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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

**Report of the Special Rapporteur on the promotion and protection of
human rights and fundamental freedoms while countering terrorism**

Addendum

Communications with Governments*

* The present report is being circulated as received, in the languages of submission only, as it greatly exceeds the word limitation currently used by the relevant General Assembly resolution.

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detainees suspected of security offences. The Special Rapporteur noted some positive changes in the final text but stated that the law does not appear to provide all necessary procedural safeguards for those detained for security reasons. For example, individuals can be detained up to 96 hours before being brought before a judge, they are not necessarily present in court when detention may be extended, and there are restrictions on access to counsel during detention. These aspects of the law are, in my view, incompatible with international human rights law.

"I am mindful that States have a duty to protect their population and to take effective measures to combat terrorism. However, sustainable results can only be achieved by promoting and protecting human rights while countering terrorism. Otherwise there is no real security for the civilian population".

The Special Rapporteur was in Israel to attend the Minerva Biennial Conference on Human Rights where he gave the keynote address on Terrorism and Human Rights.

Jordan

(a) *Communication sent to the Government by the Special Rapporteur*

33. On 10 July 2006 the Special Rapporteur wrote to the Government of Jordan with regard to the **legislation applicable to crimes of terrorism**, in particular that resulting from the Jordanian Penal Code No. 16 of 1960, as amended pursuant to the Provisional Act No. 54 which entered into force on 8 October 2001, and the **Draft Terror Prevention Law**. The Special Rapporteur drew the Government's attention to several substantive areas of concern. First, the Special Rapporteur pointed to the overly broad and vague definition of terrorism as contained in Article 147 paragraph 1 of the Jordanian Penal Code. In particular, its sweeping nature is revealed by the fact that an act may be qualified as terrorist regardless of the motives or purposes for carrying out the act as well as the references to damage, even partial, carried out against public or private property and facilities and the obstruction of the application of the constitution and laws. The Jordanian definition suffers from the absence of two of these cumulative conditions for classifying a crime as a terrorist crime: there is no requirement of a specific aim to further an underlying political or ideological cause and some acts are qualified as terrorist without the intention of causing death or serious bodily injury. Second, Article 5 of the draft terror prevention law provides that security services have the right to arrest and hold any suspect for a period of two weeks, which can be extended by the public prosecutor for a similar period, for justifiable reasons. Lastly, under Article 4 of the draft terror prevention law, the public prosecutor may take several freedom-limiting measures against individuals who are suspected of being involved in terrorist activities. In particular, the Public Prosecutor of the State Security Court may order surveillance of the home, the movements and communications of the suspected individual; ban from travel; and search the residence and impound any item relevant to terrorist activities and appropriate any money. These orders are valid for 3 months and may be renewed for another 3 months by the State Security Court. While the individual against whom these decisions are taken has the right to obtain the review of the measure, this can only be done before the Attorney General of the State Security Court, whose decisions are final. Due to the wide ranging consequences of the measures that may be taken vis-à-vis suspected terrorists in respect of several human right, these measures should in the Special Rapporteur's view be subject to review by a court of law. The Special Rapporteur also urged the Government of Jordan to review

the definition of terrorism contained in the draft law, significantly amend the draft terror prevention law before it is adopted by Parliament and qualify what constitutes “justifiable reasons” for keeping an individual in detention.

(b) *Communications from the Government*

34. By letter of 18 January 2006, the Government of Jordan replied to the communication sent on 17 November 2005 (see paras. 5-8, E/CN.4/2006/98/Add.1). The Government informed that the allegations submitted concerning Mr. Salah Nasser Salim ‘Ali and Mr. Muhammad Faraj Ahmed Bashmilah were false, as there was no record showing that the two had been arrested for violations of penal, disciplinary or administrative codes. Furthermore, the Government indicated that there had been no files on the two Yemeni citizens indicating that they pose a security concern, eliminating the possibility of their arrest for what may be described as “terrorism”.

35. By letter of 22 September 2006, the Government of Jordan replied to the communication sent on 10 July 2006. In its reply, the Government states that the definition contained in Article 147 paragraph 1 of the Jordanian Penal Code is consistent with the Arab Convention for the Suppression of Terrorism, which defines terrorism as any act or threat of violence, whatever its motive or purpose, which is carried out for the purpose of advancing an individual or collective criminal agenda, alarming and frightening people by doing them harm and endangering their lives, liberty or security, damaging the environment, damaging, occupying or seizing public or private installations, or endangering national resources. The definition contained in Article 147, paragraph 1, of the Criminal Code refers to the aims of the act as the basis for defining it as a terrorist offence. As stated in that article, the aim must be “to disrupt public order or endanger the safety and security of society”. These aims are linked to a specific outcome, namely alarming and frightening people, endangering their lives and security, damaging the environment, damaging, occupying or seizing public or private installations or property, State installations or diplomatic missions, endangering national resources or impeding the application of the Constitution and the law. The presence of intent (criminal intent), the Government informs, is a key component of terrorist offences. These offences are subject to the general provisions of the Criminal Code. According to article 63 of the Criminal Code, intent is the desire to commit an offence as defined by law. It follows that criminal intent to commit a terrorist offence necessarily entails the desire to commit a criminal act and to achieve a criminal result.

With respect to Article 5 of the Draft Terror Prevention Law, the Government informs that it was designed to take account of the gravity of such offences. The purpose of the article is to give the security services enough time to gather evidence and conduct investigations into these kinds of offences. The article places a number of restrictions on this measure ensuring its correct implementation when and only when specific conditions are met. Thus, recourse to the period of time mentioned in the article can only be had in accordance with the prevention of terrorism law. The defendant must have committed a legally designated offence under that law. The time period cannot be extended unless by order of the public prosecutor and it can only be extended once, for the same period of time. Extension orders must be justified (i.e. they must be based on grounds that justify the extension). Two weeks is the maximum period of detention. If this period of time is not required for the purposes of the investigation and collection of evidence, the individual will be brought before the court as soon as these procedures are completed.

Referring to Article 7 of the International Covenant on Civil and Political Rights, the Government informs that according to article 159 of the Code of Criminal Proceedings, any confession made by a defendant, a suspect or an accused person without a public prosecutor being present shall be ruled inadmissible, unless the prosecution presents clear evidence of the circumstances in which the confession was made and the court is convinced that the confession was given voluntarily and of the person's own free will. If the court concludes that the defendant's confession was obtained as the result of any form of physical or mental coercion, it shall rule the confession to be null and void. Furthermore, Article 208 of the Criminal Code punishes anyone who uses violence or force to extract a confession. Accordingly, anyone who breaches this article must be brought before the competent court.

With respect to incommunicado detention, the Government reports that according to Article 66 of the Code of Criminal Proceedings, the public prosecutor is entitled to prevent a defendant in detention from communicating with the outside world for a period of up to 20 days, which may be extended. This does not apply to the defendant's counsel, who can see his client at any time and without a guard being present. Anyone deprived of his or her liberty by means of detention is entitled to apply to the competent judicial authorities for release and to appeal to the competent court against any rejection of his application.

As regards Article 4 of the Draft Terror Prevention Law, the Government letter informs that the Cabinet recently introduced a number of amendments to this draft law, of which the most important concern the defendant's right to appeal to the court (the State Security Court) against a decision handed down by the public prosecutor, and an increase in the number of safeguards provided. The Court must hear the appeal within one week of being seized of the matter. If the appeal is rejected, it can be sent before the Court of Cassation (the highest court in the land), which must issue a ruling within one week of being seized of the matter.

The Government further informs that there are three types of courts in Jordan, namely civil courts, religious courts and special courts. The types, levels, divisions and administration of the courts are determined by a special law. Special courts conduct proceedings in accordance with the relevant laws and the Constitution. The State Security Court was established by the State Security Act No. 17 of 1959 (as amended). It is an independent and impartial public court established by law. It applies the procedures and rules laid down in the Act and the Code of Criminal Proceedings, which are further explained in the Government's letter.

(c) *Press release*

36. The Special Rapporteur made the following statement on 7 September 2006:

"Before Jordan's Anti-Terrorism law enters into force I call for further debate and amendments as the implementation of this law as it currently stands could negatively impact on a number of human rights.

"I regret that Parliament passed this law, on 29 August, during a period of intense deliberation by a number of independent Members of Parliament, opposition party leaders and human rights activists who claim it infringes on certain public freedoms and peaceful political activities.

"The Special Rapporteur wrote to the Government in July 2006 when the draft law was before Parliament and identified a number of areas of concern.

"One of the primary concerns is the overly broad definition of terrorism since it is vague regarding the elements of intent and aim and can be seen to be at variance with the principle of legality. There are also a number of procedural safeguards that appear to have been compromised which can negatively impact on the right to a fair trial and due process. For example, the law currently allows suspects to be detained for up to 30 days without access to a lawyer and without judicial review. Further, the law gives considerable powers to law enforcement, security forces and the Public Prosecutor with regard to detention, search and arrest that effectively negate the right to privacy, freedom and movement and the presumption of innocence. Finally, the law designates military courts as having sole jurisdiction of terrorism cases which may lack judicial independence and deny a number of procedural guarantees.

"This law awaits ratification; and while I am fully conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, I wish to recall that States have a duty to ensure that any such measures comply with their obligations under international law, in particular Articles 7, 9, 10, 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR), to which Jordan is a party".

Kenya

(a) *Communication sent to the Government by the Special Rapporteur*

37. On 21 June 2006 the Special Rapporteur sent a letter to the Government of Kenya with regard to the **draft Anti-terrorism Bill 2006**, which was under consideration by the Parliament. The Special Rapporteur brought several substantive areas of concern to the attention of the Government. First, the Special Rapporteur pointed to the overly broad definition of terrorism as contained Article 3 of the draft bill. Furthermore, he highlighted the vague reference to "any specified person" in Article 21 (1b) and (2c). Second, the Special Rapporteur underlined that Articles 6 and 7 of the draft bill are vaguely phrased and do not require any proof of intent on the person of the alleged perpetrator to support/commit a terrorist offence. Given the very broad and vague definition of "terrorism" and the lack of any intent requirement, articles 8 and 9 on incitement and aiding and abetting also carry the danger of being misused. Third, Part III of the draft bill confers large powers on the Minister to declare that an organization is "terrorist", if he "believes that it is engaged in terrorism" (art. 11 (4)), based on an assessment of vaguely formulated criteria, such as "promotes and encourages terrorism or is otherwise involved in terrorism" (art. 11 (5 c and d)). Consequently, the Special Rapporteur underlined the need for revising the definition of terrorism contained in the draft bill by introducing clear and precisely formulated provisions, limiting its scope to acts that are genuinely terrorist in nature, and the need for clear and precise provisions with regard to the proscription of allegedly terrorist organizations and appropriate judicial oversight. Furthermore, the Special Rapporteur requested the Government to provide more detailed information on the creation of a victim's fund and its operation.

(b) *Communication from the Government*