

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL SAU 17/2019

9 December 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 42/22 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning the death of **Mr. Ibrahim Mohammed Mahyoub Saeed Shamsani**, a Yemeni national in a detention facility in Jazan, in Saudi Arabia. A letter expressing similar concerns is being sent to the Government of Yemen.

According to the information received:

Mr. Ibrahim Mohammed Mahyoub Saeed Shamsani, is a national of Yemen, born on 1 November 1984, who worked as a First Lieutenant, communication director, in the Yemen Coast Guard, in the port of Hodeidah, in Yemen.

When the Houthis took control of Sana'a, Mr. Shamsani went to the Taiz province, where he assumed policing duties in the security department of Mashra'a, in the Wahdanan Directorate. Subsequently, he was summoned to work with the coast guard.

On 17 June 2019, Mr. Shamsani was in contact, for the last time, with his family. At that time, he was conducting a military training on the island of Miyun.

On 31 July 2019, Mr. Shamsani's family received a letter from a Yemeni officer informing them that Mr. Shamsani committed suicide by hanging in a prison in Jazan, in Saudi Arabia. Prior to that, Mr. Shamsani's family never received any information that he had been arrested or was being held in Saudi Arabia.

According to some of Mr. Shamsani's colleagues, Saudi and Yemeni officers in uniforms arrested him while he was serving on the island of Miyun. He was then brought to a Saudi navy barge belonging to the Western Naval Fleet and subsequently to a Saudi prison of the Saudi navy in Jazan.

As soon as his relatives were informed of Mr. Shamsani's death, they requested that his body be handed over to them, but this was repeatedly denied. Following

negotiations and interventions of Yemeni military leaders, Mr. Shamsani's body was handed over to his family on 19 September 2019.

The body was examined by a forensics expert who concluded Mr. Shamsani's death was due to torture and suffocation.

Mr. Shamsani's family continue to have no information as to the reasons of his arrest and deprivation of liberty. They believe that Mr. Shamsani may have been suspected of providing information to the Houthis and that his death, as a result of torture, was covered up as a suicide.

While we do not wish to prejudge the accuracy of these allegations, should they be confirmed, they would constitute violations of Articles 3, 5 and 9 of the Universal Declaration of Human Rights, as well as Articles 5, 8 and 13 of the Arab Charter on Human Rights, to which Saudi Arabia is a State Party since 2009. These articles protect the right of every individual to life, liberty and security; the right not to be arbitrarily arrested and detained and the right to not be subject to torture or otherwise ill-treated.

Furthermore, they would violate the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in Articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Saudi Arabia on 23 September 1997. Moreover, Article 12, outlines the obligation of the state, as party to the Convention, to carry out a prompt, independent and thorough investigation wherever there is reasonable ground to believe that an act of torture has been committed.

We recall that, when depriving persons of their liberty, States assume responsibility to care for their lives and bodily integrity and must therefore take all necessary measures to protect them. We note that, in its General Comment No. 36, the United Nations Human Rights Committee highlighted the duty of States to take adequate measures to prevent suicides of individuals deprived of their liberty<sup>1</sup> and stress that, among the measures that States must adopt to protect the life of individuals deprived of their liberty is the identification of the causes of death while in custody<sup>2</sup>.

In this regard, we wish to emphasize that investigations and prosecutions, where appropriate, of potentially unlawful deprivations of life are an important component of

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<sup>1</sup> CCPR/C/GC/36, para. 9:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fG%2f36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fG%2f36&Lang=en)

<sup>2</sup> Human Rights in the Administration of Justice, Report of the United Nations High Commissioner for Human Rights (A/HRC/42/20; paragraph 35):

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx>

the protection of the right to life<sup>3</sup>. Their purpose must be to clarify the circumstances surrounding the death and to contribute to preventing the recurrence of death in custody, reducing trauma and providing an effective remedy to the next of kin and the identification, prosecution and punishment of those responsible. Judicial investigations become an obligation when there appears to be an arbitrary deprivation of life<sup>4</sup>.

