

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
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14 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/19, 36/6 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. [REDACTED], a Yemeni national living in Saudi Arabia, who was reportedly arrested at a checkpoint in Yemen, forcibly disappeared between 19 May to 25 June 2018 while detained in unofficial detention facilities and allegedly tortured and intimidated, by Yemeni forces and their allies.

According to the information received:

Mr. [REDACTED] ([REDACTED]) is a Yemeni national from the Awalki tribe, born [REDACTED] in Saudi Arabia, where he resided and whose family is from the city of Ataq in the Shabwah governorate in Yemen. Mr. [REDACTED] is a follower of Tablighi Jamaat Movement.

On 18 May 2018, Mr. [REDACTED] drove from Saudi Arabia to Yemen to visit his family in the city of Ataq. The next day whilst on the road, he was stopped at a checkpoint in Shubeika, Ataq district by Yemeni armed groups who were reportedly under the supervision of Emirati officers. Mr. [REDACTED] was asked about his tribe and when he confirmed being from the Awlaki tribe, he was beaten up, handcuffed, blindfolded, and pushed into a car that drove him to a barrack in Ash Al-Shubeika, reportedly run by the Shabwan Elite Forces non-State armed group, backed by the United Arab Emirates, where he was subjected to enforced disappearance.

While detained in the barrack, Yemeni, Saudi and Emirati security personnel interrogated Mr. [REDACTED] regarding reasons for his visit, suspecting him of affiliation with the Al-Qaeda in the Arabian Peninsula (AQAP), the Islamic State in Iraq and the Levant (ISIL) or Al-Islah Party. During interrogations, Mr. [REDACTED] was blindfolded and repeatedly beaten.

On 20 May 2018, Mr. [REDACTED] was transferred by car to the Balhaf coalition base located in the Balhaf gas liquefaction plant. During the transfer, he was allegedly subjected to mock executions. Upon arrival, he was pushed from the car, threatened and intimidated by security officers.

In Balhaf, Mr. [REDACTED] was detained, in the so-called “Maaskar Al Himaya Al Sharika”, with eight others, two of them from the Awlaqi tribe, also accused of belonging to the AQAP. Mr. [REDACTED] was interrogated eight times, where he was questioned by Emirati officers on his ties with AQAP, ISIL and Al-Islah Party.

On 6 June 2018, after 17 days in Balhaf, Mr. [REDACTED] was taken to the Mounawara Central Prison in Al-Mukalla, where he was examined by a doctor, before being transferred blindfolded to Al-Rayyan Airport detention facility, reportedly run by the Emirati armed forces. Guards from several nationalities allegedly recruited by the United Arab Emirates took him to a mobile home, used as interrogation room, where he was psychologically and physically tortured, including threats of rape and murder.

On 14 June 2018, detainees were allowed one hour in open air. However, the same night, officers stripped Mr. [REDACTED] of his clothes and suspended him from the ceiling by his hands. He was detained in a cell called “Room 10”.

Mr. [REDACTED] was transferred blindfolded by helicopter on two occasions, on 15 and 21 June 2018, to an unknown location by the sea, where he was interrogated by a U.S. officer, about his affiliations, whether he received military training and reasons for his travels to countries such as Indonesia, Bangladesh, Viet Nam, Malaysia and others. After interrogations, he was transferred back to Al-Rayyan, where he was threatened with execution.

On 25 June 2018, Mr. [REDACTED] was released with fourteen other detainees. He was asked to leave Yemen and not to come back until the war on terror was over. He was also requested not to speak of Al-Rayyan Airport detention facility nor the Emirati presence in Yemen. He was hit on his back and head with a metal stick when he refuted those instructions. His family picked him up from Al-Rayyan airport and took him to the Mukalla hospital to examine his reportedly deteriorated health, as Mr. [REDACTED] suffered from a prior urological condition and did not have access to medical treatment throughout his 28 days of detention.

After his return to Saudi Arabia, Mr. [REDACTED] was diagnosed with urethral stricture and undertook surgery. He was however threatened with reprisals when he reported to the Saudi Police the torture and ill-treatment he has been subjected to during his journey in Yemen.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by the deteriorated health condition of Mr. [REDACTED] as a result of

torture and ill-treatment perpetrated during his enforced disappearance, by armed forces of Yemen and the United Arab Emirates, in contravention of the absolute and non-derogable obligation to prohibit and prevent torture and ill-treatment as codified in articles 2 and 16 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT), ratified by Yemen on 5 November 1991 and 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.

We further express our grave concern that Mr. [REDACTED] was forcibly disappeared, held incommunicado in unofficial detention facilities in Balhaf and Rayyan, reportedly under the control of the UAE forces, for 28 days, which removed him from the protection of the law and subjected him to an increased risk of torture and ill-treatment. We are concerned that intelligence officials of the United States engaged in extra-territorial interrogation. Moreover, we are extremely concerned by the allegations of the use of interrogation techniques adopted by security officers and methods of intimidation and threatening, which could amount to psychological torture, as well as security personnel's brutality in detention and denial of medical care.

In this connection, we underscore that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.

We further remind your Excellency's Government responsibility for the violations committed by the coalition armed forces, including the Emirati officers, under the International Humanitarian Law, rule 149.

In connection with the above alleged facts and concerns, please 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 additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds for the arrest and detention of Mr. [REDACTED]. Please clarify precisely how this is compatible with Yemen's international human rights obligations.
3. Please provide detailed information on the detention facilities in Balhaf and Rayyan Airport including conditions of detention and treatment of detainees. Please explain how this is compatible with international human rights law and standards.

4. Please provide further information on the interrogation techniques adopted by the Yemeni Government and its allies in the context of combatting terrorism. Please explain how those techniques are compliant with the State obligation to eradicate enforced disappearances and prohibit and prevent torture.
5. Please provide information on legal grounds for the accusation of Mr. [REDACTED] of belonging to a terrorist organisation and indicate how this complies with United Nations Security Resolution 1373, and the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
6. Please provide detailed information on the investigations which may have been conducted with regards to the alleged acts of enforced disappearance, torture and ill-treatment detailed above. If no investigation has been undertaken to date, please explain how this is compatible with the international human rights obligations of Yemen.

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.

Please note that a letter expressing similar concerns is being sent to the Governments of the United Arab Emirates and the United States of America.

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(s) responsible for the alleged violations.

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

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

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and article 5 of the African Charter on Human and Peoples' Rights.

We would like to draw the attention of your Excellency's Government to article 6 of the Convention Against Torture, which requires State Parties to establish their jurisdiction over acts of torture if they are committed in any territory under its jurisdiction; when the alleged offender is a national of that State and when the victim is a national of that State if that State considers it appropriate. It also requires State Parties to establish their jurisdiction over acts of torture in cases where the alleged offender is present in their territory. Article 7 goes on to provide that State Parties must either extradite alleged offenders or submit the case to its competent authorities for the purpose of prosecution.

We would like to further refer to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture."

Moreover, paragraph 27 of General Assembly Resolution 68/156, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished". In addition, the Committee Against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

We wish 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).

Furthermore, the Declaration sets out an obligation for States to take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control (article 14).

We would like to draw the attention of your Excellency's Government to the obligation to effectively investigate allegations of torture as expressed in paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, 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; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

Finally, we would like to refer to the State responsibility under International Humanitarian Law, rule 149, explaining that "A State is responsible for violations of international humanitarian law attributable to it, including:(a) violations committed by its organs, including its armed forces;(b) violations committed by persons or entities it empowered to exercise elements of governmental authority;(c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and(d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct."