

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

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 214 (33-27) G/SO 214 (53-24) G/SO 214 (89-15)
YEM 1/2012

14 December 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/18, 17/5, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **two executions carried out and the risk of further executions of 23 individuals reported to have been minors at the time of the alleged offence in Yemen**, in particular the recent execution of Ms. **Hind al-Barti** and the imminent risk of execution of Messrs. **Muhammad Taher Samoum**, **Waleed Hussein Haikal**, and **Muhammad Abduh Qasim al-Taweel**.

Article 31 of the Penal Code of Yemen prohibits the imposition of the death penalty against all persons below the age of eighteen, and stipulates that such death sentences would be commuted to maximum ten years of imprisonment.

Moreover, it is reported that the Government of Yemen committed in February 2012 to establish a committee of forensic doctors in charge of verification of all cases and ages of juveniles at risk of execution, as well as not to execute any alleged child until this committee completes its work.

Yet, the cases reported below indicate that the death penalty continues to be imposed and carried out against alleged minors in Yemen.

According to information received,

Ms. **Hind al-Barti** was executed on 3 December 2012 in Sana'a Central Prison. It is reported that she was arrested in 2006 and accused of murdering another girl. In accordance with the forensic report, she was 16 years old at the time of committing this crime. The legal proceedings against her allegedly did not meet the requirements of fair trial, including under article 37 and 40 of the Convention on the Rights of the Child. It is further reported that her family did not receive any prior notification regarding the execution.

Furthermore, another alleged minor, Mr. **Fuad Ahmad Ali al-Sayyid**, was reportedly executed in Taiz on 18 January 2012, under murder charges. Mr. Fuad Ahmad Ali al-Sayyid was subject of a past communication sent to your Excellency's Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 23 December 2010, where he was referred to as Mr. Fuad Ahmed Ali Abdulla and concern was expressed that he might have been minor at the time of commission of the offence. A reply from your Excellency's Government to this communication is still awaited. It is also alleged that the family of Mr. Fuad Ahmad Ali al-Sayyid was notified of the execution only hours before he was actually executed.

We are further informed that 23 other individuals, all having been less than eighteen years old at the time of the commission of the offense, are reported to be sentenced to death and risk execution. Three of them, namely Messrs. **Muhammad Taher Samoum** in Ibb, **Waleed Hussein Haikal** in Sana'a, and **Muhammad Abduh Qasem al-Taweel** in Ibb, are believed to risk imminent execution, due to the fact that their death sentences have been ratified by the President.

Mr. **Muhammad Taher Samoum**, detained in Ibb, is believed to be at a very high risk of execution. He was sentenced to death for a murder committed on 8 June 1999, when he was allegedly 13 years old. His death sentence was confirmed by the Supreme Court and ratified by the President. Mr. Muhammad Taher Samoum was subject of a past communication sent to your Excellency's Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 23 December 2010. A reply from your Excellency's Government to this communication is still awaited.

Mr. **Waleed Hussein Haikal**, detained in Sana'a, was sentenced to death for a murder committed on 12 September 2000, when he was believed to be 15 years old. His death sentence was confirmed by the Supreme Court and ratified by the President.

Mr. **Muhammad Abduh Qasem al-Taweel**, detained in Ibb, was sentenced to death for a murder committed on 7 June 1987, when he was allegedly 15 years old. His death sentence was confirmed by the Supreme Court.

The other 20 cases of alleged juveniles sentenced to death, as reported to us, concern:

