

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
YEM 4/2011

19 October 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4, 16/5 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention and health condition of human rights defender, **Mr. Sadiq Al-Sharafy**, co-founder of Hemaya (Protection), a human rights organization which works in the Republic of Yemen. Mr. Al-Sharafy is also a member of the Board of Trustees of the Yemeni Centre for Human Rights.

According to the information received:

In July 2009, armed forces of the Yemen National Security Agency reportedly arrived at Mr. Al-Sharafy's house and searched it without a judicial warrant. It is further reported that he was forcibly arrested and held incommunicado for nine months in an undisclosed location which later proved to be the prison of the National Security Agency. He was then transferred to the Al-Aman Al-Seyasi prison. In both prisons, Mr. Al-Sharafy was allegedly mistreated, physically and psychologically tortured, and kept in solitary confinement.

The office of the prosecutor has reportedly interrogated Mr. Al-Sharafy, without the presence of his lawyer. According to the information received, Mr. Al-Sharafy was then referred to the Specialized Penal Court, a special court with alleged record unfair rulings against activists in Yemen.

It is reported that the court held several sessions during which a representative of the office of the prosecutor accused Mr. Al-Ashrafy of supporting the Houthis in the city of Saada and called for the imposition of the death penalty.

The lawyer was allegedly also not allowed to photograph the case file and did not attend any of the interrogation sessions. He was able to meet his client only briefly during the court hearings.

According to the allegations received, the case had not been referred to the Specialized Penal Court through normal legal procedures and the trial would have been politicized. The trial was allegedly postponed for an indefinite period of time because of the ongoing protests in the Republic of Yemen.

Mr. Sadiq Al-Sharafy's life may be at stake as he continues to suffer from *livedo reticularis*, repeated coma, and weakness of the left hand. It is reported that the administration of the Al-Aman Al-Seyasi prison did not allow Mr. Al-Sharafy to get proper treatment at the hospital, and refused to give him any medication. This has further deteriorated his physical and psychological condition.

Serious concern is expressed regarding the physical and psychological security of human rights defender, Mr. Al-Sharafy, following his arrest and detention, as well as the allegations of continuous torture, solitary confinement and unfair trial. Grave concern is expressed that his detention is directly related to his peaceful work in defence of human rights, in particular due to his role in denouncing gross human rights violations against Yemeni activists and citizens.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Sadiq Al-Sharafy is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Right.

In this connection, we would like to refer your Excellency's Government to article 9(4) of the ICCPR which states that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Article 14(1) further stipulates that "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligation in a suit at law, everyone shall be entitled to a fair and

public hearing by a competent, independent and impartial tribunal established by law.” Moreover, principle 6 of the Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) also states that “ The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

Article 14(2) underlines that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.” In particular, Guideline 12 of The Guidelines on the Role of Prosecutors (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) stipulates that “Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.”

Moreover, article 14(3)(b) of the ICCPR indicates that, in the determination of any criminal charge against him, everyone shall be entitled to “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. The Basic Principles on the Role of Lawyers (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) and, in particular, principle 8 which stipulates that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.” Principle 21 of the Basic Principles further states that “It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”

Article 14(3)(c) further stipulates that, in the determination of any criminal charge against him, everyone shall be entitled to “be tried without undue delay” and article 9 (3) states in particular that “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw the attention of your Excellency's Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds 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 the dignity of the person and to ensure that secret places of detention and interrogation are abolished."

We would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed" (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the ICCPR (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your Excellency's Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 9, para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Al-Sharafy are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Al-Sharafy in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of this case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Al-Sharafy?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds of the arrest, detention and charges against Mr. Al-Sharafy and how these measures are compatible with international human rights norms and standards on the right to freedom of opinion and expression, as contained, inter alia, in the ICCPR, and international human rights norms and standards on the status and protection of human rights defenders as contained in, inter alia, the Declaration on human rights defenders.
5. Please provide detailed information on the measures taken to ensure the right of Mr. Al-Sharafy to a fair and public hearing by an independent and impartial tribunal, as enshrined, inter alia, in article 14 of the ICCPR.
6. In the event that the detention of Ms. Al-Sharafy is found to be unlawful under the applicable domestic law, please indicate whether, in accordance with international law, any disciplinary, administrative or penal action against the alleged perpetrators is provided for in national law, and if so, whether any such action has been taken and what they have resulted in.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
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