International Covenant on Civil and Political Rights of 1966** (it was published on issue number (4764) of the Official Gazette, page 2227, on 15/6/2006)

The seventh chapter of the Convention states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

- **International Convention on the Elimination of All Forms of Racial Discrimination** (it was published on issue number (4764) of the Official Gazette, page 2220, on 15/6/2006)

“Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin”;

The state parties also undertake to guarantee the right of each person to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (chapters 4 and 5) of the Convention.

- **Convention on the Rights of the Child**, (it was published on issue number (4764) of the Official Gazette, page 3993, on 15/6/2006

The convention states in article (37), that all state parties shall ensure that:

- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- 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. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

It is worth mentioning that the applicable Juvenile Law number 32 of 2014 adopted all the above stated obligations.

- **The Arab Charter On Human Rights**, (it was published on issue number (4675) of the Official Gazette, page 4475, on 16/9/2004),

Article (8) of the convention states:

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 compensation.

## **Second: The National Legislative Framework for Combating Torture:**

In order to protect the individual's dignity and safety in a state that upholds the principles of the rule of law and respects human rights and freedoms, article (8) of the Jordanian Constitution prohibits torture, by stating:

- (i) No person may be arrested, detained, imprisoned, have his/her freedom restricted or prevented from free movement except in accordance with the provisions of the law.
- (ii) Every person who is arrested, imprisoned or whose freedom is restricted, must be treated in a way that preserves his/her human dignity. It is forbidden for him/her to be tortured (in any form) or harmed physically or mentally, as it is forbidden to detain him/her in places outside of those designated by the laws. Any statement extracted from a person under duress of anything of the above or the threat thereof shall neither bare any consideration nor reliability.

The legislator also criminalized and outlawed the actions which is considered torture, where article (208) of the Criminal Code states:

1. Whoever inflicted any form of violence and force, not allowable by law, in order to obtain a confession for committing a crime or information regarding such a crime, he/she shall be punished by imprisonment from three months to three years.
2. For the purposes of this article, torture means any act that results in severe physical or mental suffering which intentionally inflicted on someone in order to obtain information from him or from other person or to force such person to or other person to commit a certain act or when a person is subjected to such pain for any discriminatory reason or when such actions are incited or agreed to or not revealed by a public official or any person who is acting in his/her official capacity.
3. If the acts of violence and force resulted in a sickness or an injury, penalty shall be from six months to three years unless such acts are punishable by a harsher penalty.
4. Despite of what is stated in article (54) and (100) of this law, the court is not permitted to halt the execution of the penalty stated in this article and is not also permitted to apply any mitigating factors.

## **Third: Elements of the Crime of Torture according to the Jordanian Law:**

the crime of torture is legally established when the general criminal elements are present, provided that there is a special criminal intent in addition to the general intent according to the following:

### **a) The Legal Element:**

It is the element that requires the presence of a legal provision, that criminalizes the act and imposes a punishment on the perpetrator. This is what article (208) of the Penal Code provides, where it includes that legal rule that criminalizes the act

of torture and provides for the punishment to be imposed when such act is committed

b) **Physical Element of the Crime:**

The physical element is composed of the following two components:

1. **The Criminal Behavior:**

The behavior that results in the establishment of the torture crime is not only the active behavior, the crime of torture can be committed whether by performing an act or refraining from taking an act, thus torture can be committed by beating someone or refraining from providing someone with his/her essential needs such as depriving the victim from food or water or sleep or holding him in a dark cell.<sup>4</sup>

2. **The Criminal Result (Suffering and Severe Pain):**

The criminal result is established when the victim suffers severe physical or mental pain due to him/her being tortured or subjected to any sort of inhumane or cruel treatment.

3. **The Causation Relationship between the Behavior and the Criminal Result:**

for the causation result to be established, the pain and torture that affected the victim shall be the result of the criminal behavior committed by the perpetrator. The mere pain which results or is associated with the imposed sentence shall not be considered as torture.

c) **The Mental Element:**

For a crime to be legally established, the mental element has to be present, which means the intent to commit the crime according to its description in the law this element includes both the general and the private intent if the latter is required to be present by the law.

1. **The General Intent:**

For the crime of torture to take place, the actions which caused the pain or suffering for the victim have to be intentional ones. The actions which are based on pure negligence shall not constitute torture. This means that the perpetrator's intent shall be directed towards carrying out the action that caused the severe pain or suffering, while he/she understands its nature and impact.

2. **Special Intent:**

The special intent is the motive for committing the crime when the law requires the presence of such intent and considered as part of the mental element of the crime. Article (67) of the Penal Code states:

1. The motive is the reason which makes the perpetrator commit the act. Or, it is the ultimate result he / she intend to achieve.

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<sup>4</sup> Guide on the Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adalah Center for Human Rights Publication / Jordan 2008, p 19

2. A motive is not an incriminating element except in instances stipulated by the law.

In principle the motive is not one of the crime's elements, by the Jordanian legislator took it into consideration under certain circumstances, while it is used as a mitigating factor in some instances or as aggravating one in other as the case in the crime of torture.

In addition to the fact that the special intent is an integral element that is needed to establish the crime of torture, it is also the differentiation factor between the crime of torture and the cruel and inhuman treatment. That is, ill-treatment does not constitute torture unless the perpetrator tried to achieve a special intent through it. The special intent that needs to be present to establish the crime of torture shall include the following according to the Jordanian law:

- a) To obtain information from the victim or from a third person.
- b) To punish the victim for an act he/she had committed or is a suspect of committing.
- c) To terrify the victim or break his/her or another person's will in order to force him/her to take or refrain from taking a certain action.
- d) Discrimination for any reason.

It is worth noting that the crime of ill-treatment cannot be considered a crime of torture. Such crime entails the following:

- Intentionally subjecting the victim to unusual pain and suffering, whether physical or mental.
- Committed by public official or he/she approves it or allows it or incite it.

Accordingly, the main differences between torture and other forms of ill-treatment can be summarized as follows:

1. The extent of exerted pain, where torture is defined by the severity of inflicted pain and suffering.
2. The presence of special intent in the crime of torture, where the perpetrator should aim to achieve a certain result through torture such as extracting a confession or obtaining information, while ill-treatment is established by merely subjecting the victim to unusual pain and suffering thorough a conduct that aims at humiliating and dehumanizing the victim.<sup>5</sup>

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<sup>5</sup> Ibid, p 11.

