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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. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in 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 sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights (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, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

### Submissions

#### *Communication from the source*

4. Adam al Natour (آدم الناطور) 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, Jordan, to study Arabic. Reportedly, he was arrested and severely tortured and sentenced on the basis of Jordanian Anti-terrorism Law. Currently, he is detained in Muwaqqar prison II and his appeal before Jordan's Cassation Court is pending.

5. According to the information received, on 12 August 2015, Mr. Al Natour was helping his father in his garage, located in Al Bayader, Amman, when 15 members of the General Intelligence Directorate (GID), 14 in civilian, one in military uniform, arrived with three cars and arrested him. Since Mr. Al Natour did not speak nor understand Arabic, his father, while translating for him, asked the GID's officers for the reason for his arrest. Members of the GID, 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 GID in Amman's Jandawil district in Wadi Al-Seer area.

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

7. For three weeks after his arrest, Mr. Al Natour's father was not allowed to visit his son. The first visit was held in the presence of a GID officer. Reportedly, during that meeting, Mr. Al Natour informed his father about having been beaten and subjected to electric shocks during the first days of his detention. His father claims having found his son at that time in very poor physical and psychological conditions.

8. At the end of 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 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 was not provided with a translation. Allegedly, he was promised to be released the day following the signature of that 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 to get sunlight and go outside his cell 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 the middle of November, 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 this 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 according to article 3.3 and article 7.3 of Jordan Anti-Terrorism Law for “joining an armed group and a terrorist organisation”. The conviction was based on a signed confession, allegedly extracted under duress, and the alleged fact that he had travelled to Syria through Turkey, which Mr. Al Natour denied. In fact, neither his Jordanian nor Polish passports show either Turkish or Syrian visa.

12. On 14 March 2016, Mr. Al Natour’s lawyer appealed his case to the Court of Cassation. The source also informs 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 an arbitrary deprivation of liberty under category III of the classifications of cases as defined by the Working Group.

14. The source argues that this 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 at the end of November 2015.

15. The source asserts that the arbitrary nature of Mr. Al Natour’s detention can be determined based on 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, as well as the right to be free from torture or other cruel, inhuman or degrading treatment or punishment. The detention facility was not subject to any regular independent scrutiny or oversight from the outside and was not 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 argues that this amounts to a violation of his rights to legal assistance and to prepare his defence.

17. Also, despite the fact that Mr. Al Natour does not speak and understand Arabic, all legal proceedings were carried out in this language, 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 the State Security Law No. 17 of 1959 to prosecute cases of terrorism, does not meet international human rights standards criteria. In this 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. Also, the General Prosecutor of the State Security Court has the rank of a military officer and is under the same administrative authority as the GID intelligence officers, i.e. the Ministry of Defence.

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

20. The source argues that after Mr. Al Natour was transferred to Muwaqqar prison II, he was allowed to receive visits of his father for only an hour, once a 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 protesting 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. Also, he was left incommunicado as he was not allowed any access to the outside world and 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 forcing him to end his hunger strike.

22. On 20 May 2016, the aforementioned restrictions were lifted and Mr. Al Natour could see his father. Also, he was allowed to see a doctor appointed by the authorities for examination. However, neither he nor his family were provided with the result of that examination. Allegedly, he was not allowed to see his father or a doctor for such a long time so that most marks of tortures on his body would disappear. Nevertheless, Mr. Al Natour's father noticed that he was suffering from difficulties in breathing and had lost his hearing on 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 which Jordan has ratified.

24. The Working Group regrets that it did not receive a response from the Government to this 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 this 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. In this 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 this regard, the Working Group<sup>1</sup> concurs with the Human Rights Committee's repeated recommendation that Jordan abolish special courts such as the State Security Court.<sup>2</sup>

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<sup>1</sup> In its 2007 annual report (A/HRC/7/4, para. 59), the Working Group stated: "However, another issue of concern for the Working Group remains the continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation, invoking special powers specific to states of emergency without formal declaration, having recourse to military, special or emergency courts, not observing the principle of proportionality between the severity of the measures taken and the situation

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 (Jordan) that the 2011 reform process and the decision taken by the Council of Ministers based on royal orders on 1 September 2013 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 the Human Rights (UDHR) and article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

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 further 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 these serious violations of, inter alia, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the ICCPR, 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 shall not be invoked as evidence in any proceedings.