1. **Mohammad Ahmad Sanhan**, detained in the Capital Secretariat, and sentenced to death for a murder committed in 2005, at the alleged age of 16 years. He was sentenced to death in first instance and appeals courts.
2. **Qa'ed Yusuf Omar al-Khadhami**, detained in the Capital Secretariat, for a murder that was committed in 2004. In accordance with the ruling of the first instance court, the defendant was 15 years old at the time of the offence. The individual was sentenced to death in first instance and appeals court, and the verdict is currently under the review of the Supreme Court.
3. **Awadh Mus'id Ahmad Hussein al-Suwari**, detained in Ibb, convicted of a murder that was committed on 29 December 2009, at the alleged age of 17 years. The defendant was sentenced to death in the first instance court.
4. **Tawfeeq Mahyoub al-Hubaishi**, detained in Ibb, for a murder committed on 5 December 2004, at the alleged age of 17 years. The defendant was sentenced to death in the first instance and appeals courts.
5. **Faisal Naji Saeed al-Haddi**, detained in Ibb, convicted for a double murder committed in March 1999, at the alleged age of 17 years. The defendant was sentenced to death in the first instance and appeals courts.
6. **Muwaffaq Muthanna Ahmad Hussein al-Midhrahi**, detained in Ibb, who was convicted of having committed a murder on 19 October 2004, at the alleged age of 17 years. The death penalty in this case was reportedly confirmed by the Supreme Court.
7. **Basheer Mohammad Ahmad al-Dhahaar**, detained in Sana'a Capital Secretariat, who was convicted of having committed a murder in October 2008, at the alleged age of 15 years. The defendant was sentenced to death in the court of first instance.
8. Ms. **Maryam Yahya Yusuf Battaah**, detained in Hudaida, who reportedly committed a murder in November 2009, at the alleged age of 16 years. She is also alleged to experience psycho-social disabilities. The defendant was sentenced to death in the first instance court.
9. **Mohammad Abduh Mohammad Hasan 'Ajainah**, detained in Dhamar, who reportedly committed a murder on 16 June 2010. In accordance with the forensic medical opinion, the defendant was 17 years old at the time of commission of the crime. The defendant was sentenced to death in the first instance court.

10. **Mohammad Abdallah Mutahhar al-Washali**, detained in Dhamar, who reportedly committed a murder in January 2009. According to the conclusions of the forensic doctor, the defendant was 16 years old at the time of the crime. The defendant was sentenced to death in the first instance court.

11. **Ahmad Bihaal Ahmad al-Rasisa**, detained in Mahweet, who reportedly committed a murder on 17 March 2010, at the age of 15 years, according to the data in the defendant's birth certificate. The defendant was sentenced to death in the court of first instance.

12. **Sameer Naji Ahmad al-Mahdi**, detained in Ibb, who reportedly committed a murder on 27 February 2005, at the age of 16 years. The defendant was sentenced to death in the court of first instance.

13. **Ibrahim Fouad al-'Umaysi**, detained in Sana'a Capital Secretariat, who reportedly committed a murder on 10 February 2007, at the age of 15 years. While the court of first instance sentenced the defendant to ten years imprisonment in 2008, the appeals court sentenced him to death in 2010. The case is under the review of the Supreme Court since 26 February 2011.

14. **Majid Abdallah Mohammad al-Madaah**, detained in Ibb, who reportedly committed a murder at the age of 15 years. The defendant was sentenced to death by the first instance and appeals courts, while the Supreme Court returned the file to the Court of Appeals for review of the age of the accused.

15. **Abdallah Abdulkareem Wasem Sha'rah**, detained in Sana'a, who reportedly committed a murder on 19 November 1999, at the age of 17 years. The defendant was sentenced to death in the first instance and appeals courts. The case is currently under the review of the Supreme Court.

16. **'Alaa al-Din Fadhl Mohammad al-Rumaana**, detained in Hudaida, who reportedly committed a murder on 8 May 2010, at the age of 17 years, established according to the defendant's birth certificate. The defendant was sentenced to death in the court of first instance.

17. **Salaah Ali Abdallah al-Raimi**, detained in Ibb, who reportedly committed a murder on 8 June 2001, at the age of 17 years, established in accordance with the defendant's passport and vaccination records. The defendant was sentenced to death by the appeals court, and the case is currently under the review of the Supreme Court.

18. **Akram Mohammad Abdallah al-Faqeeh**, detained in Sana'a, who reportedly committed a murder on 6 February 2002, at the alleged age of 15 years. The defendant was sentenced to death in the first instance court.

19. **Mohammad Abdulwahab Faysal**, detained in Ibb, who reportedly committed a murder on 14 February 1998, at the age of 15 years. The defendant was sentenced to death in the court of first instance, which was upheld in the Appeals Court and the Supreme Court.

