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Request for partner for democracy status with the Parliamentary Assembly submitted by the Parliament of Jordan

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Jordi XUCLÀ, Spain, Alliance of Liberals and Democrats for Europe

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Political Affairs and Democracy, Ms Josette Durrieu, on her comprehensive report and supports the proposed draft resolution. The decision to grant partner for democracy status to the Parliament of Jordan marks the first step of an enhanced cooperation between the Parliamentary Assembly and the Parliament of Jordan on issues related to democracy, the rule of law and human rights.

2. While considering the recommendations in the draft resolution appropriate and far-reaching, the committee wishes to propose some amendments to further strengthen the draft resolution, by making four of the recommendations slightly more specific.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 9.6, add before the word "apply", the word "consistently".

Amendment B (to the draft resolution)

In paragraph 9.7, replace "in particular, revise the 1954 Crime Prevention Act to prevent any misuse of administrative detention" with "take a step towards the abolition of the practice of administrative detention".

Amendment C (to the draft resolution)

In paragraph 9.9, insert, at the beginning of the paragraph, the words, "intensify its efforts to reduce the number of persons placed in pre-trial detention, and".

Amendment D (to the draft resolution)

In paragraph 9.10, insert at the beginning of the paragraph the words "ensure that a clear prohibition of torture is included in the legislation and that torture is considered as a serious crime and punished in accordance with international standards;".

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1. Reference to committee: Bureau Decision, Reference 3990 of 30 September 2013. Reporting committee: Committee on Political Affairs and Democracy. See Doc. 13936. Opinion approved by the committee on 25 January 2016.

C. Explanatory memorandum by Mr Xuclà, rapporteur for opinion

1. I can only congratulate Ms Durrieu on her report, which takes stock of the institutional and political situation in Jordan and the most recent reforms carried out in the country. I should like, however, to propose a few amendments to the draft resolution, with a view to completing it with regard to compliance with human rights and fundamental freedoms in Jordan, and make a few general comments on freedom of expression and freedom of peaceful assembly.

2. Even though freedom of speech is guaranteed by the Constitution, the authorities continue to place restrictions on freedom of expression by prosecuting people on charges such as "insulting an official body".[2] Freedom of expression is also limited by Article 118 of the Jordanian Penal Code, which stipulates a minimum sentence of no less than five years for anyone who commits "acts or writings the government did not authorize that expose the kingdom to the danger of hostile actions, disturb its relations with a foreign country, or expose Jordanians to acts of revenge targeting them and their assets".[3] A Jordanian journalist was for instance accused of disrupting the kingdom's relationships with foreign States and arrested on 23 April 2015, after he published an article that criticised Operation Decisive Storm, the bombing campaign by a Saudi-led coalition including Jordan against Houthi forces in Yemen.[4] Another journalist was given a sentence of 15 days in jail for "exposing the kingdom to the danger of hostile actions" after being accused of breaking a recent ban on coverage of a terror plot.[5]

3. Of particular concern is Jordan's Anti-Terrorism Law,[6] amended in June 2014 to broaden the definition of terrorism to include non-violent acts. This imposed new curbs on freedom of expression by equating acts deemed to disrupt Jordan's foreign relations, including criticism of foreign leaders and the dissemination of certain ideas, with terrorism. Such actions should not be qualified as terrorist crimes, as the United Nations Special Rapporteur on Human Rights and Counterterrorism pointed out in his 2009 Report following his mission to Egypt: "The definitions of terrorist crimes should be confined exclusively to activities that entail or are directly related to the use of deadly or serious violence against civilians."[7]

4. A positive reform regarding freedom of peaceful assembly took place in 2011, with the amendment of the Jordanian Public Gatherings Law, which no longer requires government permission to hold public gatherings or meetings. However, the right to freedom of peaceful assembly is still under threat. According to Human Rights Watch, the authorities have, for instance, failed to "investigate credible allegations of excessive use of force by police while dispersing protests". On 19 March 2014, during protests near the Israeli embassy in Amman calling for the expulsion of the Israeli ambassador over Israeli strikes on Gaza, eight journalists said they were beaten by the police while they were covering those protests.[8]

1. Amendment A (to the draft resolution)

Explanatory note:

As indicated in Ms Durrieu's report, the *de facto* moratorium on executions ended in December 2014 with the execution of 11 people and two more in February 2015. In November 2014, the end of the *de facto* moratorium was already under way as a panel to reinstate executions had been formed by the ministerial cabinet because of an alleged increase of the crimes committed in the country.[9] In 2007, 2008, 2010, 2012 and 2014, Jordan repeatedly abstained to vote on the United Nations resolution concerning a moratorium on the use of the death penalty.[10] While acknowledging the delicate situation of Jordan in a region rife with terrorism and other forms of violence, the Assembly has repeatedly pointed out, on the basis of actual experience in many countries, that the death penalty does not increase security. It does not have a deterrent

2. Human Rights Watch, Human Rights Watch World Report 2015: Jordan, p. 319.
3. Human Rights Watch, Jordan: Strengthen Penal Code Overhaul, 13 September 2015.
4. Committee to Protect Journalists, Jordan jails journalist for criticizing Saudi campaign in Yemen, 27 April 2015.
5. Committee to Protect Journalists, Jordanian court orders arrest of journalist over terrorism reporting, 9 July 2015.
6. Law No. 55 of 2006.
7. UN Human Rights Council (A/HRC/13/37/Add.2), Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin – Mission to Egypt, 14 October 2009, paragraph 50.
8. Human Rights Watch, Investigate police violence against protesters, 1 April 2014.
9. *The Jordan Times*, Panel to examine whether to reinstate executions, 9 November 2014.
10. Vote on the UN Moratorium on the use of the death penalty, A/C.3/69/L.51/Rev.1.

effect on the most dangerous criminals, who believe they will not be found out, or on terrorists, many of whom are in any event prepared to die for their cause. I would therefore like to encourage Jordan to reinstate a true, effective moratorium.

2. Amendment B (to the draft resolution)

Explanatory note:

The 1954 Crime Prevention Act authorises the practice of administrative detention. This law allows provincial governors to detain persons who are "about to commit a crime or assist in its commission, those who 'habitually' steal, shelter thieves, or fence stolen goods, and anyone who, if remaining at liberty, would constitute a 'danger to the people'".[11] The last category was also used until recently for the "protection" of women at risk of domestic violence. According to Jordan's National Centre for Human Rights, 12 766 persons were administrative detainees in 2013, some for a period of over three years.[12]

After having reviewed the third periodic report of Jordan in November 2015, the United Nations Committee against Torture called on the Jordanian authorities, in its concluding observations, to "abolish the practice of administrative detention, including and in particular against holding women and girls who are victims of violence in 'protective custody' as well as migrant workers who have fled abusive employers".[13] This amendment is in line with paragraph 9.11 of the draft resolution, which calls for the effective implementation of the relevant international instruments in the field of human rights as it reinforces the recommendation made recently by the United Nations Committee against Torture. The amendment would also be in line with the work currently being done by the Assembly on the issue of administrative detention in general.[14]

The practice of administrative detention is allowed under international human rights law only under very limited circumstances. Administrative detention, as practiced in Jordan, undermines the rule of law by denying access to justice for those detainees and by granting governors with powers which should rest with the judiciary. Therefore, I strongly recommend abolishing the practice of administrative detention as it is currently practised in Jordan.

3. Amendment C (to the draft resolution)

Explanatory note:

This amendment echoes the recommendations made in October 2015 by the Assembly in its Resolution 2077 (2015) on abuse of pretrial detention in States Parties to the European Convention on Human Rights.

In September 2013, over 40% of the detainee population was in pretrial detention according to the information given by the prison administration.[15] A large backlog and judicial inefficiency contribute to the problem of overly long pretrial detention. In principle, "[t]he law requires that police notify authorities within 24 hours of an arrest and that authorities file formal charges within 15 days of an arrest".[16] It is however common practice for judges to grant extensions to the prosecutor to file those charges (as long as six months for a felony and two months for a misdemeanour). According to a 2012 study by the Justice Center for Legal Aid, 35% of pre-detainees were later acquitted and 20% were detained for a period exceeding their final prison sentence.[17] Because of those alarming figures, I consider that the issue of pretrial detention should be dealt with urgently by the Jordanian authorities.

11. Human Rights Watch, Guests of the Governor – Administrative detention undermines the Rule of Law in Jordan, May 2009.
12. United States Department of State – Bureau of Democracy, Human Rights and Labor, Jordan 2014 Human rights report, p. 8.
13. UN Committee against Torture, Concluding observations on the third periodic report of Jordan (Advance unedited version), CAT/C/JOR/CO/3, paragraph 22.
14. Motion for a resolution, Doc 12998.
15. United States Department of State – Bureau of Democracy, Human Rights and Labor, Jordan 2014 Human rights report, p. 7.
16. Ibid., p. 7.
17. Ibid., p. 8.

4. Amendment D (to the draft resolution)

Explanatory note:

Torture is currently not considered a crime in Jordan, but a misdemeanour, and is not punishable by appropriate penalties in accordance with international standards. In its concluding observations, the United Nations Committee Against Torture urged Jordan to "adopt a definition of torture that covers all elements contained in article 1 of the Convention and ensure that torture is considered a crime and penalties for torture are commensurate with the gravity of this crime". The committee further recommends that the scope of such a definition should include "anyone who commits acts of torture, attempts to commit torture, or instigates, consents to or acquiesces to the commission of such acts".[18]

According to the 2015 Human Rights Watch report, perpetrators of torture or other ill-treatment enjoy near-total impunity.[19] The special court for the police, which deals with all complaints of police misconduct and allegations of torture and other ill-treatment, has never convicted anybody for torture.[20] Some positive changes regarding attitude and taboos towards torture have been noted since the start of the Karama programme in 2008. This programme, run among others by the National Centre for Human Rights and the Jordanian Ministry of Justice with some technical support from Dignity (a Danish Human Rights Institute), aims to eliminate the use of torture and other forms of ill-treatment.[21]

Allegations of torture related to anti-terrorism activities are regularly reported. For instance, in November 2015, Amnesty International and Human Rights Watch called on the Jordanian Government to investigate the allegation that Amer Jamil Jubran, a Jordanian of Palestinian descent, made a confession under torture and ill-treatment. In May 2014, he was arrested, detained incommunicado for 56 days and allegedly tortured at the General Intelligence Department (GID) headquarters. After his "confession", he was then charged with a series of terrorism-related offences which included conducting "acts that threaten to harm relations with a foreign government". On 29 July 2015, he was sentenced to 10 years in prison.[22] The European Court of Human Rights considered the issue of being judged on the basis of "confessions" obtained by torture as a flagrant denial of justice. In the *Othman (Abu Qatada) v. the United Kingdom* case, it judged that the United Kingdom may not deport Omar Othman (an extremist preacher linked to Al Qaeda) to Jordan because evidence obtained via torture (of others) would be admitted and used against Othman.[23]

18. UN Committee against Torture, Concluding observations on the third periodic report of Jordan (Advance unedited version), CAT/C/JOR/CO/3, paragraph 10.
19. Human Rights Watch, Human Rights Watch World Report 2015: Jordan, p. 323.
20. Dignity – Danish Institute Against Torture, Torture is now being debated in Jordan, 23 October 2015.
21. Dignity – Danish Institute Against Torture, Torture is now being debated in Jordan, 23 October 2015. Karama means "dignity" in Arabic.
22. Human Rights Watch, Jordan: Investigate Alleged Torture, 3 November 2015.
23. *Othman (Abu Qatada) v. the United Kingdom*, Application No. 8139/09, judgment of 9 May 2012.