

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the promotion and protection of human rights while countering terrorism**

REFERENCE:  
AL ARE 4/2017

28 July 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the promotion and protection of human rights while countering terrorism, pursuant to Human Rights Council resolutions 35/15 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have **received concerning a joint United States and Emirati counter-terrorism operation carried out around the village of Al Ghayil, Yakla region, Yemen, on the night of 28 January 2017, during which reportedly up to 25 civilians, including five women and nine children, were killed.**

A letter of similar content is simultaneously addressed to the Government of the United States of America (case no. USA 11/2017). Copies of both letters will also be transmitted to the Government of Yemen.

According to the information received:

On the night of 28 January 2017, U.S. Navy SEALs and Emirati Special Forces carried out a joint counter-terrorism operation in the Yakla region of the Al Bayda governorate, Yemen. At around 2 a.m. on 29 January, while approaching their target - an alleged Al-Qaida in the Arab Peninsula (AQAP) base - in the village of Al Ghayil, they were detected and fighting broke out.

As soon as they came under fire, U.S. forces reportedly requested back-up from U.S. Marines aboard the USS Makin Island, stationed in the Gulf of Aden. Shortly after, two U.S. military aircrafts approached the area of combat, followed by four armed drones and four military helicopters, conducting airstrikes by firing over a dozen rockets. Every individual that tried to escape from their houses in the target area was shot at.

While the exact number of victims is not clear, it is reported that, at least 25 civilians, including six women and nine children, ranging from 3 months to 65 years old were killed. Large parts of the village of Al Ghayil were destroyed and a large number of livestock was killed in the operation.

The victims that were identified are:

Ms. Fatim Saleh Muhsin Al Amiri, Ms. Dhabia Ali Abdallah Al Amiri, Ms. Lima Mohamed Hussain Al Tais, Ms. Fatima Abdallah Mabkhut Al Amiri, Ms. Salima Ali Ahmad Al Amiri and Ms. Fatim Abdallah Saleh Al Amiri.

Asma Fahd Ali al Amiri (3 months old), Aisha Mohammed Abdallah al America (4 years old), Halima Hussein al Aifa al Amiri (5 years old), Hussein Mohammed Abdallag Mabkhout al Amiri (5 years old), Mursil Abedraboh Masad al Amiri (6 years old), Khadija Abdallah Mabkhout al Amiri (7 years old), Nawar Anwar al Awlaqi (8 years old), Ahmed Abdelilah Ahmed al Dhahab (11 years old) and Nasser Abdallah Ahmed al Dhahab (12 years old).

Sheikh Abdulrauf Al Dhahab, Sheikh Sultan Al Dhahab, Sheikh Saif Mohamed Al Jawfi, Mr. Abdullah Mabkhuth Al Amiri, Mr. Mohamed Abdullah Mabkhuth Al Amiri, Mr. Abdullah Ahmed Al Zaubai, Mr. Zainallah Ahmed Naser Al Arbaji, Mr. Khaled Ali Aqil Al Amiri, and Mr. Zainallah Naser Al Arbaji.

In a report issued on 29 January, immediately after the incident, the U.S. Department of Defence reportedly stated that 14 of the persons killed in the operation were Al-Qaida members. The statement did not make reference to any civilian casualties. In a subsequent report released on 1 February, the U.S. Central Command (CENTCOM), which deploys forces to Yemen and falls under the responsibility of the Department of Defence, indicated that “civilian non-combatants were likely killed [...]” and that “casualties may include children”.

Three investigations into these operations are reported to have been undertaken by the U.S. Government; a civilian “casualty credibility report”, a “15-6” assessment (in relation to the death of a U.S. service member) and an aircraft mishap investigation. The first two of these investigations have been concluded and the reports tabled before the Senate Armed Services Committee. The Chief of CENTCOM reportedly stated before the Committee that they found “no indicators of incompetence, poor decision-making or bad judgement throughout [the operation]”.

It is, however, unclear what these investigations entailed or how they were conducted, in particular in view of simultaneous reports indicating that the counter-terrorism operation was approved despite insufficient intelligence, ground support or backup preparations.

It is further unclear whether any separate investigation has been undertaken by the Government of the United Arab Emirates, and, if so, what the outcome has been.

We express grave concern at these allegations of what appears to be indiscriminate targeting of civilians by U.S. and Emirati joint forces, and resulting in up to 25 casualties, including six women and nine children. Particular concern is raised that adequate safeguards to protect the right to life might not have been in place while the risks to civilian lives in counter-terrorism operations like the present one in Yemen were or should have been known, and protection measures should have been taken. Further concern is expressed that the use of force appears to have been applied without sufficient caution under applicable international human rights and humanitarian law.

While we do not wish to prejudge the accuracy of these allegations, they seem to indicate a serious prima facie violation of the right of every individual to life and security, and of the right not to be arbitrarily deprived of one's life, as set forth in articles 3 of the Universal Declaration of Human Rights (UDHR) and 5 of the Arab Charter on Human Rights (ACHR). They may also constitute a breach of Common Article 3 to the four Geneva Conventions, which establishes the minimum standards that all parties involved in a non-international armed conflict should observe concerning the treatment and protection of civilians. International humanitarian law provides that persons taking no active part in hostilities shall in all circumstances be treated humanely and prohibits without exception violence to their lives and person, in particular murder of all kinds. The indiscriminate shelling of civilian populated areas and civilian objects may amount to war crimes.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 would be grateful for your observations and clarification concerning these allegations:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify what the precise current policies and directives applicable to the armed forces of your Excellency's Government are to ensure the protection and avoid the loss of civilian life when undertaking operations such as that described above.
3. Please elaborate – on the basis of these policies and directives – what measures were taken in the preparation of this operation to protect civilian life and mitigate possible loss of life.
4. Please also elaborate on the chain of command and approval process for this operation in light of its reported failure to comply with international human rights law and standards, as well as on how the decision-making was distributed and coordinated between your

Excellency's Government and the other governments present in this operation.

