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Universal Protocol for Investigative Interviewing and Associated Safeguards: Taking Jordan as an Example

by Lubna N. Nasser*

I. INTRODUCTION

In his last thematic report to the General Assembly in October 2016, former UN Special Rapporteur on Torture Juan E. Méndez called for the development of a universal protocol to ensure that as a matter of law and policy, no person—be it a suspect, victim, or witness—is subjected to torture, ill-treatment, or coercion while being questioned by law enforcement officials, intelligence personnel or other authorities with investigative mandates.[1]

Around the same time, the Human Rights Council adopted Resolution 31/31 calling for the implementation of safeguards to prevent torture during police custody and pretrial detention.[2] Subsequent to these developments, the creation of the protocol has been recognized as a critical objective by numerous stakeholders and has received broad support from civil society, law enforcement professionals, academics, psychologists, international organizations, and member States of the United Nations.

In principle, the universal protocol will help the global community move one step closer to reducing the incidence of torture and ill-treatment around the world and strengthen the protections for persons interviewed by authorities who, as a result, find themselves “confronted with the entire repressive machinery of society”.[3] In this article, the universal protocol will be examined while taking Jordan as an example and showcasing the need and value added of such a guideline.

II. WHY ARE THE GUIDELINES NEEDED?

Law enforcement officials and other investigative bodies play a vital role in serving communities, preventing crime, and protecting human rights. One of

law enforcement’s key competencies is conducting interviews. The information derived from these interviews plays an integral role in the criminal justice process, affecting the outcome, reliability, and fairness of criminal proceedings. However, questioning, in particular of suspects, is inherently associated with risks of intimidation, coercion and mistreatment. Every day, societies are repeatedly challenged with the reality that torture persists—particularly in the context of law enforcement interviews and during the first hours of custody—despite its absolute prohibition under international law.

Justified by the need to “fight crime” and “counter terrorism,” abusive interrogation practices risk becoming normalized and widespread.[4] In many parts of the world today, a suspect’s confession is still considered the strongest form of evidence, often leading to incrimination without the inclusion of corroborating evidence. This phenomenon is one of the main incentives for law enforcement officials’ continued use of physical and psychological ill-treatment.

Furthermore, international law mandates due process guarantees, and that safeguards be afforded during questioning to counter the risks of torture and ill-treatment, but unfortunately, they are often absent or denied. The absence of basic legal safeguards nourishes an environment where coercive methods of questioning are encouraged.[5]

Using forceful interviewing methods that amount to torture or other ill-treatment confuse and disorient persons being questioned, to the point where they may actually believe or remember occurrences that have not taken place—leading to inaccurate and deceptive information.[6] In that fashion, justice systems are weakened because justice is not served. Empirical evidence also shows that torture and mistreatment can

and will breed extremism among criminal elements and, ultimately, more crime.[7]

The forthcoming guidelines will therefore be based on decades of rigorous scientific research and evidence that unequivocally demonstrate that torture and coercion not only do not work, but, in fact, have the opposite effect, as they can produce false and unreliable information.[8] The universal protocol will embrace the idea that non-coercive interviewing methods are in fact the most effective in fighting crime—in addition to their being the first and foremost legal safeguard. [9] The universal protocol aims to give less weight to confessions and to eliminate the use of coercive investigative techniques and, consequently, lead to fewer incidences of torture and ill-treatment.[10]

Moreover, the protocol will list and develop the basic procedural safeguards pertaining to questioning already enshrined in international human rights law.[11] In addition to fostering trust in the judicial system, safeguards allow investigations to be more effective in the use of limited resources—both human and financial—normally available to those institutions.[12] Such safeguards are: information on rights, access to counsel, right to remain silent, medical examination and recording.[13] In addition, the protocol will emphasize the exclusion of evidence obtained under torture as it is a non-derivable norm in international law.[14] A change of mind-set—and a move away from the culture of dependence on confessions—is one of the foremost aims of the universal protocol.[15]

