

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL OTH 223/2021

16 September 2021

Dear Mr. Sharaf,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression., pursuant to Human Rights Council resolutions 43/16, 44/5 and 43/4.

In this connection, we would like to bring to your attention information we have received concerning the killing of academic and human rights defender Dr. **Mohammed Ali Naim**.

Dr. Naim was the Director of the Engineering Consulting Centre at Sana'a University, as well as a professor of the Architectural Department at the College of Engineering at Sana'a University. He was formerly Dean of the College of Engineering at Amran University. As well as being a distinguished academic Dr. Naim was a human rights defender and used Facebook as a platform to speak out against alleged corruption and to defend civil and other human rights.

According to information received:

On 4 August 2021 at approximately 9.30pm, Dr. Naim was assassinated by unidentified gunmen while leaving the house of one of his friends in Sana'a. Security services reported that Dr. Naim was shot 4 times and died at the scene.

Dr. Naim was active on his Facebook page hours prior to his assassination, and published a post in which he called for the authorities in Sana'a and Aden to increase salaries so that they reflect the increased cost of living. Earlier that day, Dr. Naim also republished a post he had written on 4 August 2020, calling for accountability for alleged corruption.

According to reports, one of the gunmen Mr. [REDACTED] was arrested hours after the shooting and confessed to the crime, stating he was motivated by "personal disputes" between the two men on Facebook. On 22 August, a hearing was held before the Public Prosecution in Sana'a during which the accused denied his previous confession. At the time of writing, the investigation is ongoing and the possibility that there was more than one gunman has not been ruled out.

Mr. Hisham Sharaf
Sana'a
Yemen

Without prejudging the accuracy of the information received, we express serious concern about the assassination of human rights defender and academic Dr. Mohammed Ali Naim, as we believe he may have been targeted for reasons relating to his work protecting and promoting human rights online. We are concerned that Dr. Naim's death will deter other human rights defenders from speaking out against human rights violations and abuses in Yemen for fear of retaliation.

We wish to remind that in addition to its obligations under international humanitarian law, Ansar Allah, as the de facto authority is responsible to respect and ensure respect for international human rights law for individuals in the territory under their control.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the investigation into the assassination of Dr. Mohammed Ali Naim, and whether all those responsible have been brought to justice.
3. Please outline the measures that have been put in place to ensure that all human rights defenders in the territory under your control are able to exercise their basic human rights, including the right to freedom of expression, free from any restrictions, threats or attacks of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from you 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 prevent their re-occurrence of such egregious human rights violations, and to ensure the accountability of any person(s) responsible for the alleged violations.

Kindly note that a copy of this letter has been transmitted to the Government 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, Mr. Sharaf, the assurances of our highest consideration.

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan

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

Annex

Reference to international human rights law

Per customary international law, 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, are to respect international human rights law (A/HRC/38/44 para 46ff). 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 on three interlinked indicators: (i) the nature and extent of ANSA's control; (ii) the level of ANSA's 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/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 states that "Everyone has the right to life, liberty and security of person"; and article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Yemen on 9 February 1987, which provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

We wish to stress that the right to life is the supreme right from which no derogation is permitted. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights¹.

Furthermore, we recall that an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences².

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the

¹ Human Rights Committee, General comment No. 36, Article 6: right to life (CCPR/C/GC/36): <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNIjrLLdefuuQjjN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

² Ibid.

Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates³. They must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future⁴.

We would also like to draw your attention to article 19 of the ICCPR, which guarantees the right of all individuals to hold opinions without interference. Further, everyone has the right to freedom of expression, including the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Furthermore, we bring to your attention the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Finally, we would like to bring to your attention the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 7 which provides that everyone has the right, individually or in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance;
- article 8.2 which provides that all persons, individually or in association with others, have the right to submit to government authorities criticism and

³ Ibid.

⁴ Ibid.

proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms;

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.