

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 Human Rights Council resolutions 33/30, 34/18, 33/9, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of **Mr. Ali Hasan Harmal Baqatyan**.

Mr. Baqatyan is a human rights defender and employee at the Ministry of Water.

According to the information received:

In 2016, Mr. Baqatyan was responsible for a project called Azza Wattan, whose aim was to distribute meals to soldiers in the military checkpoints under the supervision of the military command during Ramadan. One day there was an explosion at two military checkpoints, and the explosives were hidden inside the food containers. The Hadramauti elite forces arrested the drivers who were the distributors of the project. Three days after interrogations, the drivers were released. The following day, on 27 June 2016, the Hadramauti forces took Mr. Baqatyan from his office without any warrant for his arrest, and detained him for 90 days at Al-Rayyan detention centre, which is run under the supervision of the United Arab Emirates. When he was released, he was brought home after midnight, blindfolded and handcuffed.

Following his first arrest, Mr. Baqatyan was distributing pamphlets asking the Emirati authorities to pay compensation to the families of detainees held in the Al-Rayyan detention centre. In this context, he was threatened by an Emirati

national, an influential figure in Hadramaut, who was responsible for the Al-Rayyan detention facility at the time.

On 10 January 2017, Mr. Baqatyan was arrested for the second time by the Hadramauti forces. They surrounded his residence, and five masked armed soldiers entered the house and searched the rooms in a random way. They recognized Mr. Baqatyan and took him away without any warrant for his arrest.

Following his second arrest, Mr. Baqatyan was allegedly beaten, humiliated and put in solitary confinement for a whole month. Mr. Baqatyan's wife did not know about her husband's whereabouts for about nine months, when someone contacted her from the Al-Mukalla detention facility and allowed her to briefly speak with her husband. All detainees from Al-Rayyan detention centre had been transferred to Al-Mukalla central prison under the supervision of the Government of Yemen. Mr. Baqatyan's wife was subsequently permitted to visit him at the Al-Mukalla central prison every Thursday.

Mr. Baqatyan has not been informed of the reasons for his detention. He believes that he has been arrested due to his participation in a rally to protest against the situation of detainees in Al-Rayyan detention centre, the night before his arrest. He also believes that some of his Facebook posts on the same issue may be a further reason behind his arrest. In fact, the influential man of Emirati nationality referred to above, who was previously in charge of the Al-Rayyan detention facility, told Mr. Baqatyan's wife on the phone that his arrest was linked to his pro-detainees activities.

At the beginning of February 2018, all detainees at the central prison declared a hunger strike. The reason for the hunger strike was that there was an order, signed by the Prosecutor of Hadramaut, requesting that they be released on bail, but apparently the Emirati authorities did not execute the Prosecutor's order.

The detainees were later ordered by the prison authorities, and forced by the guards, to stop their hunger strike. Most did, except for Mr. Baqatyan. He was told by the guards to put an end to his hunger strike and he was allegedly beaten. The prison authorities also told his wife that he would only be allowed family visits once he put an end to his hunger strike.

On 1 May 2018, Mr. Baqatyan called his wife and informed her that he was still on hunger strike, but was taking liquids and some nutrients. Mr. Baqatyan's wife was supposed to visit him on 3 May but the visit was postponed until the following Thursday. Mr. Baqatyan then called her from a phone number and said that he did not have enough time, but that he would try later on, but he still did not call back. She attempted to call the number used by her husband (which was the same number that was used to contact her when he was held at the Al-Rayyan

detention centre), and an unknown interlocutor informed her that Mr. Baqatyan would contact her. She said that she would inform the Prosecutor of her husband's condition, and the response was that she should follow up with the prison authorities.

On 10 May 2018, Mr. Baqatyan's brother went to see him in Al-Mukalla central prison but the visit was denied, and he was told that according to new rules, he should get an authorization from the Prosecutor in order to visit Mr. Baqatyan. He was also informed that this new procedure applied to all detainees. Mr. Baqatyan's brother then spoke to the prison authorities who initially told him that he should get an authorization from the Prosecutor but later on indicated that the family would get the authorization from the Al-Mukalla prison itself. The prison authorities subsequently informed him that they would contact Mr. Baqatyan's family once such visit had been authorized. According to Mr. Baqatyan's family, this unfair treatment in terms of visits only applies to them, whereas other families have a scheduled visit every Thursday. The same applies to the possibility of making incoming and/or outgoing phone calls. Mr. Baqatyan is currently not allowed to be visited by his family, and it is believed that the reason for this denial is the fact that he is protesting his detention through the hunger strike.

Since the detention of Mr. Baqatyan at Al-Mukalla prison, and his subsequent hunger strike, he has not been brought before any Yemeni judicial authority.

Mr. Baqatyan's wife was informed by relatives of another detainee that they had been asked to pass on the message that Mr. Baqatyan is in a severe physical condition, and he can barely speak. His health is deteriorating, and he is continuing his hunger strike.

The family of Mr. Baqatyan had previously informed the Prosecutor about his health condition and requested that he be transferred to the prison hospital. His brothers took this request to the prison authorities but they do not know if he was taken to the hospital or not.

While we do not want to prejudge the accuracy of the information received, we wish to express our serious concern at the alleged arbitrary arrest and detention of Mr. Baqatyan, including prolonged periods of incommunicado detention, which may be linked to his human rights activities. Additional concern is expressed at Mr. Baqatyan's physical and mental integrity in view of the allegations that he was subjected to ill-treatment, and at his deteriorating health linked to his on-going hunger strike.

We would like to draw attention to articles 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights (the Covenant) acceded to by your Excellency's Government on 9 February 1987, which guarantee the right to liberty and security of

person, to not be subjected to arbitrary arrest or detention, to have the right to challenge the legality of detention, and to freedom of opinion and expression. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the state of Yemen acceded to in 1991. Moreover, the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which lay out generally accepted principles and practice in the treatment of prisoners and prison management. In particular, we would like to refer to Rule 44 which restricts the use of solitary confinement to no more than 15 days. Furthermore, we would like to reiterate that the use of prolonged incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment.

The above-mentioned allegations also appear to be in contravention with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 11 of the Body of Principles stipulates that a detained person shall be entitled to a review of the continuance of his or her detention. The allegations further appear to contradict articles 1 and 2 of the UN Declaration on Human Rights Defenders, which state that everyone has the right to strive for the protection of human rights and that each State has a duty to implement all human rights.

Finally, we are referring to article 12 of the International Covenant on Economic, Social and Cultural Rights that Yemen acceded to in February of 1987 and to the General Comment 14 of the Committee on Economic, Social, and Cultural rights, which indicate that, under ICESCR article 12, States have the obligation to respect the right to physical and mental health by, inter alia, refraining from denying or limiting equal access for all, including prisoners or detainees to preventive, curative and palliative healthcare (GC 14, Para 34), and in compliance with all elements of the right to health including informed consent (A/64/272, Para.18). In addition, the Mandela Rules referred to above, also establish that it is the responsibility of States to provide healthcare for prisoners (Rules 22–26; 52; 62; and 71, para. 2), including prompt access to medical attention in urgent cases and the transfer of prisoners who require specialized treatment to specialized institutions or civil hospitals (Rule 27). Mandela Rules also establish the duties of healthcare professionals in prisons, including adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship (Rule 32 (b)). The full texts of the human rights instruments and standards recalled 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 on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the arrest and detention of Mr. Baqatyan and how these measures are compatible with international norms and standards as stated in the Universal Declaration of Human Rights, and Yemen's human rights obligations under the ICCPR.
3. Please indicate what measures have been taken to guarantee the physical and mental integrity of Mr. Baqatyan and to ensure that he is protected against any form of torture or other cruel, inhuman or degrading treatment or punishment, as per Yemen's human rights obligations under the CAT;
4. Please provide information about the measures taken to protect Mr. Baqatyan's right to receive adequate healthcare with his full and informed consent.

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.

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

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

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

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and expression

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