32. The guarantees of a fair trial set out in articles 10 and 11 of the UDHR and in article 14 of the ICCPR 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, paragraph 3 (g), of the ICCPR, no person may be compelled to testify against himself or to confess guilt. In its jurisprudence, the Human Rights Committee stated that such 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".<sup>3</sup>

33. In the communication No. 1769/2008, *Bondar v. Uzbekistan*, the Committee found violations of article 14, paragraph 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 was denied; and of article 14, paragraph 3 (g), owing to a confession being obtained under torture.<sup>4</sup>

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concerned, and employing vague definitions of offences allegedly designed to protect State security and combat terrorism."

<sup>2</sup> In paragraph 12 of its concluding observations in 2010 on the fourth periodic report of Jordan (CCPR/C/JOR/CO/4), the Human Rights Committee stated: "the Committee reiterates its concern at the limited organizational and functional independence of the State Security Court. It is also notes with concern that the Prime Minister has the authority to refer cases that do not affect State security to this court. [...] The Committee reiterates its 1994 recommendation that the State party consider abolishing the State Security Court (CCPR/C/79/Add.35, para. 16)."

<sup>3</sup> Human Rights Committee, communication No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4; communications No. 253/1987, *Kelly v. Jamaica*, para. 5.5; No. 330/1988, *Berry v. Jamaica*, para. 11.7; No. 912/2000, *Deolall v. Guyana*, para. 5.1.

<sup>4</sup> Human Rights Committee, communication No. 1769/2008, *Bondar v. Uzbekistan*, paras. 7.4 and 7.6.

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

article 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 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 (para. 41).

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

the 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 UDHR of 1948, the 1949 Geneva Conventions for the protection of war victims; the ICCPR 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 (para. 99).

36. Similarly, the Committee against Torture, in its General Comment No. 2 (2008) on implementation of article 2 by States parties, 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 to 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 ICCPR is to provide guarantees against all forms of direct or indirect, physical or psychological pressure 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 this 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

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<sup>5</sup> International Court of Justice, *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*, Judgement of 20 July 2012, para. 99.

afore-mentioned 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.

40. The Working Group finds that there were other violations that 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 GID agents in violation of article 9 of the UDHR and article 9(1) and (2) of the ICCPR. Nor was he promptly informed of the charges against him or brought before a judge in accordance with article 9(2) and (3) as well as article 14(3)(b) of the ICCPR. He was also not allowed to institute habeas corpus proceedings contrary to article 9(4) of the ICCPR.

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 ICCPR, 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 ICCPR. As highlighted above, his conviction based solely on his confession extracted under torture in violation of article 9(3)(g) of the ICCPR denied him of the guarantees necessary for his defence under article 11(1) of the UDHR and article 9(3) of the ICCPR.

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 the Nelson Mandela Rules 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, caused likely by the treatment in prison, is a violation of Rule 32(3) and Rule 44(1). On the institutional level, the lack of regular oversight of the prison facilities violates Rule 55 stipulating regular inspection by qualified and experienced inspectors appointed by a competent authority.

44. Given the above 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 categories applicable to the consideration of cases submitted to the Working Group.

45. The Working Group recalls article 9(1) of the ICCPR 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, 12 August 2015, to the end of September 2015, renders his detention for the given period arbitrary, falling within category I of the categories applicable to the consideration of cases submitted to the Working Group.

### **Disposition**

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

The deprivation of liberty of Mr. 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 category I for the period specified in para. 45 and category III of the

categories applicable to the consideration of cases submitted to the Working Group for the whole period of deprivation of liberty.

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 International Covenant on Civil and Political Rights 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, paragraph 5 of the International Covenant on Civil and Political Rights and article 14, paragraph 1 of 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 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 these allegations to the Special Rapporteur on torture 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 follow-up action taken on 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 further 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 possibility of undertaking its own follow-up of the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as any failure to take action.



54. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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.<sup>6</sup>

*[Adopted on 26 August 2016]*

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<sup>6</sup> See Human Rights Council resolution 24/7, para. 3.