## **Second Section: The Role of the Public Prosecution in Combating Torture**

Torture and ill-treatment are mostly committed during detention by the Police, where the statements of the detained persons are usually taken without the presence of a lawyer. This indicates the importance of the monitoring role the legislature gives to the public prosecutors through the Criminal Procedures Law number (9) of 1961. According to the said law the prosecutors have the power and authority to inspect detention places in order to make sure that the preliminary investigation procedures are followed and are being implemented according to the applicable law.

It's worth noting that the legislator through the Bar Association Law number (11) of 1972, provides other measures to protect the detainees during the preliminary investigation phase, which conducted by the police, where it gives the detainee the right to seek the representation of a lawyer according to article (32) of the said law:

“the attorney at law and the and the delegated attorney undertraining shall have the right to follow up all the procedures before the judicial and administrative bodies and they have the right to attend jointly or separately the investigations before the police and the public prosecution”.

In all instances we find that the Public Prosecution plays a fundamental role in protecting detained individuals from torture and other forms of ill-treatment. This protection takes two main aspects:

1. Prevention of torture: this is done through the regular inspection visits to the correction and rehabilitation centers and other places of detention at the police stations (holding cells). It is of a great importance to activate the legal provisions that gives the public prosecutors the right to inspect the holding cells at the police stations, in order to make sure that the police personnel adhere to the related legal provisions when arresting and interrogating detainees.
2. The legal pursuit of the perpetrators of the crime of torture in the following two instances:
  - Discovering that a crime of torture or ill-treatment had taken place as a result if the inspection visits that are conducted by the public prosecutors or through receiving a complaint or information regarding such crime.
  - Knowing that the subject matter (trial) court had ruled through a final judgment that the evidence submitted are not admissible due to the fact that such evidence was produced under torture.

### **First: Preventing torture through the regular detention places' inspection visits:**

The visits target both the correction and rehabilitation centers and the detention places at police stations. One of the most basic human rights principles is the right to liberty and person's security, where no person shall be arbitrarily detained and no person shall be deprived of his/her liberty unless it is done according to the terms stipulated

in the applicable laws. When the state deprives a person of his liberty, it is obliged to protect such person in addition to his/her security and dignity. Such international rights are reflected in the Jordanian legislation. The criminal procedures law stated that no person shall be arrested or detained unless according to an order issued by the legal competent authority.<sup>6</sup>

**First:** we should clearly define the meaning of “Places of Detention”, article (4) of the Optional Protocol to the Convention Against Torture states “Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment”.

Despite the fact that the Kingdom did not accede to the said optional protocol, the places of detention are still regulated through the related Jordanian legal framework, according to the following:

1. Article (104) of the Criminal Procedures Law states: “Prisons and detention places shall be regulated through legal directives”.

Article (3) of the Corrections and Rehabilitation Centers Law number (9) of 2004 and its amendments states: "The minister has the right to decide any place in the Kingdom as Rehabilitation and Correctional Center by a declaration issued by him or cancels in the same way any place being used as Rehabilitation and Correctional Center”.

In addition, article (2) of the Juvenile Law number (32) of 2014 states:

- Juveniles’ Education Home: the facility established and accredited for the education and rehabilitation detained juveniles according to the provisions of the law.
- Juveniles’ Rehabilitating Home: the facility established and accredited for the correction, education and rehabilitation of convicted juveniles according to the provisions of the law.
- Juveniles’ Care Home: the facility established and accredited for the housing of juveniles who need protection and care in addition to educating and training such juveniles according to the provisions of the law.

The legislator in article (8) of the Criminal Procedures Law, gave the police personnel the authority to arrest, which entails the deprivation of liberty by detaining the person by the police for a period of (24) hours- as stated in article (100) of the same law- at the end of which such arrested person should be brought before a competent judicial body.

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<sup>6</sup> Article (103) of the Criminal Procedures Law: “It is prohibited to arrest or imprison any human unless the order to arrest him/her is issued by the competent authority.”

According to the above concept the following places are considered to be places of detention:

1. Detention places administrated by the police, which are used to keep the person after his/her arrest and during the initial investigation phase.
2. Correction and rehabilitation centers, where persons are detained whether during the initial investigation phase conducted by the public prosecutor or during the trial phase or during the administrative detention.
3. Correction and rehabilitation centers, where the convicted person serves his/her sentence.
4. The juvenile education and care homes.

The regular inspection visits conducted by the public prosecution<sup>7</sup> to the detention and arrest places plays a vital role in preventing torture. Such visits have a strong deterrent effect, especially when the related authorities which administrates such places realize that is serious and active in carrying out its legal duties related to inspecting any deletion place at any time and without a prior announcement in addition to closely monitor the detonation conditions and the conditions of the detained persons by talking to any of them in privet.

The preventive nature of such visits, is what give it the concept of “interactive visit”. Such visits are mainly designed on the active cooperation between the public prosecution and the authorities responsible for the deletion places, in order to prevent torture, which distinguishes such visits in terms of its objectives and methodology from other forms of visits that might be carried out by the public prosecution to detention places, which might aim at investigating and documenting a certain incident or complaint in order to ensure brining the perpetrators of such crimes to justice. The later type of visits comes only as a reaction to a certain incident and after receiving a precise complaint or information about a torture or an ill-treatment incident. Thus the preventive visits are considered a proactive measure and a continues process aims at analyzing the whole aspects of the detention system, its conditions and the conditions of the detained persons.

Thus we find that the inspection visits<sup>8</sup> carried out by the public prosecution members are considered as the most important and effective measure directed towards the prevention of torture, in addition to its second role, when conducted based on a complaint or information, to investigate torture allegations and reveal such acts.

The burden related to monitoring places of dentition and the conditions in such places in Jordan lays specifically on the public prosecution, where it draws such powers from the applicable Criminal Procedures Law , which gave the head of the public prosecution, the attorney general and the chief judges of the first instance and

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<sup>7</sup> It is worth noting that the National Center for Human Rights has the right to visit Correction and rehabilitation centers and detention places in addition to juvenile care homes according to article (10/a) of the Center’s Law number (51) of 2006.

<sup>8</sup> The various manuals related to the prevention of torture refer to the concept of “Preventive Inspection Visits”, which can be described as a visits with specified nature and objectives, where it aims at preventing torture and ill-treatment before it takes place and it also aims at enhancing the detention conditions through the use and application of two methods:

1.Constructive dialogue with officials, based on the recommendations reached through the objective analysis of the detention conditions.

2.Deterrence based on increasing the probability of future inspection through unannounced and sudden visits.



appellate courts the right to inspect the correction and rehabilitation centers and the detention places located within the jurisdiction of their courts , at least once every month , in order to ensure the following :

- There are no persons illegally arrested or detained.
- Review the registration books of the correction centers, the detention orders and the courts' verdicts in addition to taking a copy of such documents.
- To contact any detained or arrested person and hear any complaint he/she might present to them.<sup>9</sup>

In addition, article (8) of the Correction and Rehabilitation Centers provides that the Minister of Justice, members of the public prosecution and chief judges of the courts of appeals, first instance and grand felony court, each within his/her area of jurisdiction shall have the right to enter into the correction and rehabilitation centers , in addition it gives the Minister of Justice the power to delegate staff members from the legal staff of the Ministry of Justice to conducted inspection visits to such centers,<sup>10</sup> in order to achieve the following :

- a) There is no inmate who is illegally detained.
- b) Executing the courts and the public prosecution's orders according.
- c) Making sure that no inmate who is not sentenced to imprisonment with labor is forced to work unless it is done for rehabilitation purposes.
- d) Segregate each category of inmates from other categories and dealing with them accordingly as the law may provide.
- e) The records are properly organized and kept.
- f) Following up any complaint submitted by any inmate related to any violation he/she might had been subjected to in addition to following up on any information about any illegal actions that might be perpetrated against him/her or other inmates.

On the other hand, we find that the Criminal Procedures Law obliged any person who learned of the illegal detention or incarceration of an individual in a place which is not legally designated for detention or imprisonment, to inform any member of public prosecution of such incident, where upon knowledge such prosecution members have to move immediately to the said place where the person is held or detained and shall conduct an investigation and order the release of any illegally held person. If the public prosecution member neglects to do what is stated above, he/she shall be considered as a participant in the crime of illegally holding a person and shall be held liable according to the law .<sup>11</sup>

The inspection visits are considered as a regular inspection process for all the detention related issues and aspects. It constitutes a monitoring tool on the detention

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<sup>9</sup> Article (106) of the Criminal Procedures Law.

<sup>10</sup> The "Correction and Rehabilitation Centers Unit" at the Ministry of Justice was established in 2009, as preparatory step for moving the authority to supervise the correction and rehabilitation centers to the Ministry of Justice, where the said unit shall ensure that inmates are treated according to the standards and minimum rules stated in the international conventions signed by the Hashemite Kingdom of Jordan, in addition to documenting any violations that might take place in such centers, provide inmates with the needed legal assistance and enhance cooperation between the various related parties in order to fact the4 challenges related to the correction and rehabilitation of inmates

<sup>11</sup>. Article (108) of the Criminal Procedures Law.

conditions in order to make sure that it complies with the legal human rights standards and that the detainees are being treated with respect and within the basic principles for the treatment of prisoners adopted by the UN and the Jordanian legislator.

In accordance of articles (106) of the Criminal Procedures Law and (8) of the Correction and Rehabilitation Centers Law, we can state that the objectives of the inspection visits are to ensure the following:

1. The provision of administrative and legal measures inside the detention place in order to protect the detained person and his/her right to life in addition to the right to physical and mental security. This includes ensuring the presence of a clear and declared policy to combat violence between inmates and the existence of an easy to use complaint system that protects the privacy the inmates.
2. Human living conditions are being observed during the detention period.
3. The detention conditions are in line with the international and Jordanian legal standards.
4. The necessary and appropriate medical treatment of inmates.

Whether the visit is an inspection/preventive visit or an investigatory one which is based on a complaint or information, the visits shall include several stages that should be observed:

**The First Stage “Preparing for the Visit”:**

1. Collecting the available information, such as the information related to the number of detained and sentenced inmates.
2. Defining the objectives of the inspection visit and the areas it will cover, such as: reviewing the records, meeting the detainees or inmates and listening to their complaints, visiting the dorms and observing the general detention conditions such as overcrowding, hygiene and other related issues such as medical care and the facilities.
3. Composing the visit’s team, such as the inclusion of a medical examiner and a clerk. It is very important that the public prosecutor is accompanied by medical examiner during his/her visits to places of detention in order to spot and document the marks and injuries, which indicates that a crime of torture had been committed.<sup>12</sup>

**Second Phase “Conducting the Visit”:**

1. Meeting with the director of the related correction and rehabilitation center or the official responsible for the detention place.
2. Inspecting the holding areas and the solitary confinement cells in addition to the building and the facilities in general.
3. Inspecting and reviewing the records, detention orders, verdicts and the disciplinary measures taken against any inmate if present.
4. Reviewing any special reports related to the incidents, where force is used against any of the inmates.

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<sup>12</sup> The public prosecutor shall be accompanied by a medical examiner when visiting holding cells and correction and rehabilitation centers, this shall be done through the coordination between the Ministry of Justice and the Ministry of Health according to H.E Minister of Justice letter number 17/5/b/723 dated 21/1/2008.