What is promising is that a number of States have already moved away from coercive and accusatorial interviewing models and have implemented a model similar to the one envisioned. Successful models are the PEACE model from England and Wales adopted in 1992 and the K.R.E.A.T.I.V model from Norway.[16] These models highlight how planning and preparation, engagement and explanation, accounting, closure, evaluation, and how to strategically use evidence, illustrating the critical traits that an interviewer must possess; foremost among them is the ability to develop rapport with the interviewee.[17] The protocol will underscore these best practices and how lessons learned can be utilized to ensure the protocol's effective implementation. This fair investigative process is the beginning and essence of the fair trial process to which all individuals have a right to.[18]

The ultimate goal of the universal protocol is to prevent torture and other ill-treatment practices by outlining interviewing principles and providing a model that respects its absolute prohibition. Application of the universal protocol will help states comply with their international obligations, particularly under Articles 11 and 15 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT).[19] Law enforcement officers frequently work in difficult environments and are often not adequately trained to properly respond to the situations encountered, leading them to resort to torture or other coercive practices during interviews and investigations.[20] In that connection, the guidelines will serve as an essential tool for providing much needed practical guidance to practitioners, and to changing practices and mindsets.

III. UNIVERSAL PROTOCOL IMPLEMENTATION

Central to the universal protocol's success will be its effective implementation on the ground. The protocol's procedures should be included in national systems and as a matter of law and policy to promote the actual application of the procedures by all State agents.

In order to ensure effective implementation, individuals who conduct interviews in an investigative context should undergo specialized training to ensure that the questioning is carried out at the highest level of professionalism and in compliance with human rights standards. However, comprehensive training should not only be required for interviewers but also for supervisors and high-level officials as well as all relevant personnel, such as lawyers, judges and prosecutors, so that the change in mindset and institutional culture is far-reaching and all-embracing.

The protocol shall recognize that some of the procedural safeguards have financial implications on States; as such, the protocol will outline and identify approaches to implement those safeguards in a cost-effective manner. Additionally, the protocol will articulate that the effective application of most of the safeguards contained therein can be implemented in a sustainable manner and without the need for large investments.

IV. TAKING JORDAN AS AN EXAMPLE

Jordan ratified the main human rights treaties protecting individuals from torture and ill-treatment. Such treaties are the International Covenant on Civil and Political Rights (ICCPR), United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), Convention on the Rights of the Child and also Jordan is a party to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court.[21] Nevertheless, ratification of international treaties is only the very first step in preventing incidents of torture and ill-treatment. The ratification places obligations on State parties and once those obligations are reflected in the domestic legislation and in practice, only then will the prevention and redress will be effective and operative. The Committee considers that the term “redress” in article 14 encompasses the concepts of “effective remedy” and “reparation.”[22]

At the same time, it is important to recognize the serious challenges Jordan faces: a severe economic situation, hosting a huge influx of refugees, abating the already scarce resources in the country, security issues given its strategic geographic situation, and the constant threat of terrorism that has unfortunately materialized more frequent than usual in the past 3-4 years.[23] Per the United Nations Refugee Agency, Jordan is ranked as the second country in the world with the highest share of refugees in relevance with its population: 89 refugees per 1,000 inhabitants (666,294 registered Syrian refugees and 66,823 registered Iraqi refugees among other nationalities.)[24] “A major challenge facing Jordan remains to reinvigorate the economy in the context of a challenging external environment. Adverse regional developments, in particular the Syria and Iraq crises, remain the largest recent shock affecting Jordan.[25] This is reflected in an unprecedented refugee influx, in disrupted trade routes, and in lower investments and tourism inflows.[26] Continued regional uncertainty and reduced external assistance will continue to put pressure on Jordan.[27] All of the mentioned challenges make the law enforcement officials’ jobs much more complicated and complex. Nonetheless, given Jordan’s domestic and international legal obligations, it must respect human rights standards at all times in all of its processes and procedures.

National and international reports indicate that confessions are heavily relied on as core evidence and, consequently, pressuring law enforcement officials doing the questioning. For example, the U.S. Department of State’s (DoS) 2018 Jordan Report on Human Rights Practices mentions allegations of torture by security and government officials as one of the most pressing and significant human rights issues in 2018. [28] And in 2006, Human Rights Watch (HRW) published a study with a focus on the Jordanian Intelligence practices.[29] In the study, a defense lawyer was interviewed, and he told HRW “that 95 percent of the evidence for the prosecution’s case typically rests on confessions alone.”[30] In addition, it documents how the absence of legal safeguards fosters the environment of such violations.[31]

Jordanian law does criminalize torture, but it is still not in line with international standards with few legal safeguards provided by the law.[32] The King of Jordan responded to Jordan’s own small share of the Arab Spring with an unprecedented political reform to answer to people’s demands.[33] As a result, the constitution was amended, and the most important amendment came to Article 8 under Chapter two of the Constitution, which provides the “Rights and Duties of Jordanians,” prohibiting torture and formally forbids accepting confessions and/or evidences taken under duress.[34]

There are some provisions on interviewing techniques and legal safeguards in the Jordanian legislation, but they are not fully in line with international standards and not always implemented in practice.[35] For example, with regards to the general principles on arrest and detention, the Jordanian Criminal Procedure Code (CPC) contains certain relevant provisions with regards to the means of apprehension and its documentation. However, there is nothing found in the Jordanian Criminal Procedure Code (CPC) regarding the right to information on rights at the outset of the arrest. As for the access to counsel, the law still does not allow detainees to have legal representation at the outset of arrest but rather at the point of being charged.[36]

Furthermore, nothing can be found in the legislation with regards to the right to remain silent in the first 24 hours of arrest and before seeing a public prosecutor. Concerning recording, the CPC instructs the public



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prosecutor to have written recordings of the hearings which must be read to the defendant and, then signed by the public prosecutor, the notary, and the defendant and if the defendant refuses to sign, that should be recorded with the reasons on abstaining from signing.[37] However, nothing is mentioned in the CPC with regards to audio-visual recordings. As for medical examination, there is no explicit provision in the Jordanian legislation granting the right to prompt and independent medical examination upon arrest.

Then, looking at the safeguards provided for vulnerable populations in the law: the 2014 Juvenile Law, contains specific provisions to ensure having mechanisms in place to safeguard the juvenile from any ill-treatment or coercion during questioning.[38] Meanwhile, the new amended law on the Rights of Persons with Disabilities has no provisions stipulating special and additional rights of people with physical and intellectual disabilities when they are being questioned by law enforcement officials.[39]

Jordan has taken a few good steps in the prevention of torture and ill-treatment, but it still has a long way to go. Equivalently, examining the universal protocol and context in Jordan, it becomes crystal clear that there is

an utmost need for such a protocol as a guiding principle on disposing the confession-based criminal justice systems and adopting a universally accepted interviewing technique with an emphasis on the provision and implementation of procedural legal safeguards.

V. CONCLUSION

A torture-free society is one where citizens trust their institutions, law enforcement officials, prosecutors, and the judiciary system. It is one where citizens have full confidence that these institutions exist to protect them. The universal protocol aims to implement the prohibition and prevention of torture and ill-treatment by mainstreaming non-coercive questioning techniques and insisting on the importance of safeguards in the fight against torture and other forms of ill-treatment. It will be an important tool to change mindsets and the institutional culture that relies excessively in obtaining confessions as the chief way to “solve crimes”—particularly after showcasing how coercive methods are ineffective and lead to unreliable information, which undermines justice systems and erodes society’s trust in public institutions.

From my modest experience, I believe this protocol will be successful not just on paper but also in its implementation because it is tackling what Jordan—and most States—are usually most skeptical of. When States want to use the ‘security’ argument, or the ‘counter-terrorism’ argument, or that these models are unrealistic and don’t reflect the challenges law enforcement officials face, the protocol will have the answers to all of that. With the right backing from the international scene and strong push on the political local level, I can see this model being adopted and trained in police academies. This vision comes with the challenge of time and resistance to change, but if the trainings were practical, bringing the best practices illustrated in the protocol to life, and harness all the lessons learned from the field to enhance the training experience, eventually a change will happen.

Once finalized, the protocol will contain a set of non-binding but highly authoritative guidelines on the conduct of non-coercive interviews and the implementation of safeguards. It will be intended to assist law enforcement officials and relevant authorities to achieve better operational results while protecting human rights and meeting the obligations to prohibit and

prevent torture and ill-treatment. Grounded in scientific research and empirical evidence that demonstrate that intimidation, ill-treatment and torture do not work, the universal protocol brings that understanding to a universal level and will play a vital role in preventing the use of torture and ill-treatment.

It is quite obvious through the Jordanian example how the universal protocol will be an instrumental and, most importantly, practical tool for States to move further away from confession-driven criminal justice systems and one step closer to making the absolute prohibition of torture a reality.

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1 U.N. Secretary-General, *Torture and other cruel, inhuman, or degrading treatment or punishment*, ¶¶ 5-6, U.N. Doc. A/71/298 (Aug. 5, 2016).

2 Hum. Rts. Council Res. 31/31, U.N. Doc. 31/31, 1 (Mar. 24, 2016).

3 U.N. Secretary-General, *supra* note 1, at ¶ 4.

4 U.N. Secretary-General, *supra* note 1, at ¶ 9; see also African Commission on Human and Peoples Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa: Luanda Guidelines Trainer Manual* (2017), https://www.achpr.org/public/Document/file/English/conditions_of_arrest_police_custody_toolkit.pdf

5 U.N. Secretary-General, *supra* note 1, at ¶ 6.; Hum. Rts. Council Res., *supra* note 2, at 1.

6 U.N. Secretary-General, *supra* note 1, at ¶ 7.

7 Id.

8 Id.

9 See U.N. Secretary-General, *supra* note 1, at ¶ 3.

10 See *id.*

11 *Id.* at ¶¶ 10-15.

12 See *id.* at ¶ 8.

13 *Id.* at ¶¶ 19, 21-22.

14 Juan E. Méndez, Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/28/68/Add.2 (Feb. 27, 2015).

15 *Id.*

16 U.N. Secretary-General, *supra* note 1, at ¶ 13.

17 *Id.*

18 *Id.* at ¶ 14.

19 G.A. Res. 39/46, at 1 (Dec. 10, 1984).

20 See U.N. Secretary-General, *supra* note 1.

21 See G.A. Res. 39/46, *supra* note 19, at 1; G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966); Geneva Conventions, Aug. 12, 1949, 75 U.N.T.S. 287; Rome Statute, art. 8(2)(xxii), Jul. 17, 1998, 2187 U.N.T.S. 90.

22 UN Committee Against Torture (CAT), General comment no. 3, 2012 : Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : implementation of article 14 by States parties (Dec. 13, 2012).

23 Jordan's Economic Outlook, World Bank (Oct. 3, 2018), <http://pubdocs.worldbank.org/en/995001538654889315/Jordan-MPO-Revised.pdf>; June 2018 Fact sheet, U.N.H.C.R. (Jun. 2018), <http://reporting.unhcr.org/sites/default/files/UNHCR%20Jordan%20Fact%20Sheet%20-%20June%202018.pdf>; Jordan Overview, World Bank (Apr. 1, 2019)

<http://www.worldbank.org/en/country/jordan/overview>.

24 Jordan Overview, *supra* note 23.

25 *Id.*

26 *Id.*

27 *Id.*

28 See Jordan 2018 Human Rights Report, U.S. DEPT. OF STATE (2018).

29 Suspicious Sweeps: The General Intelligence Department and Jordan's Rule of Law Problem, HUM. RTS.WATCH (Sep. 18, 2006), <https://www.hrw.org/report/2006/09/18/suspicious-sweeps/general-intelligence-department-and-jordans-rule-law-problem/>.

30 *Id.*

31 *Id.*

32 U.N.H.R.C., Concluding observations on the fifth periodic report of Jordan, U.N. Doc CCPR/C/JOR/CO/5, at 3 (2017).

33 H. Varulkar, The Arab Spring in Jordan: King Compelled to Make Concessions to Protest Movement, THEMIDDLE EAST MEDIA RES. INST. (Dec. 12, 2011), <https://www.memri.org/reports/arab-spring-jordan-king-compelled-make-concessions-protest-movement>.

34 Constitution of Jordan of 1952, art. 8.

35 Crim. Pro. Code No 9, Official Gazette No. 1539, Mar. 16, 1961.

36 *Id.* at art. 63 (1) - (2).

37 Crim. Pro. Code, *supra* note 35, at art. 63(3).

38 Juvenile Law No 32, Official Gazette No 5310 (Nov. 11, 2014).

39 Jordan: Parliament Passes Human Rights Reforms, Advances for People With Disabilities, Women, Criminal Suspects, HUM. RTS.WATCH (Oct. 4, 2017), <https://www.hrw.org/news/2017/10/04/jordan-parliament-passes-human-rights-reforms>.