

**Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL OTH 192/2021

10 May 2021

Dear Mr. Sharaf,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6, 42/22, 45/3, 44/5, 41/12 and 43/20.

In this connection, we would like to bring to your attention the information we have received concerning **a fire at the Immigration, Passports and Naturalisation Authority (IPNA) compound in Sana'a, controlled by Ansar Allah/the Houthis, which has led to the deaths of at least 44 migrants held in the detention facility and injured over 200 others.**

According to the information received:

On 7 March 2021, migrants held at the Immigration, Passports and Naturalisation Authority (IPNA) compound went on a hunger strike to protest their continued detention, the poor living conditions and ill-treatment at the holding facility. The IPNA, is a compound located in Sana'a and run by Ansar Allah/the Houthis, the de-facto authorities in the north-west of Yemen. The Compound serves as an administrative building and an immigration detention facility. At the time of the incident, some 928 migrants were held at the IPNA's detention centre, while the compound has the capacity to hold about 600 detainees.

At approximately 1 p. m., the hunger strike of the detainees led to an altercation with two security guards at the facility, who attempted to end the hunger strike by force and allegedly beat the migrants, using wooden sticks and firearms. The security guards were unable to gain control over the situation and left the hangar – one of the three buildings on the compound. The guards then locked the migrants in the hangar building and called for reinforcements.

At approximately 1:50 p. m, security guards returned with riot control forces of Ansar Allah, carrying specialised equipment. The riot forces fired three projectiles, two through the windows of the hangar and the third from the top

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of the exposed roof. While the first two projectiles produced a lot of smoke, the third one exploded loudly and started a fire inside the hangar building that extended quickly facilitated by the covers and sleeping mattresses. The type of the third projectile used is believed to be a sound grenade.

450 migrants were reported to be in the hangar and could not escape as the iron doors of the ward remained closed. Civil Defence workers arrived 10 to 15 minutes later and were also unable to open the doors of the ward and instead, they used a small bulldozer to demolish a sidewall to help the survivors get out.

However, Ansar Allah forces reportedly deployed heavy security presence and restricted access to the detention centre and to hospitals where the injured were treated. At hospitals, security personnel prevented access to the injured and confiscated their phones to prevent the spread of information related to the incident. Moreover, the area surrounding the detention centre was closed after the fire, and dozens of migrants who were not severely injured were reportedly arrested by Ansar Allah forces and transferred to unknown locations.

Following the incident, hundreds of survivors, and the families of the deceased migrants – including women and children – took to the street and peacefully demonstrated for days before the UNHCR office in Sana'a. Among various requests, some of them demanded for compensation. Based on the information received, despite the announcement made by relevant de facto authorities in Sana'a to provide financial compensation to the families of the migrants deceased and to those injured in the fire, no payment had been received.

On 3 April, the riot police forcibly removed the demonstrators. A group of about 40, including women and children, were arrested, and immediately transported by trucks to the city of Dhamar, where they remained in detention for one night. The police took their photographs and fingerprints, and later they were transported towards the frontlines to the South, from where they had to walk to Aden. According to the reports, at least one of the demonstrators was hit on the head with a baton, which left him unconscious and bleeding from the head. Additionally, a pregnant Ethiopian woman carrying a 2-year-old child on her back fell to the ground while fleeing from the riot police, who allegedly kicked her after falling. As a result of this, she lost her unborn baby.

According to the result of an initial investigation conducted by Ansar Allah authorities 44 migrants died during the incident or later as a result from injuries, while some 202 were injured with varying degrees of burns. Rescue teams transferred the injured to Al-Jumhuria Hospital and other hospitals in Sana'a and retrieved the charred bodies. The de- facto Ministry of Interior in Sana'a issued a statement confirming that 170 of the injured had recovered and left the hospitals on 9 March, while 31 others were still receiving treatment, of which 4 were in critical condition and being treated in the intensive care unit.

The statement also mentioned the formation of an investigation committee headed by the General Inspector at the de-facto Ministry of Interior in Sana'a and an independent committee that would include the leadership of immigrant communities for its supervision. According to the statement, this investigation committee would also monitor the condition of the injured and will approve funds for the compensation of the injured and families of the deceased. It

additionally stated that 11 individuals were arrested, seven of whom affiliated with riot forces and four affiliated with the IPNA. Senior officers from involved entities were suspended.

The statement added that victims had been buried in presence of diplomats from Ethiopia and the de-facto Ministry of Foreign affairs in Sana'a, and that DNA samples were taken under supervision of the investigation committee to identify the bodies and offer compensation to their relatives.

Migrants held at the IPNA facility had reportedly been detained in the absence of any formal detention procedure. Some detainees had been arrested for irregular entry, while others were informally charged of participating in hostilities. However, most of them had not been informed of the reasons for their arrest or detention. The legality of their deprivation of liberty was unclear. The length of the detention for each person could vary between a few days and several months. Migrants detained at this facility allegedly did not have access to legal assistance to challenge the lawfulness of their detention and no periodic reviews on the necessity for detention were conducted. Since early 2021, there had reportedly been an increase in persons detained at the IPNA compound.

In the overcrowded facility, detainees were subjected to unsanitary and unsafe conditions, with limited food and drinking water, forcing them to drink from the faucets above the squat toilets. Mattresses were only available if purchased from the facility guards. Migrants also suffered different forms of verbal abuse from the security guards, such as racial insults and threats. The release of the detainees was reportedly subjected to either payment of fees to Ansar Allah guards, in some cases of the amount of 70,000 Yemeni rial (equivalent to approximately 280 USD), or to joining their combat forces.

Reportedly, there has been an increase of alleged arbitrary arrests of migrants in Yemen since the outbreak of COVID-19. Especially since February 2021, Ansar Allah forces have allegedly carried out a campaign of arrests against migrants who do not hold an asylum card granted by the United Nations High Commissioner for Refugees (UNHCR) and have detained hundreds of undocumented migrants from their workplaces and held them in the IPNA's compound.

There has also been an increase in forced movements of migrants from the north to the south of Yemen. Migrants, who are mostly Ethiopian and Somali, arrive to Yemen from the Gulf of Aden in the south and try to reach the Kingdom of Saudi Arabia in the north, crossing deserts, mountains and territories controlled by armed groups. Ansar Allah forces are allegedly stopping migrants travelling on this route and forcibly transferring them from the northern governorates controlled by Ansar Allah to the south, using force and ill-treatment against them. Reportedly, sometimes migrants are left in the desert, without access to food or medical care. The Gulf of Aden remains one of the most dangerous routes for migrants, including asylum seekers. At least 14,500 migrants, including women and children, are currently stranded in Yemen without access to basic services and at risk of discrimination, exploitation, kidnapping, torture and death. Based on the information received, an estimation of 6,000 migrants are being held in detention across Yemen.

While we do not wish to prejudge the accuracy of these allegations, we wish to remind that in addition to its obligations under international humanitarian law, the Ansar Allah movement, as de facto authority, is responsible to respect and ensure the human rights of individuals in the territories under their control. Should the above-mentioned allegations be confirmed, they would constitute violations of Articles 3, 5 and 9 of the Universal Declaration of Human Rights; and articles 6, 7,9 and 21 of the International Covenant on Civil and Political Rights (ICCPR), in relation to the right of every individual to life, liberty and security; the right to not be arbitrary arrested and detained, the right to not be subject to torture or otherwise ill-treated and the right to peaceful assembly.

We wish to express our grave concern about the excessive and disproportionate use of force by Ansar Allah security forces against migrants protesting their detention conditions at the IPNA compound. We are particularly concerned by the allegations of the careless use of tear gas and sound grenades in closed premises by Ansar Allah that caused panic and suffocation among migrants and lead to the outbreak of the fire in the hangar, causing the death of at least 44 migrants and injuring hundreds. We also wish to express our most serious concern that after security guards locked the doors of the hangar and they did not manage to open them again when the fire started, making it impossible for migrants to escape.

Serious concern is also expressed regarding the fate and whereabouts of the survivors, as well as about their physical and mental integrity. Particularly, we are concerned about restrictions on access to hospitals where the injured were treated and we fear that migrants who were arrested by Ansar Allah after the incident could have been subjected to acts tantamount to enforced disappearance, as their fate and whereabouts remain unknown. We are equally concerned that restrictions on access to hospitals and to IPNA's detention facility could affect the transparency of the investigations.

Additionally, we wish to express our serious concern on the forced removal and detention of the survivors and other migrants that were demonstrating before the UNHCR office in Sana'a, which allegedly led to injuries and the arrest of protestors. We are particularly concerned that these allegations refer to the presence of women and children among the protestors.

Finally, we are concerned about the detention condition at the IPNA detention facility and the allegations of ill-treatment by security guards, which appear to be in contravention of the absolute and non-derogable obligation to prohibit and prevent torture and ill-treatment and the positive obligation to protect the (right to) life of those held in detention. In this regard, we further wish to express our grave concern on the general situation faced by migrants in Yemen, as they seem to remain at risk of being subjected to arbitrary arrest and detention, acts of violence, intimidation and mistreatment, and possibly enforced disappearance and torture or other ill-treatment as well as arbitrary killings, in transit and upon arrival in Yemen.

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 detailed information about the circumstances of the fire at the Immigration, Passports and Naturalisation Authority (IPNA) compound in Sana'a. Please include information on the rescue and any measures taken to ensure the security of all detainees in the compound, during and after the fire.
3. Please provide detailed information on the medical treatment and care given to the migrants who were injured because of the fire, indicating in which hospitals they are being treated and explaining what measures have been taken to communicate their whereabouts to their families.
4. Please provide detailed information on the fate and whereabouts of those migrants that were allegedly re-arrested by Ansar Allah forces after the fire.
5. Please indicate any measures adopted to guarantee the identification and repatriation of the victims' remains, as well as the right of their family to the truth and obtain effective access to justice and reparation.
6. Please provide details, and where available the results, of the investigation led by the de-facto Ministry of Interior in Sana'a. Please indicate whether the injured migrants and the families of the deceased have received any compensation or other form of reparation. In addition, please indicate if any judicial or other inquiry has been undertaken in relation to the above-mentioned incident. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please provide information on the factual and legal basis for the arrest and detention of migrants held at the IPNA compound in Sana'a, and how these measures are compatible with international human rights norms and standards as stated in the Universal Declaration of Human Rights, and Yemen's human rights obligations under the ICCPR. Please also provide information on the factual and legal basis for the arrest and detention of the protestors referred to above.
8. Please provide detailed information on the IPNA compound in Sana'a, including conditions of detention and treatment of detainees, and please explain how this is compatible with international human rights obligations. Please include details, and where available the results, of any investigation carried out in relation to the allegations of ill-treatment of migrants at the IPNA compound. If no inquiries have taken place, or if they have been inconclusive, please explain why.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received 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 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. Kindly respond separately to the allegation letter and the regular procedure.

Kindly note that a copy of the present communication will be transmitted to the authorities of the Republic of Yemen. We stress that this letter does not in any way imply the expression of any opinion concerning the legal status of any territory, city or area, or of its authorities.

Please accept, Mr. Sharaf, the assurances of our highest consideration.

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Special Rapporteur on the human rights of migrants

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

Tae-Ung Baik  
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Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

There is growing authority that customary international human rights law applies to non-state armed groups, particularly in situations where the armed group exercises effective control over territory or operates as de facto authority over an area (A/HRC/38/44 para 46 ff). Therefore, 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 three interlinked indicators: (i) the nature and extent of ANSAs control, (ii) the level of ANSAs governance and (iii) the extent of their capacity.

Customary international human rights law obligations applicable to non-State armed groups continue to apply in armed conflict situations (International Court of Justice advisory opinion on the threat or use of nuclear weapons and advisory opinion on the construction of a wall, as well as CCPR/C/21/Rev.1/Add. 13, para 11 and CCPR/C/GC/36, para 64).

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, and the prohibition of acts tantamount to enforced disappearance. Where the Ansar Allah movement engages in actions that are unrelated to the conflict and not direct consequences of it, the governing legal framework should be international human rights law.

Article 3 of the Universal Declaration of Human Rights (UDHR) 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’.

Similarly, we would like to refer to Articles 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Yemen on 9 February 1987. 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. We further note that article 9 identifies personal liberty as the principle and the detention and restrictions upon that liberty as exceptions which requires States to uphold the principle and only in exceptional cases resort to divergence from it.

We would also like to recall article 21 of the ICCPR which guarantees the right to peaceful assembly. In particular, we wish to remind that any restrictions to the exercise of this rights must be provided by law and be necessary and proportionate to the aim pursued.

The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State

Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort.

According to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. In this respect, we would like to recall the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, “alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure”. The Working Group also underlined that such “[D]etention must be justified as reasonable, necessary and proportionate in the light of the circumstances specific to the individual case” and that it “must not be punitive in nature and must be periodically reviewed as it extends in time.” Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195).

In relation to the arrest and detention of the protestors referred to above, we would like to recall that the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights, such as freedom of opinion and expression, as well as assembly and association and participation in public affairs, as protected by articles 19, 21, 22 and 25 of the ICCPR (see CCPR/C/GC/35, para. 17 and the jurisprudence of the Working Group on Arbitrary Detention).

With regard to the conditions of detention, we would also like to recall article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Furthermore, we would like to draw the attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988).

Especially, we wish to refer to the absolute and non-derogable prohibition of torture and other ill-treatment 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. In this regard, we would like to recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

Regarding the use of force, including of lethal force, it is strictly regulated under international human rights law. Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible



moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). The principle of necessity under international human rights law is interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life.

Regarding policing persons in custody, Principle 15 on the UN Basic Principles on the Use of Force and Firearms states that ‘law enforcement officials, in their relations with persons in custody, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened’. Principle 16 further provides that law enforcement officials, in their relations with persons in custody shall not use firearms, ‘except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9’.

In relation to the obligation to investigate deaths in custody, we wish to refer to Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, relevant authorities have a duty to investigate, prosecute, and punish all violations of the right to life. The investigation of such cases “shall be thorough, prompt and impartial. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death”. This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. Furthermore, Principle 17 provides that “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

Additionally, the general comment no. 36 of the Human Rights Committee sets some of the requirements and objectives of investigations into potential violations of the rights to life, including the need for transparency, both with regard to the victim’s next of kin and the public.

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 to investigate and to ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment and/or their family receive adequate reparation.

Under international human rights law, authorities have a positive duty of due diligence to investigate all allegations of potentially unlawful killings, and to do so in an independent, impartial, prompt, effective, through and transparent manner. Any suspected arbitrary killings must give rise to immediate and effective investigations and, where there is sufficient evidence, prosecution of the perpetrators.

We would like to refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to

freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/31/66),<sup>1</sup> in which it is stated that: “The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit” (paras. 57 and 58). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).”

We would also wish to recall general comment no. 37 of the Human Rights Committee which states that “[t]he obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.” (CCPR/C/GC/37, para 23)

Finally, we wish to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 and 7, which prohibit enforced disappearances and state that no circumstances whatsoever may be invoked to justify enforced disappearances.

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<sup>1</sup> <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SpecialProject.aspx>