5. Conduct private and personal interviews with any of the inmates especially those subjected to solitary confinement.
6. Conduct meetings with the related detention place's staff.
7. An exit interview with the center's director

During the visit, the public prosecutor might use a "check list" derived from the rights and standards stated in the Correction and Rehabilitation Centers Law. These check list's items are quoted here for guidance, there is nothing that prevents the public prosecutor from inspecting any aspect/s he/she might presume necessary to achieve the visit's goals even if it is not listed in the said list. The list aims at enabling the public prosecutor from defining the current status of the detention place being visited. The list includes a number of questions, the answers to which might give a full description of the situation in the detention place:

- **Treatment:** is there any complaints by the detained persons related to torture or ill-treatment? Are there any reports related to the use of force against detainees or between the detainees themselves? What are the conditions of the places of solitary confinement?
- **Protective Measures:** what are the disciplinary actions taken against the detainee? what are the penalties or sanctions imposed? Are there defined procedures related to receiving complaints from detainees? Is there a separation between the different categories of detainees?
- **The Physical Conditions:** what is the housing capacity of the detention center? what is the actual number of the detainees? What is the occupancy rate for each dorm? What is the lighting, ventilation, hygiene and health conditions at the center? What is the number of sick detainees and those with special needs? How the food can be described in terms of quantity, quality and variety?
- **Contacts with the Outside World:** Are visits by relatives, spouses and children allowed? How regular such visits take place? Are phone calls and other forms of communications available? <sup>13</sup>

### Third Phase: Visit's Results

- After concluding the visit, the public prosecutor shall prepare a detailed report regarding the visit <sup>14</sup>which includes his/her observations, notes, recommendations and the measures he/she had taken within his/her authority, in relation to the shortcomings he/she had noticed during the visit. The said report shall be submitted by the public prosecutor to the attorney general, who shall review it and take the necessary actions and then refer it with the actions he/she took to the head of public prosecution. The head of public prosecution shall in turn review the report and the actions taken and if he/she sees that such actions are sufficient and that the public prosecution can according to its powers remedy the violations at the related detention place, then he/she returns the report to the attorney general to follow up on the actions taken and inform him/her about any new actions to be taken, Otherwise the entire report with all

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<sup>13</sup> For more information, reference can be made to "Monitoring Places of Detention, A Practical Guide" published by "the Association for the Prevention of Torture" Geneva 2004, an Arabic copy of the Guide can be found at: [www.ap.t.ch](http://www.ap.t.ch)

<sup>14</sup> Annex number (1), Detention Place Inspection Visit's Form.

the actions taken shall be sent to Minister of Justice, who shall contact the Minister of Interior in case there were violations to the law and request him/her to remedy such violations and hold the persons who committed them accountable.

- Following up the implementation of the visit's recommendations when conducting the next visit according to the visits' schedule prepared by the public prosecutor. The second visit shall always aim at making sure that the recommendations of the previous visit are implemented and thus measuring the effectiveness of the visit.

## **Second: The Criminal Prosecution of the Perpetrators of the Crime of Torture:**

### **1. Criminal actions<sup>15</sup> according to a complaint or information or after revealing the torture or ill-treatment during an inspection visit:**

Or when there are reasonable reasons which lead to believe that an act of torture has been committed<sup>16</sup>, or when any act of torture is discovered by the public prosecutor during his/her inspection visit or when information regarding such actions are received or when a complaint is submitted to the public prosecution that a crime of torture has been committed or there are compelling reasons that lead to believe such crime had been committed. In all the previous cases the public prosecutor shall take the following actions and measures<sup>17</sup>:

1. To listen directly to the complainant or the person who allegedly had been subjected to torture and document his/her statement according to the applicable procedures and referring him/her to physical and/or mental examination<sup>18</sup> in coordination with the related detention center's administration in order to prepare a report regarding his/her condition. In case the public prosecutor receives information regarding the occurrence of torture, he/she shall move immediately accompanied by the medical examiner and a clerk to the place of detention and shall start investigating the crime and take the necessary procedures, according to article (43) of the Criminal Procedures Law which states " If the public prosecutor in instances other those defined in articles (29 and 42) became aware through informing him/her or through any other way that a felony or a misdemeanor was committed within his/her area of jurisdiction or he/she became aware that the person accused of committing

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<sup>15</sup> Gender shall be taken into consideration when necessary.

<sup>16</sup> This is in compliance with what is stated in articles (12 and 13) of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment.

<sup>17</sup> It is worth mentioning in this context that the "Transparency and Human Rights' Office" at the Public Security Directorate, receives complaints related to torture, where this office is specialized to receive complaints and grievances from citizens related to the misconduct and abuse of power by the public security personnel, which violates the citizens' basic rights and liberties. in case there is a complaint regarding a torture crime committed by a police officer, the Police Public Prosecutors at the said office investigate the crime according to the procedures and rules applied by the regular prosecutors.

According to the investigation results the appropriate decision shall be taken whether to not to refer the case to court (ban the trial) or submitting the investigation file to the Head of the Legal Affairs Directorate at the Public Security Directorate, who shall take the final decision either by referring the accused to the Police Court or not. According to article (83) of the Public Security Law number (38) of 1965, the public security public prosecution shall bring legal action against the accused if the victim or whoever represents him/her submitted a civil claim and such case shall not be dismissed or halted or abandoned unless according to the conditions stipulated in the law.

<sup>18</sup> This is what article (104) of Istanbul Protocol confirms

such a crime is staying in his/her area of jurisdiction, the public prosecutor has to initiate the criminal investigations and personally move to the crime scene if it is necessary to do so in order to draft the requested report according to the investigation's procedures stipulated in this law".

2. Register an investigation case in a special registration book dedicated for torture cases.
3. Hearing the witnesses' statements, collecting all related evidence and seizing all the tools used in committing the crime of torture according to the powers given to him/her by article (82) of the Criminal Procedures Law, which states: "Taking into consideration the previously stated provisions, the public prosecutor has the right to collect evidences and information in all places which there might be items or persons the discovery of which might help in revealing the truth".
4. Submitting the investigation documents accompanied with all criminal evidences and seized objects to the attorney general, who has the power to refer the submitted file to the Head of Public Security in order to pursue the suspects by the General Security Department's Public Prosecution which has the authority to refer such suspects to the Police Court. In any instance the Minister of Justice shall be informed of all the procedures and decisions taken in this regard and copies of the file shall be sent to the Correction and Rehabilitation Centers' Directorate at the Ministry of Justice, which shall follow up on all the procedures taken by the General Security in relation to the torture case.

It is rightly noticed that torture crimes are usually enclosed by silence especially by those who are responsible for administrating places of detention and those staff members who are suspected in committing such crimes. In addition, the victims and witnesses might be intimidated in order to prevent them from submitting a complaint or give a statement and thus keeping them silent which makes dealing with such crimes harder than dealing with other types of crimes.

Despite what is stated above and in order to facilitate the work of the public prosecutor in such cases, there are a number of procedures which if correctly followed during the investigation of torture crimes, it might help the prosecutor to reach the objectives of his/her investigation.

- According to the above stated articles (43 and 82) of the Criminal Procedures Law, he/she shall immediately document the statement of the victim as soon as possible and subject him/her to an immediate medical examination. Immediate measures should be taken in order to identify any potential witnesses and hearing them without any delays in order to define the time and place of the crime and how it was committed. Special attention shall be given when dealing with victims and witnesses due the sensitive nature of the crime of torture.

The public prosecutor shall work towards obtaining as much as possible of the following information when hearing the victim's statement:

- Description of the acts of torture including the objects and tools used in committing such acts and how many times it was perpetrated in addition to a description of the place of detention, where it took place.

- Defining the relative times and dates when the acts of torture were committed, including the last time it took place.
- A detailed description of the person/s who committed or participated in the acts.
- Defining if the victim was subjected to sexual assault.
- Describing the physical injuries, that resulted from torture.
- The identity of the persons who witnessed the acts of torture.<sup>19</sup>

It is important to keep in mind that even though hearing the victim and witnesses provides an important source of information, it should not constitute the only source of evidence. Thus attention shall be given to other forms of evidence such as medical and laboratory reports. Furthermore, evidences shall be consistent, despite the fact that inconsistency does not always mean that the claim of torture is not a true one, because the victim might still be under shock or afraid or he/she is under pressure to give false statements or he/she have delayed submitting a complaint until it became safe for him/her to do so.

Similar to the practice in investigating all criminal cases and out of the fear of losing evidences or tampering with it, all physical evidences shall be collected, wrapped and numbered according to the applied procedures. It is also important to seize any objects or tools that were used in committing the acts of torture and examining any materials or effects or places which might help in revealing the truth. Such objects shall be properly stored and kept in a secure place in order to prevent any tampering with or loss of such evidences. This shall be done according to article (87) of the Criminal Procedures Law which states: “The public prosecutor shall be accompanied by his/her clerk and shall seize or order the seizure all the items he/she deems as necessary to reveal the truth. He/she shall organize an official report and make sure that such items are kept according to the provision of article (35) of this law.” and also according to article (35) of the same law which states:

1. The seized items shall be kept in a way which preserves its condition when seized. The items might be backed or put in a jar if its nature required this and in any case it shall be stamped.
2. If banknotes (cash money) were found and keeping the same banknotes is not required in order to reveal the truth or to protect the rights of the two parties or a third party, then the public prosecutor might allow such banknotes to be kept at the treasury safe.”.

It is important to make sure that all information is collected, examined and documented in order to be used as legal evidence before the court. Some of the documentation methods are illustrated below:

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<sup>19</sup> For more information, related to medical evidences in the crime of torture, please see, “Annex number (5) “13. Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Cruel, Inhumane or Degrading Treatment or Punishment” which is considered the first international tool developed in order to assist lawyers and physicians to confirm if a person had been subjected to torture and document the effects of such torture to be presented as admissible evidences before the court. More than (40) international organizations and more than (75) medical and legal experts participated in the development of the said manual. This Protocol was submitted to the UN Human Rights’ High Commissioner on the 9 August 1999, where it was adopted as an official UN document at the same year.

1. Imaging the victim's injuries through the use of X-ray and using modern methods in order to detect minute injuries such as nerves' bruises or any other injuries that cannot be detected by the naked eye.
  2. Examining any traces of blood or other bodily fluids in addition to any clothes or objects that were used in committing the acts of torture and taking photos of such items.
  3. Documenting the identity of all persons present at the crime scene.
  4. Reviewing the medical report of the first medical examination done to the victim and all subsequent reports in addition to interviewing the related doctors and medical staff and asking them about the said reports.<sup>20</sup>
- 2. Legal actions as a result of a final court's judgment nullifying a confession or any other evidence because it was obtained through the use of torture:**

The nullification of the confession which was forcefully produced under torture is a basic rule, which emerges from the prohibition of torture in international law. The reason behind such ban is to stop one of the major reasons behind the use of torture. In many cases, especially when acts of torture are committed by security forces, the reason behind it, is to obtain a confession from the accused in order to secure a conviction by the court. This rule provides a clear obligation, where states shall ensure that confessions obtained through torture could not be used under any circumstances and shall have no value in any legal proceedings. The only way such confessions can be used is when used against persons who are accused of committing torture, this comes in accordance with the provisions of the Convention Against Torture<sup>21</sup>. Thus all states shall take the necessary measures to actively implement such rule, where national legislations and procedural rules shall not give any legal value to confessions or statements which are produced as a result of torture.

In the Jordanian Legislation, article (159) of the Criminal Procedures Law states: "the statement given by the accused or the suspect in the absence of the public prosecutor, where he/she confesses to coming the crime, shall only be admissible if the prosecution provides evidence regarding the circumstance under which such statement was given and the court is convinced that such statement was given voluntarily and the result of his/her freewill." This means that confessions extracted under torture shall not be admissible before the court, because it is the result of an unfree will and thus it is void and null.

The Jordanian Cassation Court in its two General Panel decisions (number 107/2003 and 1463/2004), sets the conditions that should be present in any confession in order for it to be admissible before the trial court:

1. It shall be clear, explicit, unequivocal and unambiguous and does not bear any contradicting interpretations.

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<sup>20</sup> Connor Folly, Preventing Torture: A Manual for Judges and Prosecutors, University of Essex, Human Rights Center, First Edition, 2003, p (59) and after.

<sup>21</sup> The Jordanian legal provision which nullifies confessions which are obtained through torture is in confirmation with article (15) of the Convention Against Torture and article (8) of the Arab Charter of Human Rights.

2. It shall be made by a competent and sane person.
3. It shall be the result of a free will that is not subject to duress.
4. It shall be consistent with reality.
5. It shall be consistent with the evidences presented in the case and not in contradiction with it.

Thus the admissible confession is the one that meets all the legal conditions and secures the confidence of the court according to the legal principle which states that the court's judgment is the conscience of the judge and the criminal judge shall rule according to his/her personal belief, pursuant to article (147) of the Criminal Procedures Law.

Despite the fact that the only evidence to acts of torture when used to extract a confession is the confession itself, it is worth noting that the nullification of the confession due to the fact that it was produced under torture does not extend to other evidences. The effect of nullification shall only affect the confession produced under torture, thus if there are other evidences in the case that are sufficient for conviction, then the court may rely on such evidences to convict and its judgment shall not be undermined by the nullification of the confession.

In all instances, when the court decides to exclude any evidence due to its believe that such evidence was extracted under torture, in such case the public prosecution shall follow the below stated procedures:

1. The head of the public prosecution or the attorney general shall immediately - after receiving the related case file, which includes the judgment excluding the evidences produced under torture – send a copy of the said judgment to the competent public prosecutor in order to register an investigation case in a special register designated for torture cases and to immediately start the investigation process and collect the needed evidences according to the applicable rules. The said public prosecutor shall take the appropriate decision according to the investigation and shall submit the file to the attorney general who shall after reviewing the procedures and actions taken by the public prosecutor, either approve or dismiss the decision taken
2. In case the investigation proved that a crime of torture had taken place, the attorney general shall refer the whole file to the head of general security in order for the later to refer it to the General Security's Legal Affairs Directorate, which shall initiate the legal proceedings and refer the suspect/s to the Police Court. In any case a copy of the investigation file shall be submitted to the Minister of Justice.



### **List of References**

1. The Holy Quran and Sunna.
2. The Jordanian Constitution.
3. The Jordanian Penal Code number (16) of 1960.
4. The Jordanian Criminal Procedures Law number (9) of 1961.
5. The Corrections and Rehabilitation Centers Law number (9) of 2004.
6. The Jordanian Juvenile Law number (32) of 2014.
7. The National Center for Human Rights Law number (51) of 2006.
8. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
9. The International Covenant on Civil and Political Rights of 1966.
10. International Convention on the Elimination of all Forms of Racial Discrimination
11. Convention on the Right of the Child.
12. The Arab Human Rights Charter.
13. Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Cruel, Inhumane or Degrading Treatment or Punishment.
14. The Torture Reporting Handbook: How to Document and Respond to Allegations of Torture within the International System for the Protection of Human Rights', Camille Gifford, Human Rights Center, University of Essex,
15. Monitoring Places of Detention, A Practical Guide" published by "the Association for the Prevention of Torture" Geneva 2004,
16. Guide on the Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adalah Center for Human Rights Publication / Jordan 2008.
17. Connor Folly, Preventing Torture: A Manual for Judges and Prosecutors, University of Essex, Human Rights Center, First Edition, 2003.

Annex number (1)

**Detention Place Inspection Visit Report's Form**

Report's Number:  
Report's Date:

Name of the Public Prosecutor Conducted the Visit and his/her Place of Work:  
.....  
Report Submitted to: .....  
Date Received:.....

**First: Information about the Visit :**

1. Name of the Detention Place and Location:  
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2. Visit's Date: .....
3. Visit's Team Members:
  - Medical Examiner: .....
  - Clerk:.....
4. Name and Rank of the Detention Place Director or the Person in Charge:  
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5. Cooperation by the Detention Place Administration and the Visit's Difficulties:  
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**Second : Describing the Detention Place and the Detainees Conditions ;**

1. The Detention Place General Condition:

Type and Age of the Building	Surrounding Environment	General Conditions

2. Records

Organization and numbering	Detention Warrants	Verdicts	Convicts	Administrative Detainees	Judicial Detainees	Sick Inmates	Special Needs Inmates	Foreign Inmates

3. Categorization and Solitary Confinement

The applied categorization System		Is the applied solitary confinement system combatable with the law?			Notes
Dangerous	V. Dangerous	Detained	Convicted	Juveniles <sup>1</sup>	

4. Dorms and Holding Cells' Conditions:

Number of Inmates in the Dorm	Dorm's Size	Height	Ventilation	Lighting	Heating	Beds	Covers
Hygiene	Shower Rooms	Rest Rooms	Water	Mold	Cracks	Contamination	Noise

5. Sun Yards: size and time

Sun Yard Size	Yard Time	Period

6. Medical Care:

Doctors	Nursing	Medical Clinic	Equipment	Number of Beds	Infections	Addition	Medicine	Shifts

7. Food and Drink

Kitchen 1	Food	Number	Tools	Hygiene	Quality	Quantity	Serving	Special food	Drinking water

8. Treatment:

Torture complaints	Abuse complains	Discrimination complains	Treatment when arresting	Treatment during investigation	Treatment during interrogation	Treatment when transferring	Treatment when coming to the center for the first time

9. Solitary Confinement

Number of inmates and their names	Reasons	Number	Rooms condition

10. Disciplinary Procedures

Reports	Procedures	Penalties

11, Violence among Detainees

Cases	Reports	Actions	Disadvantages	Results

12, Strikes and Riots

Cases	Treatment	Reports	Reasons	Actions	Results

13, Death Cases

Number	Names	Reasons	Actions

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14, Detention Period

Detention Period before Interrogation	Pre-trial detention Period	Administrative Detention Period

15, Contacts with the outside World:

Visits	Correspondences	Calls

16, Center Regulations and Complaints Procedures:

Clarity of Systems	Circulation	Complaints Procedures	Confidential	Results

17, Education and Training

School	Workshops	Beneficiaries	Production	Public Safety

18, Entertainment and Culture:

Sports	Library	Radio	TV	Newspapers and Magazines

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**Third: Subjects that have been discussed with the administration of the detention place at the end of the visit, and their response:**

Subject:

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Administration Response:

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Subject:

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Administration Response:

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Subject:

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Administration Response:

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**Fourth: Actions that were taken by the Public Prosecutor regarding the deficiencies or violation of law, noticed by in his the visit:**

Action:

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Date     /     /

Action:

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Date     /     /

Action:

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Date     /     /

**Fifth: Visit Results**

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**Sixth: Public Prosecutor's Recommendations**

**Recommendation 1:**

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**Recommendation 2:**

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**Recommendation 3:**

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Referral Date to the Attorney General:

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

Actions Taken by the Attorney General in Accordance to the previous Public Prosecutor's recommendations:

Action:

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Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Action

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Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Action:

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Date    /    /

Seventh: Visit's results

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**Seventh: Attorney General's Recommendation**

Recommendation 1:

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Recommendation 2:

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Recommendation 3:

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Referral Date to the Chief Prosecution:

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**Eighth: Notes of Chief Prosecution:**

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Action:

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Date: \_\_\_ / \_\_\_ / \_\_\_

**Ninth: Notes of the Ministry of Justice:**

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Action:

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Date    /    /

**Notes for Filling out the Visit's form**

- It is not preferable to fill out this form during the visit but after finishing it and according to the notes written by the Public Prosecutor during the visit using the advisory checklist mentioned in the guide, and after reviewing the 18 detention aspects contained in the report, that should be covered by the visit.
- For some aspects, it is enough to mention the irregularities and violations, if available. Example: only details for any case where the detention period was illegal or unjustifiably long is mentioned in item (14) on the detention period.
- For the aspects that include a special column in the report (e.g. 11, 12, 13), it only should be written whether the reports exist or not and their condition.
- For the aspect No. (8) related to the treatment, it should mention under each column the number of complaints or the number of notes on the abuse. However, details related to the complaint or the claim of torture or abuse, this is detailed in the form named: (Report Form on the Act of torture and Abuse), which can be filled out based on a written complaint or a personal interview with the victim.
- When visiting a detention place at a police/security station (holding cell), the appropriate aspects for this place should be filled and leave other aspects related to correction and rehabilitation centers.

**Report's attachments: the following can be attached to the report:**

**Attachment 1:**

(Any documents or materials that help in clarifying the violations or irregularities regarding the conditions of the detention place or the abuses related the detainees should be attached)

**Attachment 2:**

(A list of the detainees or staff in the detention place who were interviewed)

Annex number (2) : Investigating the Act of Torture and Abuse Form

The Act Report's Number \_\_\_\_\_

Report Date      /      /       
                  Day    Month    Year

Name and working place of the Public Prosecutor who organized the report:  
\_\_\_\_\_

The report's nature: based on a compliment/ news  during inspection  
 visit/ interview

1- Victim's data:

First name: \_\_\_\_\_ Father's name: \_\_\_\_\_ Grandfather's name: \_\_\_\_\_

Nickname: \_\_\_\_\_

Male     Female

Adult                       Juvenile

Nationality:

Date and place of birth: Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_ Place \_\_\_\_\_

Social Status: \_\_\_\_\_

Education and occupation: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Detention place: \_\_\_\_\_

Reason: \_\_\_\_\_

Period: \_\_\_\_\_

2- Events:

- Event Description :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Date, time and place of the act of torture:

Day: \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_ Time \_\_\_\_\_

Place \_\_\_\_\_

When did the torture occurred?

During Detention

During Transfe

During Detention

During Interrogation

Other, please specify:



Details on the body parts that were tortured:

- Hands                      Legs
- Head                                             Back  
Abdomen                      and                      chest                       Sexual parts
- Other, specify:

Details on the Torture Nature:

<input type="checkbox"/>	Beating
<input type="checkbox"/>	Hanging
<input type="checkbox"/>	Whipping
<input type="checkbox"/>	Electric shocking
<input type="checkbox"/>	Rape/ sexual assault
<input type="checkbox"/>	Threatening
<input type="checkbox"/>	Suffocating
<input type="checkbox"/>	Hanging
<input type="checkbox"/>	Isolating
<input type="checkbox"/>	insulting religious/ national feelings
<input type="checkbox"/>	Lightening
<input type="checkbox"/>	Sleep deprivation
<input type="checkbox"/>	Other, specify:

Tools used in torturing:

- 1-
- 2-
- 3-
- 4-

- Number of the tortured: \_\_\_\_\_  
Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_ Time \_\_\_\_\_

- Place \_\_\_\_\_  
Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_ Time \_\_\_\_\_

- Place \_\_\_\_\_

- Number of people responsible for the torture:  
1 O    2 O    3 O    4 O    5 O    6-10 O    11-15 O    16-  
more O

Can the victim identify any of the perpetrators     ?     Yes  
No

Identity of the perpetrator (s) of torture

- 1- Name/ nickname: or any other name: \_\_\_\_\_  
2- Description: \_\_\_\_\_  
3- Occupation:  Policeman  Investigator   
Officer/ Administrator
- 

- 1- Name/ nickname: or any other name: \_\_\_\_\_  
2- Description: \_\_\_\_\_  
3- Occupation:  Policeman  Investigator   
Officer/ Administrator
- 

- 1- Name/ nickname: or any other name: \_\_\_\_\_  
2- Description: \_\_\_\_\_  
3- Occupation:  Policeman  Investigator   
Officer/ Administrator
- 

- 1- Name/ nickname: or any other name: \_\_\_\_\_  
2- Description: \_\_\_\_\_  
3- Occupation:  Policeman  Investigator   
Officer/ Administrator
- 

Who was issuing the torture orders?

\_\_\_\_\_

\_\_\_\_\_

Number of victims for the same violations in this act:

1 O    2 O    3 O    4 O    5 O    6-10 O    11-15 O    16- more O

Can you recognize any of those victims?

Their names and nicknames:

1-

2-

3-

Date of the first medical test for the victim:

Time \_\_\_\_\_ Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_

Is there any physical or psychological effects of the torture that are evident on the victim at the medical test date:

Yes

No

Describe it, if found:

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Public Prosecutor's Actions:

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Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Report's Attachments/ attach the following according to each case:

- Medical Reports.
- X-rays, Photograph, Xe and personal photos.
- Laboratory Reports.
- Statements / testimonies .
- Evidences (weapons or other tools).
- Any other attachments required by the public prosecutor as necessary.

### **Annex number (3)**

#### **Judicial Jurisprudence**

Torture makes evidence inadmissible before the court and it also nullifies the legal value of confessions. This is the general principle that is reflected in many court decisions and impeded in the related jurisprudence. The admissible confession that can serve as a legal evidence before the court, is the one that is produced by a will which is free of duress.

In order to assist the users of this Manual to refer to such legal principles, whenever there is a need to do so, we include the below stated Cassation Court's decisions, which have special importance in relation to confessions extracted under torture and the effect it has on its admissibility before the trial courts.

**Jordanian Cassation Court's Decision (Criminal), number 280/2010 (five members panel), date 4/5/2010:  
Published by Adalah Center**

1. The right to defense is a sacred right and due to the fact that the defendant and -in light of the criminal lab report- claimed that he did not commit the crime he is accused of committing and he was subjected to beatings and torture by the police and was also threatened by them at the public prosecutor's office, the Grand Felony Court had to summon the public prosecutor as a defense witness not to testify about the investigations he/she did, rather to testify about the conditions which surrounded taking the accused statement. Thus, the said court should have weighted the technical evidence represented by the criminal lab report and because it did not do so, its decision should be vacated.

