

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Mr. Sharaf, Ms. Al Shabi,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 42/22, 34/18 and 34/19.

In this connection, we would like to bring to your attention information we have received concerning the alleged abduction of two Yemeni journalists, **Mr. Bilal Al-Arifi** and **Mr. Mohammed Al-Salahi**.

According to the information received:

On 20 October 2018, two journalists, Mr. Bilal Al-Arifi and Mr. Mohammed Al-Salahi, who are students at the Media Department of Hodeida University, had their media services office, Mega Pixel, raided by Houthi fighters. Mega Pixel, located in Hodeida Governorate, provides media services including media documentation and filming. It is alleged that charges have been filed against Mr. Al-Arifi and Mr. Al-Salahi concerning the filming services provided by Mega Pixel to channels in the United Arab Emirates (UAE).

During the raid on Mega Pixel on 20 October 2018, all persons present at the office, including persons associated with Mr. Al-Arifi were interrogated. Following the raid, the same Houthi fighters abducted Mr. Al-Arifi and Mr. Al-Salahi. At the time of the raid, no arrest warrants were presented in the case of either Mr. Al-Arifi or Mr. Al-Salahi, nor were their families or lawyers notified of any arrest.

Shortly after the abduction, persons associated with both individuals directly contacted the de facto authorities in an attempt to ascertain the fate and whereabouts of the two journalists, to no avail. It was speculated that their places of detention might be the Political Security Prison, the Criminal Investigation Department or a civilian building located in the commercial district.

Mediators involved in the disappearance have indicated that in late 2018, after the outbreak of hostilities in Hodeida, Mr. Al-Arifi was transferred from the Political

Security Prison in Hodeida to the Political Security Prison in Haija, where his family members visited him three months after his disappearance. Available information indicates also that Mr. Al-Arifi's health has deteriorated due to torture inflicted upon him during the course of investigations.

Mr. Mohammed Al-Salahi remains disappeared since October 2018, with no information at all about what happened to him. Allegations that he may be detained at either the Political Security Prison in Hodeida or in Tamar could not be confirmed. Following his abduction, persons associated with him have made numerous attempts to ascertain his fate and whereabouts. In December 2018, a demand for mediation was submitted to the Houthi-appointed governor of Taiz, which remains unanswered.

We express our grave concern about the enforced disappearance of Mr. Mohammed Al-Salahi; the alleged torture and ill-treatment inflicted upon Mr. Bilal Al Arifi while undergoing interrogation; and the related attack on press and media freedom that the raid on their office, their search and abduction would constitute. While we do not wish to prejudge the accuracy of these allegations, should they be confirmed, they would contravene articles 6 (right to life); 7 (right not to be tortured); 9 (right to liberty and security of person), 10 (right to be treated humanely while detained); 14 (right to fair trial); 16 (right to be recognized as a person before the law); and 19 (right to freedom of expression) of the ICCPR ratified by Yemen in 1987. These allegations would also constitute violations of the Articles 1 and 2, among others, of the United Nations Convention against torture, and other cruel, inhumane and degrading treatment or punishment, ratified by Yemen in 1991; and contravene the protections provided for by the Declaration on the Protection of all Persons from Enforced Disappearance adopted by General Assembly resolution 47/133 of 18 December 1992, specifically Articles 2, 7, 10, 13.

Yemen as a State has ratified seven core human rights Conventions. The de facto authorities in Sana'a are responsible for the acts committed in the territory under their control including the human rights violations perpetrated by those acting on their behalf, and which may constitute arbitrary deprivation of life and liberty, torture and enforced disappearance. The rights to protection against arbitrary deprivation of life and arbitrary detention, to be free from torture and other cruel, inhuman or degrading treatment or punishment, and to recognition as a person before the law are peremptory norms of international human rights law which are applicable in all situations and should be respected in all circumstances including during armed conflict.

