

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
UA YEM 1/2019

26 April 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 33/30, 35/15, 35/11, 34/6 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the prosecution's response towards Mr. **Hamid Kamali bin Haydara's** appeal against his death sentence.

Mr. **Hamid Kamali bin Haydara**, Bahá'í follower in Yemen, was the subject of previous communications to you (YEM 5/2014, YEM 1/2016, YEM 3/2016, YEM 2/2017, YEM 1/2018) to which we regret that no replies have been received.

According to the additional information received:

Following the death sentence issued against Mr. Hamid Kamali bin Haydara on 2 January 2018 by the Specialized Criminal Court, Mr. Haydara appealed against the decision. The hearing of his appeal took place on 1 January, 29 January, 19 February, 12 March and 2 April 2019 in Sana'a.

At the last hearing on 2 April 2019, the prosecution disapproved Mr. Haydara's appeal and requested the court to uphold the decision of death sentence. The prosecution claimed that the first-instance sentence was one of the most just and valid jurisprudences based on evidences of Mr. Haydara's alleged criminal activities that targeted on religion and threatened the independence of the Republic of Yemen by manipulating people to convert or leave Islam.

The prosecution in his memo derided and demonised the Baha'i faith and claimed that the Báb was supported by the Russian consulate in Iran and was allied with the Jews in spreading their religion. The prosecution accused Mr. Haydara and his father of executing a Baha'i Jewish plan, endeavouring to occupy Yemen and allocate Socotra as a national homeland for the Baha'i faith citing

Mr. Haydara's Emirati citizenship, alleged alliance with the Jews and other countries that are aggressing the Republic of Yemen as evidence of that. Furthermore, the prosecution repeatedly accused Mr Haydra of "apostasy", of working to convert others away from Islam, and of colluding with aggressors against Yemen. He stressed that the defendant must revert to Islam. Moreover, the prosecution stated that anyone collaborating with Mr. Haydara in his defense is considered to betray the nation and the religion, hence, should receive punishment.

Mr. Haydara was arrested on 3 December 2013, and remains incarcerated in the National Security Prison in Sana'a. The Specialized Criminal Prosecution of the Republic of Yemen indicted him for "compromising the independence of the Republic of Yemen". In the indictment letter, the General Prosecutor accused Mr. Haydara of collaborating with a foreign country (the State of Israel) by working for the Universal House of Justice, the supreme governing body of the Bahá'ís based in Israel. He was also accused of spreading the Bahá'í faith in the Republic of Yemen. During the trial hearings, neither Mr. Haydara nor his lawyer had the chance to discuss or contest the evidence presented by the General Prosecutor in relation to the accusation of Mr. Haydara's involvement in "compromising the independence of the Republic of Yemen".

We express grave concern that the prosecution lodged his arguments against Mr. Haydara's appeal without solid legal basis while he included many personal views on religious matters in his memo. The charge of "compromising the independence of the Republic of Yemen" does not meet the threshold of "most serious crimes" warranting the death penalty under international law. We are also concerned that the judicial procedures that led to the imposition of death sentence on Mr. Haydara have not fulfilled the most stringent guarantees of fair trial and due process as provided by international law, and that the carrying out of a death sentence under these conditions may amount to an arbitrary execution. We are further concerned by the threat imposed on the defense lawyers, risking to face the accusation of betraying the nation. Our serious concern is heightened by the fact that Mr. Haydara was arrested and punished with death on the ground of his religion and for belonging to a religious minority, which is evidenced by the position and biased views reiterated by the prosecution.

Given these concerns, we are respectfully appealing for **the death sentence against Mr. Haydara to be annulled.**

While we do not wish to prejudge the accuracy of the information made available to us, the death sentence imposed on Mr. Haydara appears to be in contravention with international law, in particular the right of every individual to life and security as set out in articles 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) as well as the right not to be deprived arbitrarily of his liberty and to fair proceedings before

an independent and impartial tribunal, including the right to have access to legal counsel, in accordance with articles 9 and 14 of the ICCPR, acceded to by the Republic of Yemen on 9 February 1987. The Human Rights Committee has stressed in its General Comment No. 32 (2007) that “requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception and that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter”.

Article 6 (2) of the ICCPR states that the sentence of death may be imposed only for the most serious crimes. Furthermore, article 6 (4) of the ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

We are also appealing to you to ensure the right to freedom of religion or belief, in accordance with article 18 of the ICCPR. This right includes the freedom to have or to adopt a religion or belief of one’s choice, and freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching.

Article 27 of the ICCPR guarantees the minorities, inter alia, the right to profess and practice their own religion. Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to protect the existence and identity of religious minorities within their territories, to adopt appropriate legislative and other measures to achieve those ends (article 1) and to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1).

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 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 any comment you may have on the above-mentioned allegations.

2. Please provide information concerning the factual and legal grounds for the arrest and detention of Mr. Hamid Kamali Bin Haydara on 3 December 2013 and how these measures are consistent with the international human rights obligations of Yemen, including article 9 of the ICCPR.
3. Please provide the factual and legal grounds for the imposition of the death sentence against Mr. Haydara on 2 January 2018, and how this sentence complies with international human rights laws standards including article 6 of the ICCPR.
4. Please provide the details of the judicial proceedings against Mr. Haydara, and how they comply with the guarantees of fair trial and due process, as enshrined, inter alia, in article 14 of ICCPR.
5. Please indicate the measures taken to protect the independence and the safety of defense lawyers who received threats while handling Mr. Haydara's case.
6. Please indicate what measures have been taken to ensure that persons belonging to religious minorities, including members of the Bahá'ís, can freely and without discrimination exercise their right to freedom of religion and belief.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Kindly note that a letter with the same information will be transmitted to the de facto authorities in Sana'a through the representative of United Nations Office of the High Commissioner for Human Rights in Yemen. Please also note that this letter does not

in any way imply the expression of any opinion concerning the legal status of any country, territory, city or area, or of its authorities.

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 urgent 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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