

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL YEM 4/2018

25 June 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/5 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning multiple detentions of human rights defenders Ms. Radhya Al-Mutawakel and Mr. Abdulrasheed Al-Faqih during attempts to fly from Seiyun airport, in apparent reprisal for their cooperation with UN human rights mechanisms.

Ms. Radhya Al-Mutawakel is the President of the Mwatana Organisation for Human Rights. She was the first Yemeni woman to present a briefing at the UN Security Council in 2017 and was an important advocate for the adoption of an international mechanism to investigate human rights violations during the war in Yemen.

Mr. Abdulrasheed Al-Faqih is the Director of the Mwatana Organisation for Human Rights, an independent Sana'a based organisation that monitors and documents human rights violations in Yemen. The organisation also provides support to victims to ensure accountability for violations of human rights and prevention of repetition of such violations. Mr. Al-Faqih was previously a consultant and field researcher for Human Rights Watch and Amnesty International.

Mr. Al-Faqih has previously been the subject of one joint letter of allegation sent by special procedures mandate holders on 10 May 2016, case no. YEM 2/2016. We regret that no response was received to the aforementioned communication.

We wish to inform you that a letter on the same subject will be sent to the authorities of the Kingdom of Saudi Arabia for their information.

According to the information received:

On 14 June 2018, at approximately 6.30 a.m., while travelling to Seiyun airport in Hadhramaut governorate, Mr. Al-Faqih's car was stopped at Bab Al-Falaj checkpoint in Marib by individuals believed to be members of forces loyal to President Hadi wearing Central Security Forces uniforms. The individuals

confiscated his passport and cell phone and detained him. They proceeded to ask for the passcode for his phone in order to search it. After being interrogated for approximately two hours, he was told that he would be taken to the security headquarters in Marib. He was unable to contact anybody for several hours and his location of detention remained unconfirmed until his release later that afternoon. Mr. Al-Faqih had intended to travel abroad for medical treatment and to participate in preparations for a training workshop in partnership with the European Union. This trip would have been his first abroad since his participation in the Human Rights Council in February 2017.

On 18 June 2018, while attempting to travel again, Mr. Al-Faqih and Ms. Al-Mutawakel were detained at Seiyun airport at approximately 11.00 a.m. by military police of the First Military Zone, based on orders received from the Saudi-led coalition. Their passports were confiscated and they were not permitted to contact anyone during their detention. Due to being detained, they missed their flight, which took off at 12.30 p.m. They were then taken to an unknown location and released late that night. Ms. Al-Mutawakel was travelling to participate in an event organized by the Center for Humanitarian Dialogue in Oslo.

On 19 June 2018, in the morning, Mr. Al-Faqih and Ms. Al-Mutawakel received new threats of detention, reportedly from the Saudi-led coalition. That day, Ms. Al-Mutawakel posted on twitter stating both she and Mr. Al-Faqih held the Saudi-led coalition and the Hadi Government “fully accountable” for their safety until they left the country or were able to return home.

Serious concern is expressed over the detentions of Mr. Al-Faqih and Ms. Al-Mutawakel, including those during which they were held incommunicado, for reasons which may be linked to their work as human rights defenders. Concern is also expressed over the possibility that they are being prevented from travel due to their previous cooperation with UN human rights bodies. Final concern is expressed over Mr. Al-Faqih’s medical condition and access to the healthcare that he had initially intended to travel for.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the detentions of Ms. Al-Mutawakel and Mr. Al-Faqih, along with information on the measures taken to ensure that their detentions were compliant with article 9 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide details on any investigations being undertaken to assess the legal and factual basis of Ms. Al-Mutawakel and Mr. Al-Faqih detention consistent with Yemen's obligations under the ICCPR.
4. Please provide detailed information on any charges against Mr. Al-Faqih or Ms. Mutawakel.
5. Please indicate what measures have been taken to ensure that Ms. Al-Mutawakel and Mr. Al-Faqih may leave the country in order to obtain medical care or for any other reason in compliance with their right to freedom of movement under article 12 ICCPR.
6. Please indicate what measures have been taken to ensure that human rights defenders in Yemen are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no

way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Yemen on 9 February 1987, which guarantee the rights to liberty and personal security, due process, the right to challenge the legality of detention, freedom of opinion and expression and freedom of association.

Furthermore, the above mentioned allegations appear to be in contravention with article 12 of the ICCPR, which provides that everyone has the right to liberty of movement. We would like to emphasise that any restriction to the right to liberty of movement and the freedom to leave any country, including his/her own must be compatible with paragraph 3 of Article 12 of ICCPR, which establishes that restrictions are only acceptable if they are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the ICCPR. The imposition of travel bans as a means to limit the exercise of freedom of expression and of association is also not compatible with article 19(3) of the ICCPR.

We would like to refer to Human Rights Council Resolution 24/24 which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights; and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal; and to Human Rights Council resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.

In particular, the allegations above appear to be in contradiction with articles 1 and 2 of the UN Declaration on Human Rights Defenders, which state that everyone has the right to promote and to strive for the protection and realisation 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. Furthermore, we also refer to article 5, which provides for the right to form, join and participate in non-governmental organisations, associations or groups; and article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and

fundamental freedoms, and to study, discuss and hold opinions on the observance on these rights.

We would finally like to refer also to the Commentary to the Declaration on human rights defenders which states that "travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to "promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels".