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ICJ Submission to the Universal Periodic Review of Jordan

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Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review of Jordan. Despite the renewed commitment of the Government of Jordan to the promotion and protection of human rights, accompanying its membership of the Human Rights Council, numerous serious human rights violations persist. These have been largely committed in the context of the "war on terror" and the participation of the Jordanian Government in renditions and secret transfers of prisoners, victims of enforced disappearance, to countries of origin where there is a risk of torture or other ill-treatment.

In this submission, the ICJ points to the breaches by Jordan of its obligations under international law, which amount to human rights violations. Those include continuing practice of arbitrary detention, including secret and incommunicado detention; use of security courts and military courts to exercise jurisdiction over civilians; and the failure to investigate, promptly and independently, the consistent reports of torture, ill-treatment and other abuses of the rights of detainees, and bring to justice officials and law enforcement officers responsible for such violations. The ICJ also wishes to draw the Council's attention to the failure of the Jordanian judicial system to fulfil the rights of victims of human rights violations through access to justice and ending the impunity of those responsible for such violations. This is true in particular with regard to the role of the State Security Courts, which mandate contravenes the international standards of judicial independence and impartiality and that has further exacerbated the impunity of those responsible for the many human rights violations in Jordan.

I. Secret detentions, renditions and other human rights violations under the "war on terror"

After the attacks of 11 September 2001 on the United States of America (USA), a new Law on Prevention of Terrorism was adopted, which has defined terrorism as: *"Using violence or threatening to use it in execution of an individual or collaborative act, which aims at disturbing the public order or endangering the safety and security of the society, as to impose terror upon people, frightening them or endangering their life and security; actions damaging to the environment, to the public, private and international utilities and properties, to diplomatic missions (by occupation or take*

over), and exposing national resources to danger or disruption of the application of the regulations of the laws and the Constitution.”¹

This definition is overly broad and vague. It is unclear, how the threat of using violence and carrying out “actions damaging to the environment” or certain private properties could in themselves be considered as a terrorist act as opposed to an ordinary offence. It is also unclear as to which form of writing, speech or act would be considered to constitute a threat of using violence and therefore a terrorist act. This vague definition provided for by the 2006 terrorism law is in contravention of the principle of legality of offences, *nullum crimen sine lege*, which is one of the cornerstones of the contemporary criminal law, as well as a principle of the international human rights law. The *nullum crimen sine lege* principle requires that, in order to be considered a criminal offence, a specific type of conduct be established in law as a crime and the definition of any criminal offence should be precise and free of ambiguity.²

Article 150 of the Penal Code stipulates that: “Every writing, speech or action intended to or resulting in inciting sectarianism, racism or incitement to conflict between communities and the various elements of the nation is punishable by imprisonment for not less than six months and not more than three years or a fine not exceeding five hundred dinars.” This provision taken in combination with Jordan’s anti-terrorism measures have further endangered the enjoyment of other freedoms, such as the freedom of opinion and expression,³ in violation of Article 19 of the ICCPR, which stipulates that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Moreover, the cooperation of the Jordanian Government with other governments in undertaking counter terrorism activities, including the “war on terror”, has resulted in additional human rights violations, including secret detentions and renditions of terrorism suspects, even to countries where the person is at risk of torture and other ill-treatment or other serious human rights violations, in breach of the principle of *non-refoulement*. At the heart of an international network of renditions as transit, source and destination country, Jordan has secretly arrested numerous prisoners including, amongst others, Mohamed Farag Bashamilah, Salah Naser Salem Ali Darwish, and Maher Arar, all of whom are known to have been subjected to torture as part of interrogations. Bashamilah and Darwish were, according to the allegations of their lawyers, ⁴ apprehended, detained in an intelligence detention centre and tortured in Jordan and later transferred to the US custody. In addition, although the case of Maher Arar has been well documented, including a report by the Canadian Commission of Inquiry, ⁵ Jordanian officials have denied all allegations regarding his rendition and said that

¹ Law on Prevention of Terrorism N° 55/2006 of 1st November 2006, available at: <http://www.moi.gov.jo>.

² Human Rights Committee, General Comment N° 29, *States of Emergency (Article 4)*, UN document CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 7.

³ See the Human Rights Watch report: *Jordan: Rise in Arrests Restricting Free Speech*, available at: <http://www.hrw.org/english/docs/2006/06/17/jordan13574.htm>.

⁴ Submission by the New York University School of Law Center for Human Rights and Global Justice and International Human Rights Clinic of Washington Square Legal Services to the International Commission of Jurists’ Eminent Jurists Panel sub-regional hearing in Cairo, 4-5 June 2007, covering Egypt, Jordan, Yemen and Syria. Available at: http://ejp.icj.org/hearing.php3?id_rubrique=56.

⁵ Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, “*Report of the Events Relating to Maher Arar: Analysis and Recommendations*” available at: http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/26.htm.

he arrived in Jordan as a normal passenger on a Royal Jordanian Airlines flight.⁶ The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment discussed the case of Maher Arar with Jordanian officials during his visit to Jordan in June 2006 and concluded that it was: *“astonishing that high-level intelligence officers provided him an account which is clearly contradicted by the well-substantiated and partly proven allegations, as well as the evidence obtained so far and made public in this well-known case.”*⁷

Other testimonies of prisoners, reported by local and international organizations, described how terrorism suspects have been held at the General Intelligence Department (GID) detention facility at their headquarters in *Amman* and at a secret detention centre at the *Al-Jafr* prison.⁸ The GID was established under the General Intelligence Department Law N° 24 of 1964 as a military security agency for both internal and external intelligence. In practice, the GID exercises wide powers of arrest and detention. It has been reported that the GID: *“commonly holds suspects incommunicado and even without charge for interrogation for periods ranging from one week to two months, and in some cases even longer.”*⁹ Such practices are in breach of Jordan’s obligations under international law precluding it absolutely from engaging in the practice of secret or unacknowledged detention, which itself constitutes a form of torture or other proscribed ill-treatment. The United Nations Human Rights Committee has pointed out that *“[t]he absolute nature of these prohibitions, even in times of emergency, is justified by their status as norms of general international law,”*¹⁰ and called on States to *“immediately cease [the] practice of secret detention and close all secret detention facilities”*.¹¹

The ICJ therefore calls on the Working Group and the Council to urge the Government of Jordan to:

- i) Ensure that the definition of terrorist acts and other legislative counter-terrorism measures comply with the norms and principles of international law, including the principles of legality and *nullum crimen sine lege*;**
- ii) End immediately the policy and practice of secret and incommunicado detention and participation in renditions and ensure that the apprehension and transfer of suspects comply with the international standards, in particular with the absolute nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the principle of *non-refoulement*, where there is a risk for a person to be returned of torture, ill-treatment or other serious violations of human rights.**

⁶ Commission of Inquiry into the actions of Canadian Officials in Relation to Maher Arar, *Report of the events relating to Maher Arar: Analysis and Recommendations*, 18 September 2006.

⁷ See the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Jordan, UN Doc., A/HRC/4/33/Add.3, 5 January 2007, para. 45.

⁸ See the Amnesty International report: *USA/Jordan/YEMEN: Torture and secret detention: Testimony of the “disappeared” in the “war on terror”*, August 2005.

⁹ AMNESTY INTERNATIONAL, *Jordan: “Your confessions are ready for you to sign” Detention and Torture of political suspects*, 24 July 2006, p. 6.

¹⁰ Human Rights Committee, *General Comment N° 29, States of Emergency (Article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 13 (b).

¹¹ See the *Concluding Observations of the Human Rights Committee on the United States of America*, CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 12.

2. Torture and other cruel, inhuman or degrading treatment or punishment

There have been consistent and credible reports¹² alleging that torture and other ill-treatment has been systematically used in Jordan's prisons and centres of detention. In particular, it is alleged that torture remains widespread in Jordan and in some places routine, namely in the GID, in order to extract "confessions" and obtain intelligence in pursuit of counter-terrorism and national security objectives, and within the Public Security Directorate's Criminal Investigations Department (CID), to extract "confessions" in the course of routine criminal investigations.

The ICJ regrets that during the mission to Jordan in 2006, the UN Special Rapporteur on torture "*was denied the right to speak to detainees in private during his visit to the General Intelligence Directorate (GID); and at the Public Security Directorate's Criminal Investigation Department (CID) in Abdali, central Amman, the authorities attempted to obstruct him and hide evidence.*"¹³ Detainees in these two departments are often ill-treated and tortured during their interrogation and detention. Such allegations have been also supported by the last report of the UN Special Rapporteur on torture on the situation in Jordan that concludes that "*the practice of torture is widespread in Jordan, and in some places routine, namely the General Intelligence Directorate, the Public Security Directorate's Criminal Investigation Department, as well as Al-Jafr Correction and Rehabilitation Centre*".¹⁴ These practices breach Jordan's obligations under international law, including under the ICCPR (Article 7) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under international law, the prohibition of torture is absolute and a peremptory norm from which no derogation is permitted (*jus cogens*). The Human Rights Committee reaffirmed that "*the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment [...] in no circumstances can be derogated from. [...] No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk of being subjected to torture or cruel, inhuman or degrading treatment*".¹⁵

The absence of a specific crime of torture in the domestic legislation, in accordance with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the minor sanctions, which are not commensurate with the gravity of the offences, are a part of the problem.¹⁶ Furthermore, the prevalence of torture and impunity of its perpetrators has been compounded by maintaining a policy of incommunicado and secret detention; making the principle of presumption of innocence illusory through allowing as evidence in court "confessions" extracted through torture and

¹² See the Human Rights Watch Report: *Suspicious Sweeps: the General Intelligence Department and Jordan's Rule of Law Problem*, 2006 <http://hrw.org/reports/2006/jordan0906/>, and the Amnesty International Report: *Jordan: "your confessions are ready for you to sign", detention and torture of Political suspects*, 24 July 2006, <http://www.amnestyusa.org/document.php?lang=e&id=ENGMDE160052006>.

¹³ See the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: *Mission to Jordan*, UN Doc., A/HRC/4/33/Add.3, 5 January 2007, para.6.

¹⁴ *Ibid*, para. 64.

¹⁵ See the Human Rights Committee's Concluding Observations following the consideration of the fifth periodic report by Canada on the implementation of the International Covenant on Civil and Political Rights, CCPR/C/CAN/CO/5, 20 April 2006, para. 15.

¹⁶ See Article 208 of the Jordanian Penal Code, which is not in line with the definition of torture contained in article 1 of the Convention against Torture, as torture is not treated as a specific crime but rather as a misdemeanor, and is not subject to penalties appropriate to its gravity.

other ill-treatment; and by institutionalizing the impunity of those responsible for carrying out such acts and failing to bring them to ordinary civilian courts.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Jordan to:

- i) Bring the definition of torture in the Penal Code in accordance with Article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;**
- ii) Investigate in a prompt, transparent and independent manner the allegations of torture and ill-treatment of convicted prisoners and detainees and bring to justice military and civilian state officials and law enforcement officers who carried out, ordered or acquiesced torture such practices.**

3. State Security and Other Special Courts

The State Security Court (SSC) has been established as a special court under Article 99 and Article 100 of the Jordanian Constitution by the Law N° 17 of 1959 on the State Security Court.¹⁷ According to this law, the court comprises military and civilian judges, appointed by the Prime Minister on the recommendation of the Minister of Justice and the head of the Joint Chiefs of Staff. The latter appoints also a military officer to serve as Prosecutor. The SSC prosecutor's offices are physically located inside the central GID complex. The State Security Court has a broad range of competence, including jurisdiction over cases involving sedition, armed insurrection, financial crimes, drug trafficking, slandering the royal family, crimes involving the possession of weapons and explosives and conspiracy against state security. It is possible for the Prime Minister to transfer any case to the SSC and his decision cannot be appealed. Sentences issued by the State Security Court may be appealed to the Court of Cassation and the death sentences imposed by the SSC are automatically referred to it for review.

Concerns continue to be raised about the objective and reasonable justification for the existence of such special court, not only with regard to the principle of equality before the law and the courts, but also with regard to the courts' independence and impartiality. The Human Rights Committee has recently stressed that *"the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned."*¹⁸ The European Court of Human Rights and the Inter-American Commission on Human Rights have both said that military judges cannot be considered independent and impartial because they are part of the hierarchy of the army.¹⁹

Only civilian courts using accepted procedures provide the necessary independence and impartiality to ensure that civilians are protected and that the security forces are accountable. Ordinary crimes, including those that amount to human rights violations committed by military and law enforcement officials, should be tried in ordinary civilian courts using established procedures in line with international standards. The UN Human Rights

¹⁷ See also article 97 of the Jordanian Constitution, which allows for the establishment of special courts.

¹⁸ Human Rights Committee, General Comment No. 32, Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/V/GC/2 (2007).

¹⁹ European Court of Human Rights, see *Findlay v. The United Kingdom*, judgment of the European Court of Human Rights of 25 February 1997, Series 1997-I and *Incal v. Turkey*, judgment of 9 June 1998, Series 1998-IV. Re Inter-American system, see Annual Report of Inter-American Commission on Human Rights 1997, OAS document OEA/Ser.L/V/II.98, Doc. 6, Chapter VII, Recommendation No. 1.

Committee has repeatedly expressed its concern at the use of special courts and has, on several occasions, recommended that such courts be abolished. The Committee is also of the view that the abolition of special courts is a positive step in achieving national implementation of the ICCPR.²⁰

In addition, and according to Article 7 of the 1964 GID Law, only intelligence court comprising of GID officials may try GID officers. Military personnel are also tried and sentenced exclusively by military courts. The United Nations Human Rights Committee, has frequently reiterated that the *“wide jurisdiction of the military courts to hear all cases involving the trial of military personnel and their powers to decide cases that belong to the ordinary courts contribute to the impunity enjoyed by such personnel and prevent their punishment for serious human rights violations.”*²¹

The ICJ is concerned that the SSC and other special courts have been set up to shield state officials, particularly military and security personnel alleged to be responsible for human rights violations from legal accountability, with the effect of entrenching systematic impunity.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Jordan to:

- i) Abolish the State Security Court and other special courts, except for military courts with jurisdiction over exclusively military offences, and make sure that ordinary, i.e. civilian crimes, including those that amount to human rights violations committed by military and law enforcement officers and officials, are tried in ordinary civilian courts using established procedures in line with international standards;**
- ii) Ensure that the Jordanian judiciary acts with deference for human rights, and that the courts are not manipulated for political reasons.**

²⁰ See e.g. the Concluding Observations of the Human Rights Committee on Guinea, UN Doc. CCPR/C/79/Add.20, 29 April 1993, para. 3, and Concluding Observations of the Human Rights Committee on Senegal, UN Doc. CCPR/C/79/Add.10, 28 December 1992, para. 3.

²¹ *Concluding observations of the Human Rights Committee on Guatemala*, UN Doc.: CCPR/CO/72/GTM, 27 August 2001, para. 10.