

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE:  
AL OTH 66/2020

6 October 2020

Mr. Sharaf, Ms. Al Shabi,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 42/22, 36/6, 43/4, 42/16 and 43/20.

In this connection, we would like to bring to your attention information we have received concerning allegations of arbitrary arrest and detention, torture and death penalty imposed as a result of an unfair trial in relation to Yemeni journalists.

According to the information received:

*The case of the journalist arrested in the hotel Qasr al-Ahlam*

On 9 June 2015, Mr. **Akram al-Walidi**, Mr. **Abdelkhaleq Amran**, Mr. **Tawfiq al-Mansouri**, Mr. **Hisham Tarmoom**, Mr. **Hasan Annab**, Mr. **Haytham al-Shihab**, Mr. **Hisham al-Yousefi**, and Mr. **Essam Balgheeth**, were arrested during a raid conducted at the hotel Qasr al-Ahlam, in Sana'a, by 30 armed men in plain clothes, claiming to be members of the Ansar Allah movement (the Houthi movement and de facto authority in Sana'a and northern Yemen).

Subsequently, they were brought to the al-Ahmar and al-Hasaba police stations. Some of them were reportedly allowed to make brief telephone calls to their families. Two days following the arrest, the journalists were transferred to the counter-terrorism department at the Criminal Investigation Department (Ministry of Interior) on the al-Adl street in Sana'a, and were held there for at least one month, without being charged.

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In July 2015, their families were informed that the journalists were no longer being held at the Ministry of Interior, but had been moved to an unknown location and were being held incommunicado.

In the course of September 2015, the journalists were reportedly being held at the al-Thawra pre-trial detention facility, in Sana'a. In March 2016, they were moved to the al-Habra pre-trial detention facility.

Throughout the detention period, the journalists could not receive visits from their families, even if only to deliver food and/or medicines. The families were reportedly told that visits were only allowed subject the authorization of the Ansar Allah office, or that the prisoners had been moved.

On 9 May 2016, the journalists began a hunger strike to protest against their detention. Two of them, Mr. Abdelkhaleq Amran and one other journalist, were refused access to appropriate care, even after a serious deterioration of their health situation following the hunger strike.

On 23 May 2016, the journalists were reportedly transferred from al-Habra to an undisclosed location in Sana'a. When the relatives went to visit them in al-Habra, prison guards informed them that the journalists were no longer being held there and provided no other information as to their whereabouts.

Subsequently, the families reportedly learned that the journalists were held at the Political Security Office (PSO), where Mr. Amran, in particular, was held in solitary confinement and had allegedly been subjected to physical abuse.

#### *The case of Mr. Salah al-Qaedi*

On 28 August 2015, **Mr. Salah al-Qaedi**, a journalist, was arrested by members of the Houthi National Security Agency (NSA) forces in his home in Sana'a. After he was arrested, the officers returned to the house and demanded Mr. al-Qaedi's family to hand over his laptop and other IT equipment. When family members said they had no knowledge of where these were, the male relatives of Mr. al-Qaedi were arrested by the agents, and brought to an undisclosed location for 48 hours without charges.

For approximately six weeks following his arrest, Mr. al-Qaedi was reportedly held in the al-Judairi prison. While there, he was allowed visits from his family. In mid-October 2015, he was transferred to al-Habra pre-trial detention facility.

On 10 November 2015, the Houthi Prosecutor General issued a release order for Mr. al-Qaedi. However, despite the order, Mr. Salah al-Qaedi was not released.

#### *Trial of all the journalists*

The journalists were allegedly held in pretrial detention for at least 3 years, without charges.

On 9 December 2019, the Houthi Specialized Criminal Court (SCC), in Sana'a, held a first court hearing in the case of all the journalists, resulting in the formulation of criminal charges against them for a series of offenses. These included "spying for Saudi Arabia"; "creating several websites on the internet and on social media"; and "broadcasting rumors, fake news and statements in support of the Saudi-led coalition against the Republic of Yemen". These crimes are punishable by death.

The lawyers of the journalists were only allowed to take part in the first hearing. Afterwards, they were prevented from participating in the trial. All the journalists were sentenced despite the lack of legal representation at the trial, and with no information whatsoever provided to their relatives.

On 11 April 2020, in a closed hearing, the SCC sentenced four of the journalists to death. These were Mr. Akram al-Walidi, Mr. Abdelkhaleq Amran, Mr. Tawfiq al-Mansouri, as well as one other journalist.

On 22 April 2020, the four journalists filed an appeal to the Specialized Criminal Court. The SCC ordered the release of six journalists, namely Mr. Hisham Tarmoom, Mr. Hasan Annab, Mr. Haytham al-Shihab, Mr. Hisham al-Yousefi, Mr. Essam Balgheeth and Mr. Salah al-Qaedi. The SCC further ordered that they be placed under police surveillance for three years, with the additional measure of confiscation of property. However, only Mr. Salah al-Qaedi was released on 23 April 2020.

Seven of the journalists were reportedly subjected to physical and verbal abuse during their detention periods, including during interrogations. These were Mr. Hisham Tarmoom, Mr. Hasan Annab, Mr. Haytham al-Shihab, Mr. Hisham al-Yousefi, Mr. Essam Balgheeth, Mr. Abdelkhaleq Amran and Mr. Salah al-Qaedi. In particular, according to the information submitted, Mr. Abdelkhaleq Amran and Mr. Salah al-Qaedi were repeatedly interrogated blindfolded and with their hands tied. On one occasion, on 19 April 2019, a prison warden reportedly entered their cell at night, stripped off their clothing and brutally beat them. During his interrogation, Mr. Salah al-Qaedi was beaten on his thighs, abdomen and back, repeatedly slapped, threatened and frightened, including through the use by officers of aggressive dogs.

Neither those journalists allegedly subjected to torture or ill-treatment, nor those affected since their arrest in 2015 by different medical conditions (including stomach and colon pain, tooth pain, hearing problems, hemorrhoids and headaches) have had access to appropriate medical care.

At present, the journalists still in detention are held at the Political Security Office (PSO). However, to date, their fate is unknown.

While we do not wish to prejudge the accuracy of these allegations, we wish first to remind that in addition to its obligations under international humanitarian law, the Houthi movement, as de facto authority, is responsible to respect and ensure the human rights of individuals in the territories under their control.

In this regard, we express concern at the arrest, treatment and sentencing of the ten journalists, seemingly for exercising their profession, in a manner which would be incompatible with the freedom of opinion and expression. Moreover, the deprivation of liberty of individuals in violation of the freedom of expression would render their deprivation of liberty arbitrary, that is, unlawful under human rights law.

Secondly, we express grave concern at the treatment of the journalists while in detention and incommunicado detention. The verbal and physical abuse would, if correct, amount to cruel, inhuman or degrading treatment or punishment, prohibited by international law. Moreover, we further highlight our concerns relating to the lack of humane detention conditions and a reported lack of access to medical care by the journalists while in detention. Lastly, the de facto authorities did not indicate the whereabouts of the detained journalists to their relatives or others over periods of time, in a manner which could constitute enforced disappearance contrary to customary international law.

Thirdly, the death penalty is prohibited under international human rights law, save for a very limited set of circumstances. The many flaws which the allegations highlight would render the death penalty a violation of the right to life. Among these, we highlight the closed hearings of the SCC and the trial of the defendants without legal representation. Moreover, death penalty may only be imposed for the most serious crimes. The UN Human Rights Committee has interpreted this to mean that the death penalty must be an “exceptional measure and should not be used on non-violent crimes”

While we do not wish to prejudge the accuracy of these allegations, we wish to 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 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 detailed information on the current fate and whereabouts of the journalists currently detained, namely Mr. Akram al-Walidi,



Mr. Abdelkhaleq Amran, Mr. Tawfiq al-Mansouri, Mr. Hisham Tarmoom, Mr. Hasan Annab, Mr. Haytham al-Shihab, Mr. Hisham al-Yousefi, Mr. Essam Balgheeth.

3. Please provide detailed information on all the circumstances, including the legal basis for the arrest and detention of the persons, the charges brought against them and the conduct of the proceedings.
4. Please provide detailed information about any investigation which may have been undertaken with regards to the allegations of incommunicado detention, enforced disappearances, torture and/or ill-treatment suffered by Mr. Abdelkhaleq Amran and Mr. Salah al-Qaedi, with a view to ensuring accountability of those responsible, as appropriate. Please also provide information on measures taken to ensure victims/their families' access to reparation, as appropriate, and non-repetition.
5. Please provide information on the measures taken to ensure the physical and mental integrity of all detained journalists, including adequate access to appropriate medical care.
6. Please explain whether the above-mentioned persons can at present be visited by their family members and lawyers.

This communication and any response received from you 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.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with you to clarify the issue/s in question.

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 copy of this letter will be 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.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

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

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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 abovementioned allegations and concerns, we would like to draw your attention to the following:

At the time of the above-mentioned events, there was a non-international armed conflict ongoing between the Houthi movement and the government forces.<sup>1</sup>

All parties to the conflict, including the Ansar Allah movement (also known as the Houthi movement), are bound by common article 3 of the Geneva Conventions, which establishes minimum standards concerning the treatment and protection of civilians, those no longer actively participating in the hostilities and civilian objects. They are also bound by the customary law norms contained in the protocol additional to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non-international armed conflicts. In addition, it is now well established that in a situation of armed conflict, international human rights law continues to apply, and both international human rights law and international humanitarian law frameworks will act in a complementary and mutually reinforcing way (A/HRC/29/51).

In a report to the Human Rights Council, the Special Rapporteur on extrajudicial, summary or arbitrary executions considered that, while States have a central role in upholding human rights law, the same may also apply to other actors depending on a context-dependent assessment based, in particular, on three interlinked indicators: (i) the nature and extent of ANSAs control; (ii) the level of ANSAs governance and (iii) consequently, the extent of their capacity.<sup>2</sup>

In the present case, the Ansar Allah movement is bound under international law to respect core human rights obligations, such as the right to life, the absolute prohibition of torture, cruel, inhuman and degrading treatment, the prohibition of slavery and the prohibition of enforced disappearance, as well as the right to freedom of thought, conscience and religion, and the right to health.

In addition, where the Ansar Allah movement engages in violations that are unrelated to the conflict and not direct consequences of it, the governing legal framework should be international human rights law. In practice, this means that the Ansar Allah movement is legally bound to respect freedom of expression, freedom of assembly and freedom of movement. These rights should be protected without discrimination on any of the grounds prohibited by international law. The right to a fair trial should also be guaranteed. In areas of substantive overlap between international human rights and international humanitarian law, the principles that provide assistance in determining which framework is applicable are those of *lex specialis* and effective control: the more

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<sup>1</sup> IV Geneva Convention Relative to the Protection of Civilian Persons in time of War. 12 August, 1949.

Part 1. General Provisions. Article 2.

<sup>2</sup> A/HRC/38/44.

effective control the Ansar Allah movement has over a territory or individuals, the greater is the extent to which human rights law will constitute the appropriate legal framework.

In the following, we shall detail the law applicable in relation to the right to life, the prohibition on cruel, inhuman or degrading treatment or punishment or torture, the right to liberty and security, the right to humane treatment while in detention, the right to freedom of opinion and expression, as applicable under IHL and customary human rights law.

### *The right to life*

General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life states that parties must respect the right to life and have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State.

We would like to draw your attention to article 6(2) of the ICCPR which states that the sentence of death may be imposed only for the most serious crimes. The UN Human Rights Committee has interpreted this to mean that the death penalty must be an “exceptional measure and should not be used on non-violent crimes” (Communication No. 838/1998, 20 December 2002, paras. 6.3,7). The Human Rights Committee also noted that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant (CCPR/C/79/Add.25). Furthermore, article 6.4 of ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that amnesty, pardon or commutation of the sentence of death may be granted in all cases.

### *Protection of journalists and the freedom of expression*

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).

Article 19 of the ICCPR 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. 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, including through their arbitrary detention, torture and ill-treatment, for their exercise of freedom of expression, will constitute a violation of customary human rights law (compare CCPR/C/GC/34 para 23).

#### *The prohibition of cruel, inhuman or degrading treatment or torture*

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).

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 places 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.

#### *The right to liberty*

Customary international humanitarian law prohibits arbitrary deprivation of liberty by parties to non-international armed conflicts (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. A prohibition on the arbitrary deprivation of liberty is further established 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). Similarly, Article 9 of the ICCPR guarantees the right to liberty and security of person. As expressed by the Human Rights Committee, the notion of arbitrariness includes elements of “inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality”. (CCPR/C/GC/35, para. 12). The arrest or detention “as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression” (*Id.* para 17). Furthermore, incommunicado detention is absolutely prohibited in international law and enforced disappearance is an aggravated form of arbitrary detention (CCPR/C/GC/35, para.17).

We further note that APII Article 5 places certain minimum standards on the treatment of individuals deprived of their liberty and Article 6 provides certain fair trial guarantees (see also the ICRC Customary rules no 99 and 100). Under international human rights law, Article 9 of the ICCPR 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. Equally anyone detained has the right to challenge the legality of such detention (see United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, principle 3).

Article 10 of the UDHR and Article 14 of the ICCPR guarantees fair trial rights, including facilities for the preparation of his/her defence and communication with counsel of his/her choosing, as well as the right for everyone convicted of a crime to have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

#### *The prohibition on enforced disappearance*

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. 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).

#### *The right to health*

Common article 3 of the Geneva Conventions of 1949 for the protection of victims of war and Additional Protocol II thereto require prisoners and detainees to be treated humanely with access to medical care. According to the non-discriminatory protections afforded under the human right to health framework, prisoners and detainees in conflict situations should have adequate access to health facilities, goods and services (A/68/297, par 20). The right to health framework recognizes the responsibility of all sectors of society towards realizing the right to health, including the responsibility of non-State actors (Committee on Economic, Social and Cultural Rights, General Comment 14, para 42; see also A/68/297, par 57).

*The duty to provide effective remedies to victims*

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 the effective investigation 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)).