

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council decision 25/116, and Human Rights Council resolutions 24/7, 26/7, 22/8, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged secret detention, risk of torture, and infringement of due process and fair trial guarantees of Mr. **Mourad Ben Ayed** and Mr. **Taha Aissaoui**, two French-Tunisian citizens. We wish to inform your Excellency's Government that a copy of this communication is shared with the Governments of France and Tunisia.

According to the information received:

Mr. Mourad Ben Ayed (دايع نب دارم), born on 19 July 1982, and Mr. Taha Aissaoui (يواسي عى حط), born on 24 January 1982, both French-Tunisian nationals, have lived with their families in Yemen for the last ten years. Both men studied in Dar Al Hadith As Salafiya, a renowned religious centre located in Shihr, Hadhramaut Directorate, Yemen.

On 7 May 2014, Mr. Aissaoui flew from Riyan Mukalla airport to Sana'a, to get his son's passport at the Tunisian Embassy in Yemen for a family visit to France.

When Mr. Aissaoui arrived at Sana'a airport, agents of the Migration and Passport Authority stopped and arrested him.

On 8 May 2014, security police agents (Al Amn Assiyassi) arrested Mr. Ben Ayed at Riyan Mukalla airport in Yemen upon his return from a visit to France. The security police agents did not show him any warrant or explained the reasons for his arrest. On 9 May 2014, Yemeni authorities questioned Mr. Aissaoui and Mr. Ben Ayed concerning their alleged political beliefs and affiliation with terrorist groups without proof for any involvement in terrorist activities.

Mr. Ben Ayed and Mr. Aissaoui have not been brought before a judge yet, and the lawyer appointed by their families has not been permitted to contact them. Since the arrests, the families have not been allowed to visit or to call them. Moreover, the authorities have refused to provide any information on their fate and whereabouts on the ground that they are officially still in custody. Former prisoners reported ill-treatment while detained, particularly those prosecuted under terrorism charges.

We express serious concern about the alleged enforced disappearance and continued secret detention of Mr. Ben Ayed and Mr. Aissaoui since their arrest in early May 2014. We are further concerned about their physical and mental integrity while in detention given the fear that they may be tortured or otherwise ill-treated. Concern is also expressed that Mr. Ben Ayed and Mr. Aissaoui have been denied contacts with their legal counsel and their families.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on the case yet, they appear to be in contravention of the right not to be deprived arbitrarily of their liberty, as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), which Yemen has acceded to on 9 February 1987. They also appear to be in violations of due process and fair trial guarantees, as set forth in article 10 of the UDHR, article 14 of the ICCPR and in the UN Basic Principles on the Role of Lawyers. The allegations further seem to be in contravention with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Yemen acceded to on 5 November 1991, prohibiting torture absolutely (article 1) and without exception (article 2(2)).

In relation to the allegation that Mr. Ben Ayed and Mr. Aissaoui's fate or whereabouts are currently unknown and that they are detained in a secret location, we would like to bring to your Excellency's Government's attention the rights and obligations set out in the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, in particular articles 2, 3, 10 and 12. We would also like to remind your Excellency's Government, that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture or other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Ben Ayed and Mr. Aissaoui in compliance with international instruments.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegations of enforced disappearance mentioned in this communication as cases to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

As 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, we are soliciting your cooperation to provide us with any information and observations concerning the arrest and detention of Mr. Ben Ayed and Mr. Aissaoui including:

1. Any additional information and any comment you may have on the above-mentioned allegations.
2. The fate or whereabouts of Mr. Ben Ayed and Mr. Aissaoui and the reason why the authorities did not inform their families and lawyer of their fate and whereabouts.
3. The legal grounds for the arrest and continued secret detention of Mr. Ben Ayed and Mr. Aissaoui and the compatibility of such measures with Yemen's international human rights obligations as enshrined in the ICCPR and the UN Basic Principles on the Role of Lawyers, in particular regarding the secret detention, the lack of access to a legal counsel and contact to their respective families.
4. Detailed information, and where available the results of any investigation, judicial or other inquiries carried out in relation to the case of Mr. Ben Ayed and Mr. Aissaoui. If no inquiries have taken place, or if they have been inconclusive, please explain why.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

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