

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on Enforced or Involuntary Disappearances

REFERENCE:
AL USA 19/2020

27 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; and Working Group on Enforced or Involuntary Disappearances, pursuant to Human Rights Council resolutions 34/19 and 36/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Mohammed Abdullah Saleh al-Asad**, who was abducted, held incommunicado and subjected to torture and ill-treatment by the Government of the United States of America in Tanzania and held in Djibouti, Afghanistan and Yemen, as well as **Zahra Ahmed Mohamed**, who was allegedly subjected to psychological pain and suffering as a result of the enforced disappearance of Mr. al-Asad, her husband.

Ms. Mohamed is the widow of Mohammed Abdullah Saleh al-Asad, a Yemeni national who was living in Tanzania when he was subjected to the U.S. extraordinary rendition program¹ from 25 December 2003 to 5 May 2005.

According to the information received:

On 26 December 2003, Ms. Mohamed witnessed the abduction of her husband, Mr. al-Asad, who was taken from their family home in Tanzania without warning and summarily detained by Tanzanian officials. Police officers in plain clothes came to the house, blindfolded Mr. Al-asad, shoved him into a car and drove him away.

On 27 December 2003, Mr. Al-Asad was flown to Djibouti, where he was held incommunicado detention for two weeks. Upon arrival at the Djibouti-Ambouli International Airport, Mr. al-Asad was driven by Djiboutian security forces to a local Djiboutian facility, which is reportedly located in the Plateau de Serpent neighbourhood of Djibouti city, about a 20-30minute drive from the airport. In this facility, Mr. al-Asad was guarded by Djiboutian security forces and held in inhumane conditions: his cell consisted of a bare dirty room with incessant mosquitos making sleep impossible. He was left in the same clothes for the full period. He was interrogated about three times by a member of the Djiboutian

¹ Mr. al-Asad is listed as detainee number 92 in the Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, 112th Cong. See supra note 4, at 460 of 499

security forces, an agent of the U.S. government, who was assisted by an interpreter.

On 7 January 2004, Djiboutian security forces drove Mr. al-Asad back to the airport and handed him over to American operatives, who were waiting on the open air tarmac of the airport. While still on the tarmac, the CIA subjected Mr. al-Asad to “capture shock” treatment, a brutal procedure amounting to torture that the CIA deployed to foster what it termed “learned helplessness”—a sense of total subjection to U.S. control. Mr. al-Asad was stripped naked, sexually assaulted, diapered, chained, and strapped down to the floor of an airplane.

Mr. al-Asad was then flown to Afghanistan, where he was held in incommunicado detention and subjected to torture and ill-treatment by the CIA for the next 16 months. He was held in a pitch dark cell, where he was unable to stand fully upright because of a shackle connecting him to the wall. His American captors blasted loud, thumping music 24 hours a day, overloading his senses and preventing him from sleeping. Several months later, Mr. al-Asad was transferred to a purpose-built “black site” in Afghanistan, where he was subjected to dietary manipulation, held in complete isolation, and blocked from sunlight. Each time Mr. al-Asad was transferred, he was subjected to a version of the “capture shock” treatment. Because of these experiences, Mr. al-Asad developed an intense aversion to traveling, fearing that each time he travelled, he would be forced to undergo the brutal capture shock procedure. Throughout his detention, he was never once given the opportunity to contact his family, the Yemeni consulate, a court, a legal representative, or humanitarian agencies.

On 5 May 2005, the CIA flew Mr. al-Asad from Afghanistan to Yemen, where he was further detained. Only after Mr. al-Asad arrived in Yemen, did Ms. Mohamed discover what had happened to her husband. She learned that the day after Tanzanian authorities took her husband, he was flown to Djibouti, where he was held and interrogated for two weeks in a local facility. On 7 January 2004, Djiboutian officials handed him over to CIA custody on the tarmac at the airport in Djibouti. He was then flown to Afghanistan, where the CIA held and tortured him in three different facilities, including a purpose-built “black site,” for a year and a half.

After 10 months in Yemeni prisons, the U.S. government instructed the Yemeni Government to finally release him and he was reunited with his family. Mr. al-Asad was never charged with terrorism, never taken to Guantánamo Bay detention facility, and never designated as a terrorist by the U.S. government or any other government.

Ms. Mohammed persistently searched for her husband but was met by silence and obfuscation. She searched for her husband in local prisons in Tanzania; she requested information from diplomats and other officials; his family searched for him in Yemen after local media wrongfully reported he had been deported there;

and she filed a tracing request with the International Committee of the Red Cross (ICRC), among other efforts. Despite these steps, Ms. Mohamed did not have any information about her husband; she did not know where he was, who was holding him, if he was safe, or even if he was alive. Ms. Mohamed and her family were forced to live with the anguish and uncertainty of not knowing the whereabouts of her husband and father of her children. Ms. Mohamed was two months pregnant at the time her husband was taken and she gave birth while Mr. al-Asad was still missing.

Ms. Mohamed learned some of the harrowing details of what Mr. al-Asad experienced while he was missing after his release. The long-term psychological effects of the torture Mr. al-Asad experienced after he came back home also affected Ms. Mohammed and her family. His personality changed and became an angry person with very little patience. The anger and impatience made him feel physically ill. At these times, he would come close to crying, and he would withdraw to be alone. Then he would apologize later. This was hard on him—to see himself out of control—and it was also hard for his family. Not only was the family impacted by these psychological effects, but Mr. al-Asad’s torture and disappearance also depleted the family’s finances and adversely impacted their children’s education.

On 8 May 2016, a decade after he was released from prison in Yemen, Mr. al-Asad suddenly passed away. He had been experiencing chest pains for some time but he was too scared to travel to see a physician. Ms. Mohamed attributes his death to his experience in detention where he developed paranoia, which prevented him from seeking what could have been life-saving treatment.

While we do not wish to prejudge the accuracy of the allegations, we express our grave alarm at Mr. al-Asad’s enforced disappearance and the pain and suffering of his family as a result, even more so that no criminal charges were ever brought against him. In connection to the alleged facts, the lack of information about Mr. al-Asad’s fate and whereabouts and refusal to acknowledge his abduction and detention despite numerous attempts to search for him, torture and ill-treatment and denial of access to due process rights, if confirmed, would be a serious violation of international human rights law, in particular articles 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), the protections provided for by the Declaration on the Protection of all Persons from Enforced Disappearance adopted by the General Assembly Resolution 47/133 of 18 December 1992, specifically articles 1, 2, 3, 7, 9, 10, 13, 17 and 19, as well as the absolute and non-derogable prohibition of torture and other ill-treatment codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would like to bring to the attention of your Excellency’s Government that enforced disappearance can amount to torture not only with regard to the disappeared but can also amount to a form of torture in relation to the family and loved ones of the disappeared (A/56/156, paras. 9–16). The disappearance, arbitrary and incommunicado

detention of Mr. al-Asad may also amount to corruption (A/HRC/40/59, paras. 16 and 48–60), betrayal of communal trust causing severe mental suffering, emotional destabilization and lasting individual and collective trauma, and in the view of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “when institutional arbitrariness or persecution intentionally and purposefully inflicts severe mental pain or suffering on powerless persons, it can constitute or contribute to psychological torture” (A/HRC/43/49, para 63).

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 Excellency’s Governments 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 detailed information about the factual and legal ground for the arrest and detention of Mr. al-Asad Please explain the absence of information of his fate and whereabouts despite repeated inquiries by his wife Ms. Mohammed.
3. Please provide information concerning the factual and legal grounds for subjecting Ms. Mohammed to continued pain and suffering due to the denial to provide any information about the fate and whereabouts of her husband and father of her children, especially after her categorical and persistent inquiries.
4. Please provide information on the steps taken by the relevant authorities to investigate the allegation of enforced disappearance of Mr. al-Asad. Please provide detailed information about any investigation, judicial or otherwise; if no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with the United States of America international human rights obligations.
5. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of ensuring that Ms. Mohammed obtains redress and reparation for the harm inflicted on her and her family due to the enforced disappearance of her husband, Mr. al-Asad, including fair and adequate compensation for income and material loss and psychological and reputational harm. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of the United States of America under the conventions it has ratified.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government 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.

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.

We would like to inform your Excellency's Government that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Working Group on Enforced or Involuntary Disappearances have written a similar letter to the Government of Djibouti.

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

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 the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The universal prohibition of torture is recognized to be of an absolute, non-derogable and peremptory character and has been restated in numerous international instruments of human rights, humanitarian and criminal law. It 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) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The United States of America became party to the CAT following ratification on 21 October 1994 and ICCPR ratified on 8 June 1992.

The Committee against Torture² and the UN Human Rights Committee³ have repeatedly concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones. While, the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has long recognized "psychological" or "mental" torture as an analytical concept distinct from physical torture (see E/CN.4/1986/15), and defined to include all methods, techniques and circumstances which are intended or designed to purposefully inflict severe mental pain or suffering without using the conduit or effect of severe physical pain or suffering. Loss of communal trust is also a method of psychological torture when constitutional processes are fatally corrupted and administrative and judicial power is used to circumvent rule of law and the principles of due process for instance through arbitrary detention, incommunicado detention, solitary confinement, enforced disappearance, coercive detention and cruel, inhuman or degrading punishment (A/HRC/43/49, para 61-67).

We would also like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which sets out the necessary protections with respect to the responsibility of the State; in particular that no State shall practice, permit or tolerate enforced disappearances (Article 2), that any person deprived of liberty shall be held in an officially recognized place of detention (Article 10.1) and 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). We also wish to stress Article 19 of the Declaration which provides that the victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible.

² See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

³ CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

The failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance. In this regard, we would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, "[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".

Lastly, we also bring to the attention of your Excellency's Government the findings of the Joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), by a group of Special Procedures mandate holders. The report recalls, *inter alia*, that victims of secret detention should be provided with judicial remedies and reparation in accordance with relevant international norms. These international standards recognize the right of victims to adequate, effective and prompt reparation, which should be proportionate to the gravity of the violations and the harm suffered. As families of disappeared persons have been recognized as victims under international law, they should also benefit from rehabilitation and compensation (A/HRC/13/42 para. 292(H)).