

(Translated from Arabic)

Permanent Mission of the Hashemite Kingdom of Jordan
Geneva

Dear Sirs and Madam,

Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;

Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers;

Fionnula Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

The Government of the Hashemite Kingdom of Jordan has reviewed with great interest your communication of 2 November 2021. It is convinced of the importance of the mandates entrusted to you as Special Rapporteurs and of the need for engagement and cooperation in order to ensure the effective implementation of your work. The Government is committed to protecting and promoting human rights and fundamental freedoms and to ensuring the effective fulfilment of the obligations of Jordan under international human rights law, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. While emphasizing the principle of the rule of law and *res judicata*, it wishes to clarify the legal and factual issues regarding the allegations attributed to convicted individual Mr. Bassem Awadallah, set out in your communication, as follows:

Pursuant to a court order to enter Mr. Awadallah's home, the judicial police arrested him on 3 April 2021, on the basis of information that steps were being taken to carry out seditious acts against the political regime of the Hashemite Kingdom of Jordan. The judicial police conducted preliminary investigations and took his statement, which he gave freely and signed on 7 April 2021, after it was read out to him. This is the only statement made by him in the case file. The allegation that he made written confessions on 14 and 22 April 2021 is untrue. Mr. Awadallah was referred to the public prosecutor of the State Security Court on 8 April 2021. It should be emphasized that the measures taken in respect of Mr. Awadallah were in accordance with the provisions of the law.

When Mr. Awadallah was referred to the prosecutor, he was made aware that he was appearing before the public prosecutor of the State Security Court and

was clearly and specifically informed of the charges against him: the felony of incitement to oppose the political regime of Jordan, in violation of article 149 (1) of the Criminal Code (Act No. 16) of 1960 and its amendments and the felony of carrying out acts that endanger public safety and security and stirring up sedition, in violation of articles 2 and article 7 (i) (f) of the Prevention of Terrorism Act (No. 55) of 2006 and its amendments. He was also informed of his legal rights in a manner which he understood, particularly his right to refuse to reply to any question except in the presence of a lawyer of his own choosing, pursuant to article 63 of the Code of Criminal Procedure, which requires that this notification be recorded in writing if the proceedings are to be considered valid and in order to ensure compliance with the guarantees of legal recourse and a fair trial stipulated in national law and in line with the International Covenant on Civil and Political Rights, particularly article 14 thereof. In his response, Mr. Awadallah stated that he did not wish to appoint a lawyer and that he did not want to give any additional information; this was recorded in the record of the investigation. On 15 April 2021, in response to Mr. Awadallah's request for a lawyer, counsel [REDACTED] appeared, on the recommendation of Mr. Awadallah's sister and through the American Consul in Amman. Private legal representation was thus organized to defend him properly.

Representatives of the United States Embassy were allowed to meet with Mr. Awadallah several times during the investigation and trial, in line with national laws and the Vienna Convention on Consular Relations of 1963. He continues to receive visits from representatives of the United States Embassy. As for family visits, it should be noted that Mr. Awadallah's [REDACTED] live in the United States and have not applied to visit him. None of his family members live in Jordan. In accordance with the provisions of national law and international conventions, the Public Prosecutor's Office ensured that Mr. Awadallah was able to exercise his right to have access to his lawyer and to have access to a suitable place to meet him freely and privately. The allegation that the conversations between Mr. Awadallah and his lawyer were recorded is untrue.

Article 8 of the Constitution of Jordan provides that no person may be arrested, detained or imprisoned or have their freedom restricted except in accordance with the provisions of the law. It is also stipulated that detainees must be treated in a manner conducive to preserving their human dignity and may not be tortured in any way or subjected to physical or mental harm. They may not be detained in places other than those permitted by law. Statements made under torture, abuse or coercion are inadmissible.

In this context, article 159 of the Code of Criminal Procedure stipulates that any confession made by the defendant, suspect or accused not in the presence of the public prosecutor shall be admitted only if the prosecution provides evidence of the circumstances in which the confession was made, and the court is satisfied that it was made voluntarily. If the court finds that the confession was the result of material or moral coercion, it shall consider the confession invalid. The violation of these provisions results in the referral of the perpetrator to the competent court.

Like all other detainees, Mr. Awadallah has been treated humanely and with full respect for his dignity and has not been subjected, as he claims, to any form of torture or ill-treatment. The State Security Court established with certainty the validity of the circumstances in which Mr. Awadallah made his investigative statement freely and willingly based on the testimony to the court of the person who took his statement, as required under article 159 of the Code of Criminal Procedure (Act No. 9) of 1961 and its amendments. The statement was given in the form of a narrative and not in the course of a discussion, and was not the result of an interrogation. It was duly signed by him. In addition, the statement included an explicit, clear and unambiguous confession of the facts attributed to him. When Mr. Awadallah appeared before the competent public prosecutor, he did not make any claims to the investigator to the effect that he was subjected to coercion, torture or psychological or physical abuse in giving his statement. The public prosecutor investigated the incident and found no signs or traces of threats or torture against Mr. Awadallah that would indicate that his confession had been forced. On the contrary, his condition was normal; otherwise he would have been sent for examination by a forensic doctor and would have personally initiated legal proceedings against those believed to have extracted the confession, in accordance with article 208 of the Criminal Code and its amendments, which establishes penalties for anyone who inflicts any form of torture against a person with the intention of extracting a confession. The penalty is increased if the torture results in illness or injury. The law prohibits the suspension of a sentence for these crimes or the consideration of mitigating circumstances. In this case, these are considered among the measures and safeguards that guarantee investigation, a fair trial and accountability. In its judgment, the State Security Court convicted Mr. Awadallah on the basis of legal evidence that was not limited to his statement before the judicial police but also included sufficient other strong and coherent evidence, most notably the audio recordings contained in the case file.

Regarding the competent court, under articles 99, 100, 101 and 110 of the Constitution, special courts can be established by virtue of a special law, setting out their jurisdiction and composition and the methods by which their rulings can be appealed. Articles 2 and 3 of the State Security Court Act (No. 17) of 1959 and its amendments stipulate that it is one of the special courts established by virtue of a special law based on the provisions of the Constitution and within the meaning of the Constitution. The Court exercises the right to try individuals accused of committing a limited and specific set of crimes that it is competent to consider and adjudicate, in accordance with article 3 of the Act. In all proceedings it applies the Code of Criminal Procedure, the Criminal Code and special laws that fall within its jurisdiction. The Public Prosecutor's Office exercises its powers in accordance with the State Security Court Act and the Code of Criminal Procedure. The legitimacy and existence of the State Security Court are thus derived from the State Security Court Act, in accordance with legislative and constitutional principles.

It should be emphasized that the State Security Court is not a military court but rather a special court. Like all other courts in Jordan, it must observe fair trial guarantees and apply the same litigation procedures as those followed before civil courts. Its judgments are subject to appeal before the Court of Cassation. Furthermore, the rulings handed down by the State Security Court, which is composed of civilian and military judges, are considered preliminary judgments that are subject to appeal. They may be enforced only after they become final following the issuance of the verdict of the Court of Cassation after it considers the case in its capacity as a court with both subject matter and legal jurisdiction. It reviews all of the measures taken to ensure their compliance with the law. It may overturn the judgment of the State Security Court and acquit the accused, uphold the judgment based on the evidence contained in the case file, or make the ruling that the State Security Court should have made. The State Security Court has no choice but to follow the ruling of the Court of Cassation. This has been established in the jurisprudence in order to ensure adherence to the principle of litigation on two levels. The Court of Cassation is the highest regular court in Jordan and all its members are long-standing judges with extensive competence and experience. The State Security Court's ruling against Mr. Awadallah was appealed by his lawyer, even though it was subject to automatic appeal by law, without the need for an application to be filed.

On 3 April 2021, Mr. Awadallah was taken to the detention centre of the Directorate of General Intelligence, a declared centre approved by the Department

of Correction and Rehabilitation, in accordance with the Correction and Rehabilitation Centres Act (No. 9) of 2004, and subject to judicial and administrative oversight and inspections. The International Committee of the Red Cross conducts regular visits to the centre. The National Centre for Human Rights conducts unannounced visits to the centre, prepares reports on its visits and receives complaints from the centre's inmates. The Centre provides full medical and psychological care to all inmates, including Mr. Awadallah, on an ongoing basis. Mr. Awadallah's claim that he was denied medical care and treatment is untrue and is not consistent with his medical records. He was seen by an independent doctor immediately following his placement in the detention centre, as is standard practice for all inmates. Mr. Awadallah's medical records show that he received the necessary health care from independent doctors and none of his requests to see a doctor were denied. He is continuing to receive regular medical care.