20. **Nasser Ahmed Ali Harqadeh**, who reportedly committed a murder on 17 October 2010, at the alleged age of 16 years. The defendant was sentenced to death in the court of first instance.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been and is being imposed against individuals reported to have been minors at the time of the offence in Yemen, which is in contravention of international human rights law. In addition, we are concerned that the death penalty may have been carried out against at least two such individuals in 2012 after proceedings that did not comply with other international human rights law standards of fair trial and due process. Concern is also expressed that Ms. Maryam Yahya Yusuf Battaah, who may risk the death penalty, reportedly suffers from psycho-social disabilities, which likewise will make her execution unlawful in terms of international standards..

In view of the urgency of the matter and of the irreversibility of the punishment of the death, we call on your Excellency's Government not to execute Messrs. Muhammad Taher Samoum, Waleed Hussein Haikal, and Muhammad Abduh Qasem al-Taweel, or any of the other individuals mentioned and all other juveniles sentenced to death..

We would like to draw your Excellency's Government's attention to the fact that any judgments imposing the death sentence and executions of juvenile offenders are incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments. Article 37(a) of the Convention on the Rights of the Child (CRC), that the Government of Yemen ratified on 1 May 1991, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, article 6(5) of the International Covenant on Civil and Political Rights (ICCPR), that the Government of Yemen acceded to on 9 February 1987, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

The Committee on the Rights of the Child has observed in its General Comment No. 10 on children's rights in juvenile justice that "Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under eighteen years of age. It means that a death penalty may not be imposed for a crime committed by a person under eighteen regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction."

With regard to the information that Ms. Hind al-Barti was executed after an unfair trial, with no prior notification of her family, as well as that the family of Mr. Fuad

Ahmad Ali al-Sayyid was notified of his execution only hours before it took place, we would like to remind your Excellency's Government that only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permitted under international law, in countries which have not yet abolished it, from a summary execution, which violates human rights standards. The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, adopted by the Economic and Social Council resolution 1984/50 of 25 May 1984, provides under article 5 that "Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

These provisions apply also in respect of due process guarantees in post-conviction proceedings. In this regard, we would like to bring to the attention of your Excellency's Government the report submitted to the Human Rights Council by the Special Rapporteur on extrajudicial, summary or arbitrary executions on "Transparency and the imposition of the death penalty" (E/CN.4/2006/53/Add.3), which observed that "due process rights and other safeguards on the right to life remain even after a person has been convicted of a crime and sentenced to death". Moreover, "Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation".

With regard to the case of Ms. Maryam Yahya Yusuf Battaah, who is alleged to suffer from psycho-social disabilities, we would like to remind your Excellency's Government Safeguard 3 Protecting the Rights of Those Facing the Death Penalty, which provides that the death penalty shall not be carried out on persons who have become insane. In addition, resolution 1989/64 of the Economic and Social Council of 24 May 1989 on the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, recommends in paragraph 1 (d) that States further strengthen the protection of the rights of those facing the death penalty, eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

We further recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

We would also like to underline that sentencing a person to death for having committed a crime when under eighteen years old amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the CRC, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The Special Rapporteur on torture in his recent report to the General Assembly further noted that "not only is the enforcement of the death penalty in these cases [juveniles] considered a violation per se of the prohibition of torture and cruel, inhuman and degrading treatment and punishment but the related State practice has led to the emergence of a *jus cogens* provision regarding the execution of juveniles". (A/67/279, para 64).

Furthermore, without expressing at this stage an opinion on the facts of these cases and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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 (UDHR) and articles 9 and 14 of the ICCPR.

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 the abovementioned persons 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 summary of the cases accurate?
2. Please provide information concerning the legal grounds for the imposition of the death penalty against the said juveniles, and indicate how they comply with the international human rights law provisions, prohibiting the imposition and implementation of the capital punishment against juvenile offenders.
3. Please provide information concerning the legal grounds for the detention of the abovementioned individuals, and indicate how this measure is compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR.
4. Please provide detailed information on each stage of the judicial and post-conviction proceedings against Ms. Hind al-Barti and Mr. Fuad Ahmad Ali al-Sayyid, and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined, *inter alia*, in article 14 of the ICCPR.
5. Please explain the legal grounds for the imposition of the death penalty against Ms. Maryam Yahya Yusuf Battaah, who is alleged to suffer from psycho-social disabilities, and explain how this is compatible with the mentioned human rights law standards.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person(s) 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.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences