

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:
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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, I 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. Please note that a letter expressing similar concerns is being sent to the Government of Saudi Arabia.

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; Articles 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR); as well Article 5, 8 and 13 of the Arab Charter on Human Rights, to which instruments Yemen is a State Party. They protect the right of every individual to life, liberty and security; the right to not be arbitrary arrested and detained and the right to not be subject to torture or otherwise ill-treated.

Furthermore, we would like to remind your Excellency's Government of 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 Yemen ratified on 5 November 1991.

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 liberty¹ 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 custody².

In this regard, we wish to emphasize that investigations and prosecutions, where appropriate, of potentially unlawful deprivations of life are an important component of the protection of the right to life³. Their purpose must be to clarify the circumstances surrounding the death and to contribute to preventing the recurrence of death in custody,

¹ CCPR/C/GC/36, para. 9:

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

² 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>

³ CCPR/C/GC/36, para. 27:

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

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 life⁴.

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

Against this background, we wish to recall that Your Excellency's Government retains a protective surveillance over its citizens abroad to ensure that their rights remain protected under international human rights law. Yemen is a signatory to the Vienna Convention on Consular Relations, and is thus entitled to protect the rights of its own nationals detained in a foreign country, as per Articles 5 (Consular functions) and 36 (Communication and contact with nationals of the sending state). As a signatory of the ICCPR, Yemen has also the duty to see that the rights of its own nationals abroad are respected.

Furthermore, Yemen is under an obligation to take appropriate measures to protect individuals against deprivation of life by other States operating within its territory or in other areas subject to their jurisdiction. It must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within its territory and in other places subject to its jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside its territory are consistent with Article 6 of the ICCPR, taking also into account the right of victims to obtain an effective remedy⁵.

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 of whether your Excellency's Government was ever officially notified, or otherwise informed, by the Government of Saudi Arabia, of the reasons and other circumstances, including dates and places, related to the deprivation of liberty of Mr. Shamsani. If yes, please provide detailed information on whether consular assistance was granted to Mr. Shamsani. Please indicate concrete steps and

⁴ A/HRC/42/20, paras. 43 and 44

⁵ CCPR/C/GC/36, para. 22.

measures taken in this regard. If no consular assistance was granted, please explain the reasons why.

3. Please explain how your Excellency's Government intervened with the authorities of Saudi Arabia in order to reportedly facilitate the restitution of the body of Mr. Shamsani to his family. Please indicate whether Your Excellency's Government provided Mr. Shamsani's family with any other form of support, including reparation, if appropriate.
4. Please explain whether your Excellency's Government has ever requested the authorities of Saudi Arabia to conduct an investigation into the death of Mr. Shamsani. If yes, please provide information on what was the reaction of the Saudi authorities. If not, please explain the reasons why.
5. Please indicate whether Your Excellency's Government is satisfied with the explanation that Mr. Shamsani committed suicide. If so, please explain the facts and circumstances supporting this determination.
6. Please explain what steps, at present, your Excellency's Government may envisage to undertake in order to pursue the matter with the authorities of Saudi Arabia and clarify all circumstances of the present case.

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 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.

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". Furthermore, Article 9 provides that "No one shall be subjected to arbitrary arrest, detention or exile".

Furthermore, Articles 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR) respectively provides that "Every human being has the inherent right to life. (...) No one shall be arbitrarily deprived of his life"; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"; "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

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.

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 custody⁶. 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".

The importance of recording and examining instances of death in custody is also recognized in the Nelson Mandela Rules⁷, 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 Custody⁸, 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.

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

⁷ https://www.un.org/en/events/mandeladay/mandela_rules.shtml

⁸ <https://www.icrc.org/en/publication/4126-guidelines-investigating-deaths-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 Protocol⁹, 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, Article 5 of the Vienna Convention on consular relations establishes that “(c)onsular functions consist [inter alia] in: (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law; (...); (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons; (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests; (...)”.

Article 36 of the Convention also states that “(w)ith a view to facilitating the exercise of consular functions relating to nationals of the sending State: (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State; (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph; (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of

⁹ <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

the sending State who is in prison, custody or detention in their district in pursuance of a judgment. (...)”.