5. Please provide information on the rules of engagement applied by your Excellency's Government forces during the operation, the measures taken to distinguish civilians from combatants and military objects from protected ones, and measures taken, if any, to cancel or suspend the operation once it became apparent that a large number of civilians, including children, were present at the site.
6. Please indicate whether any investigation has been launched into this incident by the authorities of your Excellency's Government, indicating relevant procedures and methods used, and results reached, including on its lawfulness. Please specify the numbers of civilians killed, their names, ages and sex, and the circumstances of their deaths. Please indicate the amount of property damage caused. If no investigation has been carried out, please explain why.
7. Please specify what the procedures established are, if any, to ensure the responsibility for such violations of the right to life, direct or supervisory, the accountability of the perpetrators, the reparations for the loss of life available to the surviving victims and the families of the dead, and indicate how they can access such mechanism.
8. Please provide information on the existing measures in place to prevent the recurrence of such serious violations, and how they are being effectively implemented.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure effective investigations into the alleged violations with a view to upholding the right of the family members of the victims to know the truth and to preventing their re-occurrence, and to make the results public. In the event that the investigations support or suggest the allegations to be correct, we urge your Excellency's Government to ensure the accountability of any person(s) responsible for the alleged violations. We also urge to ensure that effective processes are in place so that reparations are made swiftly to the affected families.

Given the gravity of the violations alleged, we are considering to publicly express our concerns in the near future as, in our view, the information upon which our concerns are based appears sufficiently reliable to indicate a matter warranting serious attention. We also believe that given the severity of the violations alleged, it is our duty, as part of our responsibility and efforts to promote accountability, to contribute to prevention, and to foster a process of justice and transparency, to inform the public, national and international.

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.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson  
Special Rapporteur on the promotion and protection of human rights while countering  
Terrorism

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we wish to draw your Excellency's Government's attention to the following:

1. Article 3 of the Universal Declaration of Human Rights (UDHR) as well as article 5 of the Arab Charter on Human Rights (ACHR), which the United Arab Emirates ratified on 15 January 2008, guarantees the right of every individual to life and security, and not to be arbitrarily deprived of life.

2. We would like to remind your Excellency's Government that its obligations under international human rights law continue to apply in the context of armed conflict, as acknowledged by the International Court of Justice (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, paras. 24-25; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para. 106.), the Human Rights Committee (General Comment 29, States of Emergency, para. 3) and the Committee on Economic, Social and Cultural Rights (Concluding observations on the initial report of Israel; 2001, para. 12).

3. International humanitarian law falls squarely within the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary killings. All major relevant resolutions have referred explicitly to that body of law. Most recently, the General Assembly, in resolution 71/198 of 17 December 2016, dealing with the mandate of the Special Rapporteur acknowledges "the important role of the Special Rapporteur in identifying cases where extrajudicial, summary or arbitrary executions could amount to genocide and crimes against humanity or war crimes, and urges the Special Rapporteur to collaborate with the United Nations High Commissioner for Human Rights and, as appropriate, the Special Adviser to the Secretary-General on the Prevention of Genocide in addressing situations of extrajudicial, summary or arbitrary executions that are of particularly serious concern or in which early action might prevent further deterioration" (para. 16). The resolution also urge Governments "To take all measures required by international human rights law and international humanitarian law to prevent loss of life, [...] and to ensure that the police, law enforcement agents, armed forces and other agents acting on behalf of or with the consent or acquiescence of the State act with restraint and in conformity with international human rights law and international humanitarian law" (para. 6(a)).

4. International humanitarian law, through Common Article 3 to the four Geneva Conventions, establishes the minimum standards that all parties involved in a non-international armed conflict should observe concerning the treatment and protection of civilians. It requires States to take all feasible precautions to avoid, and in any event, to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. International humanitarian law, through the principles of proportionality, distinction and precaution, further prohibits attacks which do not discriminate between civilians and combatants or military objectives, or which cause disproportionate harm to civilian

objects in relation to the anticipated military advantage which may be gained by such attack.

5. Both international humanitarian and human rights law provide that States must investigate allegations of war crimes committed either by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction, and, if appropriate, prosecute the suspects, and make full reparation for the loss or injury caused.

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) recall that exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions, and that it is States' duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions, and bring to justice all persons identified by the investigation as having participated in those executions. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly Resolution 60/147, Chapter II, paragraph 3) impose States' obligations to investigate gross violations of international human rights law and serious violations of international humanitarian law effectively, promptly, thoroughly and impartially and, where appropriate, to take action against those allegedly responsible, for the violations.

6. Beginning with its adoption of resolution 1456 (2003), the Security Council has consistently affirmed that States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law. More recently, the Council has underscored that effective counter-terrorism measures and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing, and constitute an essential part of successful counter-terrorism efforts. In its resolution 2178 (2014), the Council stated that failure to comply with these and other international obligations, including under the Charter of the United Nations, fosters a sense of impunity and is one of the factors contributing to increased radicalization.

With regard to above-mentioned allegations of indiscriminate targeting of civilians by U.S. and Emirate forces, we would like to draw your Excellency's Government attention to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/29/51, para. 58), in which the Special Rapporteur recalls that, in any case in which civilians have been, or appear to have been, killed, the State responsible is under an obligation to conduct a prompt,

independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties have been sustained, including where the facts are unclear or the information partial or circumstantial, and whether civilian casualties were anticipated or not (see A/68/389, paras. 41–45).