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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016

Opinion No. 39/2016 concerning Adam al Natour (Jordan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 22 June the Working Group transmitted a communication to the Government of Jordan concerning Adam al Natour. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language,

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religion, economic condition, political or other opinion, gender, sexual orientation, disability, or other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Adam al Natour is a Polish and Jordanian national. He was born in 1995 and normally resides in Düsseldorf, Germany. He holds a Polish passport. Prior to his arrest, he was a student. On 27 June 2015, Mr. Al Natour moved to Amman to study Arabic. Reportedly, he was arrested, severely tortured and sentenced on the basis of Jordanian anti-terrorism law. Currently, he is detained in Muwaqqar prison II and his appeal before the Court of Cassation is pending.

5. According to the information received, on 12 August 2015, Mr. Al Natour had been helping his father in his garage, located in Al Bayader, Amman, when 15 members of the General Intelligence Directorate — 14 of whom in civilian clothing and 1 in military uniform — arrived in three cars and arrested him. Since Mr. Al Natour neither spoke nor understood Arabic, his father, while translating for him, asked the Directorate officers for the reason for his arrest. Members of the Directorate, however, did not provide any official reason for the arrest nor did they provide an arrest warrant issued by the judicial authority. Mr. Al Natour was consequently brought to the premises of the Directorate in the Jandawil district of Amman, in Wadi al-Seer area.

6. On 13 August 2015, Mr. Al Natour's father went to the premises of the General Intelligence Directorate to visit his son. However, he was prevented from having any contact with his son and was only allowed to meet with a Directorate official, who informally informed him that his son was being held because of his "jihadi thoughts".

7. For three weeks after the arrest of Mr. Al Natour, his father was not allowed to visit him. The first visit was held in the presence of a General Intelligence Directorate officer. Reportedly, during that meeting, Mr. Al Natour informed his father that he had been beaten and subjected to electric shocks during the first days of his detention. His father claims that at that time his son was in very poor physical and psychological condition.

8. Late in September 2015, Mr. Al Natour was brought before the General Prosecutor of the State Security Court, who was wearing a military uniform. Allegedly, the General Prosecutor had forced Mr. Al Natour to sign a document. The source claims that Mr. Al Natour did not know its content since it was written in Arabic and he had not been provided with a translation. Allegedly, he had been promised to be released the day following the signature of the document.

9. On 28 September 2015, Mr. Al Natour was transferred to Muwaqqar prison II, where he was placed in an isolated cell and allowed access to sunlight and to go outside his cell only for half an hour per week.

10. On the same day, Mr. Al Natour was allowed to appoint his lawyer. At the end of October 2015, he was indicted on the basis of Jordan Anti-Terrorism Law No. 55 of 2006. In November 2015, he was permitted to meet his lawyer for the first time, one week prior to his first hearing before the State Security Court. During the first three hearings held before that Court, Mr. Al Natour was not provided with a certified court interpreter. The source claims that he was thus unable to understand what was said and written by the prosecution.

11. On 15 February 2016, Mr. Al Natour was sentenced by the State Security Court to four years of imprisonment and hard labour in accordance with articles 3.3 and 7.3 of the Jordan Anti-Terrorism Law, for "joining an armed group and a terrorist organization". The

conviction was based on a signed confession, allegedly extracted under duress, and the alleged fact that he had travelled to the Syrian Arab Republic through Turkey, which Mr. Al Natour denied. In fact, neither his Jordanian nor Polish passports show either a Turkish or a Syrian visa.

12. On 14 March 2016, Mr. Al Natour's lawyer appealed his case to the Court of Cassation. The source also asserts that, on 10 April 2016, the defence lawyer submitted a complaint to the Jordanian National Centre for Human Rights. Allegedly, there has been no reply from the National Centre for Human Rights.

13. In the light of the aforementioned information, the source claims that Mr. Al Natour's deprivation of liberty was not in compliance with the due process standards and, therefore, constitutes arbitrary deprivation under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

14. The source argues that the present case meets the requirements of category III because Mr. Al Natour was arrested without an arrest warrant issued by a judicial authority. He was not informed about the charges against him for more than a month and a half. Mr. Al Natour was not brought before a judicial authority until the court hearing began late in November 2015.

15. The source asserts that the arbitrary nature of Mr. Al Natour's detention can be determined on the basis of the violations of the basic minimal rules of treatment of prisoners and minimum international standards of due process, including the right to prepare a defence, the right to a public hearing by an independent and impartial tribunal and the right to be free from torture or other cruel, inhuman or degrading treatment or punishment. The detention facility in which he was held was not subject to any regular independent scrutiny or oversight from the outside and had not been listed as an official detention facility in the country.

16. With regard to the violation of the fair trial standards, the source claims that Mr. Al Natour was not allowed to communicate with his lawyer until mid-November 2015, i.e. four months after his arrest. It is argued that this amounts to a violation of his rights to legal assistance and to prepare his defence.

17. Furthermore, despite the fact that Mr. Al Natour neither spoke nor understood Arabic, all legal proceedings were carried out in that language, and Mr. Al Natour was not provided with a translation of the charges or of the prosecution file or the assistance of an interpreter until the fourth hearing of his trial. The source argues that this constituted a violation of his right to an interpreter.

18. The source claims that Mr. Al Natour was not tried by a competent, independent and impartial tribunal, because the State Security Court, which is designated by State Security Law No. 17 of 1959 to prosecute cases of terrorism, does not meet international human rights standards criteria. In that regard, the source affirms that the Court itself cannot be seen as impartial and independent, because its judges are appointed and can be removed by the Prime Minister. It is composed of two military judges and one civilian one. Furthermore, the General Prosecutor of the State Security Court has the rank of a military officer and is under the same administrative authority as the General Intelligence Directorate intelligence officers, i.e. the Ministry of Defence.

19. Finally, the source claims that Mr. Al Natour was subjected to incommunicado detention twice, first during the first three weeks of detention at the premises of the General Intelligence Directorate and second during his hunger strike while in Muwaqqar prison II.

20. The source argues that, after Mr. Al Natour had been transferred to Muwaqqar prison II, he was allowed to receive visits from his father for only one hour, once per week, during the period from 2 October 2015 to 4 March 2016. On 4 March 2016, those

conditions of detention changed dramatically after Mr. Al Natour began his five-week long hunger strike, which was carried out with some co-detainees in protest against their sentences. Allegedly, during that time, Mr. Al Natour was kept in a strict solitary confinement regime, while being prevented from any contact with the other prisoners. Furthermore, he was left incommunicado as he was not allowed any access to the outside world or to receive medical visits.

21. The source further claims that, from 21 to 25 March 2016, Mr. Al Natour was subjected to severe beatings and other forms of torture by the prison guards to force him to end his hunger strike.

22. On 20 May 2016, the aforementioned restrictions were lifted and Mr. Al Natour could see his father. He was then allowed to be examined by a doctor who had been appointed by the authorities. However, neither he nor his family were provided with the results of that examination. Allegedly, he was not allowed to see his father or a doctor for such a long time so that most of the torture marks on his body had disappeared. Nevertheless, Mr. Al Natour's father noticed that he was suffering from difficulties in breathing and had lost hearing in his left ear.

Response from the Government

23. On 22 June 2016, the Working Group addressed a communication to the Government of Jordan requesting detailed information about the current situation of Mr. Adam Al Natour. The Working Group also requested the Government to clarify the factual and legal provisions justifying his detention and the details regarding the conformity of his trial with international law, in particular the norms of international human rights law that Jordan has ratified.

24. The Working Group regrets that it did not receive a response from the Government to the communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

25. In the absence of a response from the Government, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

26. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

27. The Working Group has noted with concern the source's allegations about the lack of independence and impartiality by the State Security Court. In that regard, the Working Group concurred¹ with the repeated recommendation of the Human Rights Committee that Jordan abolish special courts such as the State Security Court.²

¹ See the report of the Working Group on the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (A/HRC/7/4), para. 59.