**Jordanian Cassation Court's Decision (Criminal), number 263/2007 (five members panel), date 8/4/2007:  
Published by Adalah Center**

1. The Grand Felonies' Court heard the investigator's testimony, who stated that the defendant was beaten before he was interrogated and before he was brought in to his office and he was not beaten while he was in the witness's office. He also stated that he did not mention this to the public prosecutor because he did not ask him if the defendant was beaten or not. Accordingly, the Grand Felonies' Court ruled that the statement of the defendant that was given to the police was unwillingly extracted and was not given with the defendant's free will, and thus it dismissed such statement. The decision of the Grand Felonies' Court not to build its conviction on the victim's (accused) statement and the confession of the accused police officer (investigator), is the right decision and is combatable with the law, because such evidence do not constitute the right base for a conviction and shall not gain the trust of the court.

**Jordanian Cassation Court's Decision (Criminal), number 256/2006 (five members panel), date 17/5/2006:**

### **Published by Adalah Center**

1. Article (159) of the Criminal Procedures Law, states two conditions that should be present in order for the court to accept a confession given by the accused before the police: First: the public prosecutor shall provide the evidence related to the conditions under which such confession was made. Second: the court shall be convinced that the accused had freely and without any duress given such confession. Where the public prosecution provided as a witness the police investigator who documented the statement of the accused (Dua), who stated that the accused freely gave her statement, but the court was not convinced. Where the trial court used its discretion not to be convinced that the accused statement before the police was willingly given, thus it acted correctly and according to the law by not accepting the confession.

### **Jordanian Cassation Court's Decision (Criminal), number 820/2003 (five members panel), date 23/11/2003:**

#### **Published by Adalah Center**

- The defendants were arrested on the 11<sup>th</sup> of August 2001 and were brought before the public prosecutor on the 20<sup>th</sup> of August 2001. Holding them for nine days at the police station proves according to the legal logic, that their confessions were not the result of their free will. The logic provides that the accused shall not be held for such period at the police holding cell and shall be referred immediately to the public prosecutor if their confessions before the police were the result of their free will. What is the reason for such prolonged detention taking into consideration the text of article (100) of the Criminal Procedures Law, which obliges the police to immediately hear the statement of the accused and to refer him/her to the competent public prosecutor within (24) hours? The conclusion that is combatable with logic, shows that they confessed due to the beatings and torture they were subjected to and they were held by the police according to an administrative detention warrant in order for the torture marks to heal and after nine days in detention they were referred to the public prosecutor, who referred them to the medical examiner according to their request, where they obtained the medical report (attached to the investigation file) which proved that they were subjected to beatings and torture. The facts show that the circumstances under which the statements were taken are legally deficient according to article (159) of the Criminal Procedures Law, and thus the public prosecution shall not rely on such evidence and if it does so it negates the law. The court of appeals should have not relied on such evidence and thus its decision shall be vacated for the above stated reasons.

### **Jordanian Cassation Court's Decision (Criminal), number 450/2004 (five members panel), date 17/3/2004:**

#### **Published by Adalah Center**



- The defendants' confessions shall – as other criminal evidences- be subject to the judge's discretion and his/her personal judgment regarding its admissibility according to article (147) of the Criminal Procedures Law .
- If the trial court believed that the defendant's confession before the police was taken under suspicious conditions and during which the marks of beating and torture were evident on his/her body , then the court has the right not to accept such confession based on its discretionary power which does not fall under the monitoring powers of the Cassation Court , as long as , appealing the trial court's discretionary power does not fall within the reasons for appealing the judgments before the Cassation Court according to article (274) of the Criminal Procedures Law.

**Jordanian Cassation Court's Decision (Criminal), number 1513/2003 (five members panel), date 4/5/2004:**

**Published by Adalah Center**

The defense evidences have been regulated for the benefit of the defendants, in order to be able to prove their innocence according to article (232) of the Criminal Procedures Law, thus if the defendant claimed that his/her confession before the police was the result of duress and torture and he/she provided evidence to this end, then the court has to deal with and inspect such evidence. The court refraining from dealing with the defense witnesses, resulted in canceling the effect of such evidences, which is a grave violation to the right to defense and shall result in nullifying the trial court's judgment because the said court (State Security Court) relied in its conviction of the defendants on their confession before the interrogator.

**Jordanian Cassation Court's Decision (Criminal), number 51/1998 (five members panel), date 23/3/1998:**

**Published on page 403 of the Judicial Journal, number 3 on 1/1/1998**

- If it was proven beyond any doubt that the defendant's statements were extracted under duress and torture against his free will, such statements shall be dismissed and not considered as part of the evidences.
- If there is a doubt concerning complainant's testimony and statements, then the court's judgment shall not be based on such testimony, due to the fact that doubt shall be interpreted in the benefit of the defendant and the complainant's testimony and statements shall be dismissed and by its dismissal whatever was based on it shall be also dismissed, which means that the witness who build his testimony on what he had heard from the complainant shall be also dismissed. This means that dismissing the complainant testimony shall result in dismissing the witness's testimony, who build and based his statements on the complainant's testimony.

**Jordanian Cassation Court's Decision (Criminal), number 746/1997 (five members panel), date 20/1/1998:**

**Published by Adalah Center**

1. The defendant's confession before the police is the result of duress and beatings. This is evident by putting him in the holding cell for more than a week, despite the fact that article (100) of the Criminal Procedures Law prohibits the police from keeping any arrested person for more than (48) hours at the police holding cell. After the expiry of the (48) hours the arrested person shall be brought before the public prosecutor and, thus keeping him for that long (more than a week) means that he was subjected to duress and thus he confessed.

**Jordanian Cassation Court's Decision (Criminal), number 327/1994 (five members panel), date 1/1/1995:**

**Published by Adalah Center**

- If the defendant's confession before the police, came as a result of torture and duress and the defendant denied such confession before the court, clearly negates what is stated in the expert's report and does not confirm with the logic of things.