

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 44/8 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of Mr. **Bassem Awadallah**, who has been allegedly subjected to torture and ill-treatment to coerce him into signing self-incriminating confessions, which were used as evidence in judicial proceedings against him, and who has been convicted in a trial that did not respect due process of law.

According to the information received:

Mr. Bassem Awadallah is a Jordanian public figure, born in 1964, also holding nationalities of the United States of America and Saudi Arabia. He held several senior official positions in Jordan, serving – inter alia – as Minister of Planning and International Cooperation and Minister of Finance, in 2005, Director of the Office of King Abdullah II, in 2006, and chief of the Royal Hashemite Court from 2007 to 2008.

On 3 April 2021, local and international media reported referencing statements from Government officials, that up to 20 persons, amongst whom Mr. Awadallah, have been arrested in relation to a security threat following the discovery of “a complex and far-reaching plot that included at least one other Jordanian royal as well as tribal leaders and members of the country's political and security establishment.”

Since his arrest and throughout interrogations, Mr. Awadallah was denied access to legal counsel. During this period, he was subjected to physical and psychological coercion to force him to sign a self-incriminating confession. He was allegedly slapped, beaten, kicked, threatened with sodomy and electric shocks, as well as with causing harm to his family if he refuses to cooperate. Under such duress, Mr. Awadallah was compelled to sign two written confessions, dated 14 and 22 April, respectively, without being allowed to read them or being informed of their content. The former was reportedly used in court as supporting evidence for his conviction.

Suffering from bodily injuries and other pre-existing medical conditions, Mr. Awadallah's requests for medical care were consistently denied.

On 22 April 2021, 18 of the 20 persons arrested have been reportedly released as part of a royal clemency during the month of Ramadan. Mr. Awadallah and another senior Government official, however, remained in custody.

On 13 June 2021, it has been reported that Mr. Awadallah, along with another Jordanian official, were charged with the felony of incitement to oppose the political regime in the Kingdom, in contradiction to the provisions of article 149/1 of the Penal Code No.16 of 1960 and its amendments, and in accordance with article 76 of the same law. He was also accused of carrying out acts that endanger the safety and security of society and cause sedition, in contravention of articles 2 and 7/i of the Prevention of Terrorism Law No.55 of 2006 and its amendments, and according to article 7/f of the same law.

On 15 June 2021, a snapshot of an alleged confession signed by Mr. Awadallah was circulated on social media platforms, in which he apparently admits to having conspired with a member of the royal family against the King.

Mr. Awadallah was held for almost 100 days, without the possibility to speak with his family or to have a private meeting with his lawyer. The prosecutors have also refused U.S. Embassy representatives from meeting privately with him. On 11 July, Mr. Awadallah was allowed a five-minute phone call with his family, for the first time, on speakerphone, in the presence of a translator and two prosecutors.

Since Mr. Awadallah was granted access to his lawyer, on 15 April, he could only meet with him a few times in the presence of prosecutors, or privately in officers' bureaus where conversations may have been recorded, as prosecutors have cited parts of these conversations during interrogations.

Mr. Awadallah was tried in-camera by the State Security Court (SSC), a military tribunal whose judges are appointed by the Prime Minister. During his trial, he was not allowed to defend himself. His lawyer's request to call 25 defense witnesses was denied and prosecutors only shared purported transcripts of the recorded conversations of alleged plotters and refused to submit the audio files.

It is reported that Mr. Awadallah did not initially reveal the torture and ill-treatment he was subjected to during interrogations, hoping that he would be released if he cooperated with the authorities and out of concern to protect his family from possible harm. However, when he realized that he would be convicted anyway, as he was not allowed to defend himself in court, Mr. Awadallah decided to disclose his ill-treatment.

After six hearings, during a three-week period, on 12 July 2021, the SSC convicted Mr. Awadallah of the various charges against him, and sentenced him to 15 years imprisonment. His lawyer filed an appeal on 8 August, and on 9 September 2021, the Court of Cassation upheld the SSC ruling.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our serious concern about the allegations of physical and psychological acts of torture and other cruel, inhuman or degrading treatment or punishment perpetrated

against Mr. Awadallah, in order to force him to sign confessions of guilt. We are also concerned that these confessions were used as incriminating evidence by the court. If confirmed, these allegations would amount to serious violations of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Jordan on 13 November 1991. We would like to remind your Excellency's Government that the absolute and non-derogable prohibition applies regardless of whether the inflicted pain or suffering is of a physical or mental character, or a combination thereof, and of the circumstances.

We are further alarmed that Mr. Awadallah, who is a civilian, was tried by a special military tribunal; that he was detained almost incommunicado for over three months without contact with his family and lawyer – a period during which he underwent interrogation and was allegedly tortured; that he was denied the possibility to prepare his defence effectively; and that his contacts with his lawyer were not confidential. In these circumstances, Mr. Awadallah's detention appears to be arbitrary, which is strictly prohibited under international law; and his right to a fair trial was denied, in violation of articles 9, 10 and 14 of the International Covenant on Political and Civil Rights (ICCPR), ratified by Jordan on 28 May 1975.

Mr. Awadallah is charged, inter alia, under articles 2 and 7/i of the Prevention of Terrorism Law No.55 of 2006. That article provides an overly broad definition of terrorism that encompasses a wide range of acts, the vagueness of which is inconsistent with the principle of legality. This principle requires clarity and precision under international law, so that justiciables know what is permitted and not permitted and can regulate their behaviour accordingly in an informed manner. The criminalization of vague concepts under this law could entail acts, which are protected under international human rights law, as "terrorism". Such a vague characterization may permit the arrest, detention or harassment of individuals exercising their internationally protected rights, including restrictions which could constitute arbitrary deprivations of liberty.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on criminal proceedings, and terrorism charges, against Mr. Awadallah, and explain how they are fully compliant with the norms of due process recognised by international law, and observant of fundamental safeguards, including unrestrained and confidential access to a lawyer of his own choice and to an independent medical doctor, as well as regular contact with his family.
3. Please provide detailed information about the location, conditions of detention, treatment of Mr. Awadallah during that first phase of his

detention. Why was Mr. Awadallah not provided adequate medical care during that period?

4. Please clarify under whose authority Mr. Awadallah was detained during his preliminary phase of detention, and which was the authority charged of his interrogation.
5. Please explain why Mr. Awadallah was denied confidential access to his lawyer during his trial, and denied the possibility to prepare properly his defence.
6. Please provide detailed information and, where available, the results, of any investigation, and judicial or other inquiries carried out in relation to Mr. Awadallah's allegations of torture and confessions extracted under duress. If no inquiries have taken place, or if they have been inconclusive, please explain why.
7. Please also explain, what measures exist in Jordanian law to oblige judges to recant evidence that has been obtained by interrogators under torture or ill-treatment. If no such measures exist, please explain how this is consistent with the international human rights obligations of Jordan.
8. Please provide detailed information about the measures – legal, institutional, procedural – that exist in Jordanian judicial system to protect persons undergoing investigation in the custody of police, military or intelligence authorities, against abuse of power, and in particular the risk of torture or ill-treatment. Please explain how these measures are respected, enforced and their implementation monitored.
9. Please explain how the handling by the security and judicial authorities of the case of Mr. Awadallah since his arrest, and throughout his detention, is consistent with the Kingdom of Jordan's obligations under international law, particularly the Convention against torture and the International Covenant on Civil and Political Rights.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a prompt and detailed reply, we urge that all necessary measures be taken to remedy any violations of Mr. Awadallah's most fundamental rights to humane treatment and due process of law, to prevent their re-occurrence, and in the event that the investigations confirm that the allegations are correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that a copy of the letter is being sent to the Governments of Saudi Arabia and the United States of America.

Please accept, Excellency, the assurances of our highest consideration.

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

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw the attention of your Excellency's Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and article 7 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances. In addition, article 2(2) of the Convention Against Torture provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

In this regard, we would like to recall that the Human Rights Council Resolution 16/23, paragraph 8(a), provides that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture."

We would also like underline article 15 of the CAT providing that, "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." In addition to article 12 (CAT), which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

We would also like to recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;"

We also like to bring to your Excellency's Government attention the legal and procedural safeguards against torture and ill-treatment including the right to legal counsel and to contact one's family from the outset of arrest provided in the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Body of Principles). According to body of principles the "Communication of the detained or imprisoned person with the outside world, and in

particular his family . . . shall not be denied for more than a matter of days.”(Principle 15). Notwithstanding, the right to immediately inform a person of his choice of the arrest (Principle 16.1) and to further correspond with family “detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world.”(Principle 19). Furthermore, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reiterated, “The risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest..”(A/73/207).

We would like to draw the attention of your Excellency’s Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, “[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

Furthermore, although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counterterrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counterterrorism instruments and is strictly guided by the principles of legality, necessity, and proportionality. The definition of terrorism in national legislation should be guided by the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly¹ as well as the model definition of terrorism provided by the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism. We underline that the “principle of legal certainty” under international law, enshrined in article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

Finally, we would like to draw your attention to the issue of timely access to legal counsel. The International Covenant on Civil and Political Rights (ICCPR), ratified by Jordan in 1975, in its Article 14, provides that “everyone is entitled to a fair and public hearing”. Your country’s adherence to this treaty means that it must, *inter alia*, adopt all appropriate measures to guarantee a fair trial, noting that in General Comment No. 32 (2007), the Human Rights Committee specified that “(...) accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality (...).”

¹ S/RES/1566; A/RES/51/210.