² See the recommendation of the Human Rights Committee in para. 12 of its 2010 concluding observations (CCPR/C/JOR/CO/4).

28. Following the analysis of the information submitted by the source concerning the handling of Mr. Al Natour's case by the State Security Court, the Working Group would like to reiterate its concern expressed in its opinion No. 53/2013 that the 2011 reform process and the decision taken by the Council of Ministers on 1 September 2013 on the basis of royal orders have not brought the Jordanian rules about the State Security Court into compliance with international law.

29. As the State Security Court does not meet the fundamental principles of independence and impartiality, it fails to uphold Mr. Al Natour's right to a fair and public hearing by a competent tribunal in the determination of any criminal charge against him under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

30. In the present case, Mr. Al Natour was arrested without a warrant and without being informed of the reasons for his arrest or charges against him or being promptly brought before a judge. He was denied unhindered communication with his lawyer or the assistance of an interpreter during the trial and convicted exclusively on the basis of confessions obtained under torture in the State Security Court.

31. The Government did not provide any explanation or justification for the serious violations of, inter alia, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Covenant and the Arab Charter on Human Rights, to which it is a party, which imposes specific obligations to order a prompt and impartial investigation into allegations of torture and to ensure that any statement made as a result of torture is not invoked as evidence in any proceedings.

32. The guarantees of a fair trial set out in articles 10 and 11 of the Universal Declaration of Human Rights and in article 14 of the Covenant grant the right to legal assistance and representation and to other measures of protection in order to ensure that no evidence is obtained by confession under torture. Under article 14 (3) (g) of the Covenant, no person may be compelled to testify against himself or to confess guilt. In its jurisprudence, the Human Rights Committee stated that such a clause "must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt".³

33. In its communication No. 1769/2008, *Bondar v. Uzbekistan*, the Human Rights Committee found violations of article 14 (3) (b) and (d) on the grounds that the victim was not provided with a lawyer during the interrogation and his right to have the assistance of the lawyer of his own choosing had been denied; and of article 14 (3) (g) owing to a confession that had been obtained under torture.⁴

34. The Working Group recalls that the Human Rights Committee, in paragraph 41 of its general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, stated that:

[A]rticle 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of

³ See Human Rights Committee communications No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 7.4; No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.5; No. 330/1988, *Berry v. Jamaica*, Views adopted on 7 April 1994, para. 11.7; and No. 912/2000, *Deolall v. Guyana*, Views adopted on 1 November 2004, para. 5.1.

⁴ See Human Rights Committee communication No. 1769/2008, *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, paras. 7.4 and 7.6.

guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will.

35. The Working Group takes note of the judgment by the International Court of Justice in questions relating to the obligation to prosecute or extradite (*Belgium v. Senegal*),⁵ in which the Court expressed the opinion that:

[T]he prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*). That prohibition is grounded in a widespread international practice and on the *opinio juris* of States. It appears in numerous international instruments of universal application (in particular the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims; the Covenant of 1966; General Assembly resolution 3452/30 of 9 December 1975 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and it has been introduced into the domestic law of almost all States; finally, acts of torture are regularly denounced within national and international fora.

36. Similarly, the Committee against Torture, in its general comment No. 2 (2008) on implementation of article 2, recalled that “the obligation to prevent torture in article 2 is wide-ranging” (para. 3), and added that the measures adopted to do so were not static since the most effective measures are in a process of continual evolution (para. 4) and are not limited to those measures contained in articles 3-16 of the Convention (para. 1). The obligation to prevent torture applies to all contracting parties, particularly when they assess the risk of torture and cruel, inhuman or degrading treatment to which individuals may be subjected in a third country.