It should also be noted that Mr. Awadallah was arrested by the judicial police (Directorate of General Intelligence) in accordance with its legal authority and referred to the public prosecutor of the State Security Court for investigation and questioning on the charges against him, as the charges fall within the Court's jurisdiction *ratione materiae*, pursuant to the State Security Act (No. 17) of 1959 and its amendments.

Mr. Awadallah has been able to meet freely with his lawyer many times in a manner that guarantees the confidentiality of the conversation between them and is in line with international standards. Regarding the preparation of his defence, the Court ensured that Mr. Awadallah and his lawyer were able to exercise their right to make defence pleadings and requests and to question prosecution witnesses freely, as evidenced by the Court's ruling. It emerged clearly, explicitly and unequivocally that Mr. Awadallah was able to provide defence evidence and his written defence statement, included in the case file, which disproves his allegations that he was not allowed to prepare his defence or to have confidential access to his lawyer. The Court responded to all of the defence arguments and objections in its ruling and reviewed the evidence to be given by the defence witnesses that had been called. However, it found that this evidence was not relevant to the subject matter of the case and not useful, but intended merely to prolong the proceedings and not in the interests of serving justice. This conclusion was upheld by the Court of Cassation, the highest regular court in the country.

With regard to the investigation of allegations of torture and confessions extracted under duress, the defence lawyer raised these allegations before the State Security Court, which was required by law to verify their validity and legal characterization, failing which the proceedings could be declared invalid. The Court found the allegations to be untrue. As an additional guarantee of a fair trial, the Court of Cassation reviewed these allegations again and upheld the decision of the State Security Court that they were unfounded. In this regard, the Court of Cassation stated: “The Public Prosecutor’s Office provided evidence of the validity of the circumstances in which Mr. Awadallah voluntarily and freely made his statement, which was read out to him and duly signed by him. When he appeared before the public prosecutor, he did not claim that his statement had been given under duress or that he had been beaten and threatened and did not request to be seen by the forensic doctor.”

Jordanian legislation, including article 100 of the Code of Criminal Procedure, provides for the protection of persons in custody while under investigation by the judicial police from abuse of power and the risk of torture or ill-treatment by establishing legal controls and restrictions that prevent the use of force, abuse of power and torture in order to ensure criminal justice and in accordance with the obligations of Jordan under international law. In this context, the law provides that persons arrested by members of the judicial police must be referred to the public prosecutor within the legally specified period of time in a manner that guarantees their rights. A special report is to be drawn up containing full details of the circumstances, date and place of arrest. The suspect’s statements are taken during the period of custody permitted by law and the record is sent to the competent prosecutor; failure to follow this procedure results in the nullity of the proceedings. Under the Code of Criminal Procedure and the Correction and Rehabilitation Centres Act, the Public Prosecutor’s Office is authorized, in accordance with its jurisdiction, to enter and inspect all correction and rehabilitation centres and detention centres.

As is well known, terrorist acts are serious crimes aimed at spreading chaos, disorder, fear and terror in society, which poses a real threat to legitimacy and a grave danger to security and stability. States must therefore take all necessary measures to protect society and institutions without violating human rights, in accordance with their international obligations. In this context, the Court of Cassation concluded that, in applying the legal provisions to the acts committed by Mr. Awadallah, the State Security Court had found that they included actions that would endanger public safety and security, stir up sedition within Jordanian

society, disturb the peace and spread terror by creating a state of discord, chaos and division.

In the light of the foregoing, it is clear that the judicial and law enforcement authorities have observed, at all stages of Mr. Awadallah's arrest and trial, the applicable legal texts and procedures, in accordance with the obligations of Jordan under international law, particularly the Convention against Torture and the International Covenant on Civil and Political Rights

In conclusion, the Government of the Hashemite Kingdom of Jordan reaffirms its commitment to continuing to cooperate with all human rights mechanisms and to strengthening constructive dialogue in a way that contributes to the protection and promotion of human rights and fundamental freedoms.