Further, given the prevailing armed conflict in the country, and that Yemen is a party to the four 1949 Geneva Conventions, all parties to the conflict are bound by [Article 3 common](#) to the 1949 Geneva Conventions that provides for the minimum standard to be respected. This requires humane treatment without adverse distinction of all persons not or no longer taking active parts in hostilities; and prohibits, specifically, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, as well as the taking of hostages, outrages upon personal dignity, in particular, humiliating and degrading treatment, and sentencing following unfair trial.

In connection with the above please refer to the **Annex on Reference to international humanitarian and 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 comment(s) you may have on the above-mentioned allegations.
2. Please provide precise information on the current fate and whereabouts of both individuals; and the measures taken to ensure that they enjoy prompt and regular access to a lawyer of their choice and their families as provided for in the ICCPR and the Standard Minimum Rules for the Treatment of Prisoners (also known as “The Mandela Rules”);
3. Please provide detailed information on the legal and factual basis for the arrest and detention of these two persons, including the charges filed as well as any judicial proceedings initiated against them, and how they are compatible with international human rights obligations under the ICCPR. According to international human rights law they should be either charged and tried by a competent and independent tribunal guaranteeing fair trial rights, or released.
4. Please provide detailed information about any investigation which may have been undertaken to clarify the fate and whereabouts of these two individuals to prevent their secret detention and the risk of their disappearance. If no investigations have taken place, please explain why and how this is compatible with human rights obligations;
5. Please provide detailed information about any investigation which may have been undertaken with regards to the allegations that Mr. Bilal Al-Arifi was subjected to torture or ill-treatment while undergoing interrogation; and to ensure that perpetrators of such acts, if they occurred, are brought to justice.
6. Please provide information about the steps taken to ensure that Mr. Bilal Al-Arifi and Mr. Mohammed Al-Salahi are treated humanely while detained, and in particular are being protected against any form of torture or ill-treatment, in line with the international prohibition of torture;
7. Please provide information about the steps taken in order to bring the perpetrators to justice. If no investigation has taken place, please explain why not.

8. Please provide detailed information on what steps have been taken to ensure that the above-mentioned detainees are able to meet with family members and legal representation.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We wish to underline that should sources submit the cases of alleged disappearance mentioned in this communication that are not yet under the consideration of 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 you will be informed by a separate correspondence.

We also wish to inform you that after having transmitted an allegation letter, 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 letters in no way prejudice any opinion the Working Group may render. It is required to respond separately to the allegation letter and the regular procedure.

Kindly note that a letter with the same information has been transmitted to the authorities of the Republic of 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.

Please accept the assurances of our highest consideration.

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international humanitarian and human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following humanitarian and human rights standards:

In non-international armed conflicts, non-state armed groups are bound by common article 3 to the Geneva Conventions of 1949, as well as customary international humanitarian law. In addition, Yemen has ratified Additional Protocol II to the Geneva Conventions (APII), 17 April 1990, placing further obligations on State and non-State actors in non-international armed conflicts.

Furthermore, there is growing authority that customary international human rights law applies also to non-state armed groups, particularly in situations where the armed group exercises effective control over territory or operates as *de facto* authority over an area (A/HRC/38/44 para 46 ff). Customary international human rights law obligations applicable to non-State armed groups continue to apply in armed conflict situations (International Court of Justice advisory opinion on the threat or use of nuclear weapons and advisory opinion on the construction of a wall, as well as CCPR/C/21/Rev.1/Add. 13, para 11 and CCPR/C/GC/36, para 64).

In situations where the acts committed have no nexus to the non-international armed conflict, the higher standards of protection afforded by international human rights law apply. In situations where such a nexus exists, IHL prevails only insofar as there is a collision between the relevant norm under IHL and human rights law. Where no such conflict exists the relationship between IHL and human rights, the interrelationship between IHL and human rights is settled through interpretation. (compare e.g. CCPR/C/GC/36 para. 64)

Common Article 3 to the Geneva Conventions prohibits “violence to life and person, in particular [...] cruel treatment and torture”, as well as “humiliating and degrading treatment”, see also APII Article 4 (2) (a) and (e). This is reflective of concurrent obligations under Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties, as well as customary international law. The prohibition is of peremptory (*jus cogens*) character and cannot be derogated from. Serious acts of cruel, inhuman and degrading treatment or torture committed in non-international armed conflicts constitute war crimes and therefore entail the individual international criminal responsibility of perpetrators (ICC statute Article 8 (2) (c) (i) and (ii), reflective of customary international law see ICRC Customary IHL study rule 156).

Furthermore, we wish to highlight the following human rights standards:

- Article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Yemen on 9 February 1987, which states that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.

- Article 9 of the ICCPR which guarantees the right to liberty and security of person. It further states that anyone detained or arrested on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.
- Article 14 of the ICCPR which guarantees fair trial rights, including facilities for the preparation of his/her defence and communication with counsel of his/her choosing.
- Article 19 of the ICCPR, which guarantees the right to hold opinions without interference. It further states that everyone shall have the right to freedom of expression, including the freedom to seek, receive and impart information through any media of one's choice.

We further wish to draw to your attention articles 2, 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to by Yemen on 5 November 1991, which place an obligation to prevent acts of torture or cruel, inhuman or degrading treatment or punishment occurring on their territory, or on any other territory under their jurisdiction, and to ensure a prompt and impartial investigation into allegations when there is grounds to believe that such acts have occurred.

We would also like to remind you of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, as mirrored, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

Customary international humanitarian law places a prohibition of enforced disappearance on parties to non-international armed conflicts (ICRC Customary IHL study rule 98). A concurrent obligation exists under customary human rights law, UN Declaration on the Protection of All Persons from Enforced Disappearance.

We would like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which prohibits enforced disappearances and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1), that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3), that steps shall be taken to ensure that all involved in the investigation of enforced disappearances, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal (article 13.3) and that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished (article 13.5).

Customary international humanitarian law places a prohibition on parties to non-international armed conflicts from engaging in the arbitrary deprivation of liberty (ICRC Customary IHL study rule 99). No pronouncement is hereby made on whether non-State armed groups have the authority to detain under international humanitarian law. However, APII Article 5 places certain minimum standards on the treatment of individuals deprived of their liberty and Article 6 certain fair trial guarantees (see also Customary rules no 99 and 100). A prohibition on the arbitrary deprivation of liberty is further found in UDHR Article 9, reflective of customary human rights law, see Working Group on Arbitrary Detention, deliberation no. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44).

Customary international humanitarian law places an obligation to respect journalists engaged in professional missions in areas of armed conflict as long as they are not directly participating in hostilities (ICRC Customary IHL study rule 34). This is an extension of the general principle of distinction in international humanitarian law which places a duty on the parties to the conflict to distinguish between combatants and civilians (*id.* rule 1 and APII Article 13 (1)), prohibiting directing attacks against civilians when they are not directly participating in hostilities (AP II Article 13 (3), ICRC CIHL rules 1 and 6). The right to freedom of expression reflected in UDHR Article 19 is also of customary nature (A/HRC/24/23, para. 11). Insofar as there is no conflict of norms with international humanitarian law, it is applicable also in situations of armed conflict, permitting no further limitations than that which is necessary and proportionate. Attacks against journalists for their exercise of freedom of expression will constitute a violation of customary human rights law and customary international humanitarian law (compare CCPR/C/GC/34 para 23).

Insofar as human rights obligations are directly applicable to it, the non-State armed group is under a duty to provide effective remedies to victims in situations of alleged violations of customary human rights law and alleged serious violations of customary humanitarian law, including through investigations of alleged violations, (compare ICRC Customary IHL study, rule 158, UNGA resolution 60/147, 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, principle 3 (b)).