37. One of the aims of the provisions of article 14 of the Covenant is to provide guarantees against all forms of physical or psychological pressure, direct or indirect, by the authorities on the accused with a view to obtaining a confession. The right not to be compelled to testify against oneself or to confess guilt and access to counsel and legal aid are not only measures intended for the protection of the interests of the individual, but also measures in the interest of society as a whole of the trust in and the effectiveness of the judicial process and of the reliability of evidence. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings, and this applies especially to confessions made during the time spent in police custody.

38. In the present case, the Working Group considers that the coercive measures applied against Mr. Al Natour constitute a violation of the international norms against torture, including the aforementioned norms. The use of evidence extracted from such coercive measures severely hampered the assurances of fair trial guaranteed to Mr. Al Natour.

39. The Working Group urges the competent State authorities to proceed to a prompt and impartial investigation in accordance with article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ See International Court of Justice, *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, para. 99. Available from www.icj-cij.org/docket/files/144/17064.pdf.

40. The Working Group finds that other violations severely compromised Mr. Al Natour's due process and fair trial rights in the present case. Mr. Al Natour was not provided with a warrant or informed of the reason for his arrest at the time of his arrest by the General Intelligence Directorate agents in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant. Nor was he promptly informed of the charges against him or brought before a judge in accordance with articles 9 (2) and (3) and 14 (3) (b) of the Covenant. He was also not allowed to institute habeas corpus proceedings contrary to article 9 (4) of the Covenant.

41. Mr. Al Natour was able to meet his attorney for the first time only one week before the first court hearing, which hardly provided adequate time to prepare his defence in accordance with article 9 (3) (b) of the Covenant, and he was denied the free assistance of an interpreter in the first three hearings before the court in violation of his right under article 9 (3) (f) of the Covenant. As highlighted above, his conviction based solely on his confession extracted under torture in violation of article 9 (3) (g) of the Covenant denied him of the guarantees necessary for his defence under article 11 (1) of the Universal Declaration of Human Rights and article 9 (3) of the Covenant.

42. The condition of Mr. Al Natour's detention also constitutes serious violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 1 of which explicitly bans torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.

43. The lack of medical attention and failure to address Mr. Al Natour's breathing and hearing impairments, which were likely to have been caused by his treatment in prison, is a violation of rule 32 (3) and rule 44 (1). At the institutional level, the lack of regular oversight of the prison facilities violates rule 55, which stipulates that inspections must be made regularly by qualified and experienced inspectors appointed by a competent authority.

44. Given the above-mentioned observations, the Working Group finds that the violations of Mr. Al Natour's right to a fair trial are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

45. The Working Group recalls article 9 (1) of the Covenant, whereby no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. The failure of the Jordanian authorities to invoke any legal basis to justify the deprivation of liberty of Mr. Al Natour for more than a month and a half, from the day of arrest on 12 August to the end of September 2015, renders his detention for the given period arbitrary, falling within category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

46. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Adam al Natour, being in contravention of articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I (for the period specified in para. 45) and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

47. Consequent upon the opinion rendered, the Working Group requests the Government of Jordan to take the necessary steps to remedy the situation of Mr. Al Natour

without delay and bring it into conformity with the standards and principles set forth in the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

48. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Al Natour and accord him an enforceable right to compensation in accordance with article 9 (5) of the Covenant and article 14 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, the competent authorities should proceed to a prompt and impartial investigation in accordance with article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

49. The Working Group also urges the Government of Jordan to undertake legislative and institutional reforms to ensure that the State Security Court respects the basic due process and fair trial guarantees of the individuals.

50. In the light of the allegations of torture and other ill-treatment inflicted upon Mr. Al Natour, the Working Group considers it appropriate, in accordance with article 33 (a) of its methods of work, to refer the allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

Follow-up procedure

51. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Al Natour has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al Natour;
- (c) Whether an investigation has been conducted into the violation of Mr. Al Natour's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

52. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

53. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council informed of the progress made in implementing the recommendations, as well as any failure to take action.

54. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁶

[Adopted on 26 August 2016]

⁶ See Human Rights Council resolution 24/7, paras. 3 and 7.