In any event, we wish to recall that the State has a duty to investigate all potentially unlawful deaths caused by individuals, even if it cannot be held responsible for failing to prevent such deaths.

In connection with the above alleged facts and concerns, please also 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 on the following matters:

1. Please provide any information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information on the factual and legal grounds for the arrest, detention, and transfer to Saudi Arabia of Mr. Shamsani and how these measures are compatible with international and regional norms acceded to by Saudi Arabia.
3. Please provide detailed information about the cause and circumstances of the death in the custody of Saudi Arabia of Mr. Shamsani.
4. Please provide detailed information about any independent investigation carried out into the death of Mr. Shamsani, so as to determine its cause and circumstances, including its results. If no investigation has been conducted into his death, please explain why, and how this is consistent with Saudi Arabia's regional and international human rights obligations.
4. Please provide detailed information on the reasons and other circumstances related to the deprivation of liberty of Mr. Shamsani, including dates, places of detention, authorities under whose responsibility he has been detained, as well as the implementation of legal safeguards protecting him against torture, such as habeas corpus, judicial oversight

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<sup>3</sup> CCPR/C/GC/36, para. 27:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en)

<sup>4</sup> A/HRC/42/20, paras. 43 and 44

over his detention, legal representation, access to health care as well as consular notification.

5. Please explain whether any relevant authority in Saudi Arabia has been in contact, and if yes, in what form and to what extent, with any authority in Yemen in relation to the above mentioned allegations.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may consider to publicly express our concerns about the death in detention of this person, as the information in our possession indicate that his death may not have been caused by suicide. In this regard, given the importance of the matter, we would welcome a prompt response at your earlier convenience. Any public expression of concern in this regard will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

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

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person". Article 5 of the UDHR establishes that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 9 provides that "No one shall be subjected to arbitrary arrest, detention or exile".

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermitt Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life..."

As far as the implementation of the States' obligation to investigate deaths in custody, we wish to refer to the general comment no. 36 of the Human Rights Committee, where the Committee sets out some of the requirements and objectives of investigations into potential violations of the rights to life, including, for instance, the need for transparency, both with regard to the victim's next of kin and the public. Furthermore, we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those "who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed."

The Minnesota Protocol on the Investigation of Potentially Unlawful Death further specifies that the duty to investigate is triggered when a State agent causes the death of a detainee or when a person dies in custody<sup>5</sup>. The duty entails reporting the event, without delay, "to a judicial or other competent authority that is independent of the detaining authority and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such a death".

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<https://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrariness.aspx>

The importance of recording and examining instances of death in custody is also recognized in the Nelson Mandela Rules<sup>6</sup>, which require the prompt reporting of “any custodial death (...) to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases”.

In 2013, the International Committee of the Red Cross (ICRC) published its Guidelines for Investigating Deaths in Custody<sup>7</sup>, providing States with detailed guidance on the norms and standards to be respected and the methodology to be followed by preliminary, judicial and non-judicial investigations into cases of death in custody.

In addition, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol<sup>8</sup>, provides detailed guidance for investigating cases of alleged torture and reporting such cases to the relevant authorities, setting out the standards for the legal investigation and documenting the physical and psychological effects of torture by medical professionals.

We also recall that whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, Article 12 of the CAT imposes an obligation on the State to investigate. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment and/or their family receive adequate reparation.

Lastly, we refer to Article 36 of the Vienna Convention on Consular Relations according to which local authorities must inform all detained foreigners “without delay” of their right to have their consulate notified of their detention and to communicate with their consular representatives. At the request of the national, the authorities must then notify the relevant consulate of the detention without delay; they must also facilitate consular communication and grant consular access to the detainee.

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<sup>6</sup> [https://www.un.org/en/events/mandeladay/mandela\\_rules.shtml](https://www.un.org/en/events/mandeladay/mandela_rules.shtml)

<sup>7</sup> <https://www.icrc.org/en/publication/4126-guidelines-investigating-deaths-custody>

<sup>8</sup> <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>