

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL OTH 250/2021

5 November 2021

Dear Mr. Sharaf,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/4, 42/22, 45/3, 44/5, 42/16, 43/16 and 43/20.

In this connection, we would like to bring to your attention, information we have received concerning the alleged continued detention, physical assault and ill-treatment of four journalists currently held in a prisoner exchange facility in Sana'a. Since August 2021, the whereabouts of one of the journalists remains unknown. All four individuals remain at risk of execution.

Mr. **Abdulkhaleq Ahmed Amran** is a journalist and worked as the editor for the website Reform Online.

Mr. **Tawfiq Mohammed Al-Mansouri** is a graphic designer and worked as an art director for the Daily Source newspaper in Sana'a.

Mr. **Akram Saleh Al-Walidi** is a human rights defender and worked at the Human Rights Centre of Sana'a, a rights monitoring non-governmental organization in the city.

Mr. **Al-Hareth Saleh Hamid** is a journalist and worked for the Spring Net website. He also worked at the Human Rights Centre of Sana'a.

The cases of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid and concerns regarding the conditions of their detention, their conviction and sentencing

Mr. Hisham Sharaf
Ministry for Foreign Affairs
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despite the reported lack of fair-trial guarantees, the ill-treatment they have been subjected to whilst detained and the information that their death sentences would imminently be enforced, was previously raised in two communications sent to you on 6 October 2020 (OTH 66/2020) and 16 April 2021 (OTH 190/2021). We regret that despite the seriousness of the concerns raised in these communications, no response was received for either.

According to information received:

As previously communicated in the two abovementioned communications, Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid were allegedly arbitrarily arrested on 9 June 2015, along with six other journalists, during a raid at the hotel Qasr al-Ahlam in Sana'a. Over a five-year period, the 10 journalists were held in a number of detention facilities, and for some periods of time detained incommunicado, and denied visits from their families and lawyers. They were allegedly subjected to physical and verbal abuse, torture, ill-treatment, held in solitary confinement and interrogated under duress. For the first three years, no charges were brought against them.

On 9 December 2019, the first hearing in their case was held before the Houthi Specialized Criminal Court (SCC), from which the charges of “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” were formulated against them.

On 11 April 2020, the SCC convicted Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid of all three charges, and sentenced them to death. The six other journalists were ordered for release, with police surveillance for three years and their property confiscated.

On 22 April 2020, the four convicted journalists filed an appeal to the SCC.

On 15 October 2020, Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid were reportedly transferred from Al-Amn Al-Siyassi Security Intelligence Prison to the Exchange House prison, located in the central security camp in the center of Sana'a. The four journalists were transferred to the Exchange House prison, operated by the Houthi Prisoner Exchange Committee, as they were allegedly due to be included in a prisoner exchange between the Houthi movement and other parties to the conflict, in exchange for Houthi prisoners of war held by those other parties. However, the prisoner exchange has not yet taken place. Whilst detained in Exchange House prison, the four journalists have been denied visits from their families and lawyers, and have limited access to health services and medical treatment.

It is reported that Mr. Al-Mansouri's health in particular has deteriorated significantly as prior to being detained was already suffering from rheumatic heart disease, diabetes, asthma, prostatitis and symptoms of kidney failure, for which he has not received sufficient medical treatment or access to medicines.

On 28 February 2021, the appeal trial for Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid began before the Houthi Specialised Criminal Appeals Court in Sana'a. The four were not present during the hearing, despite the prosecution reportedly issuing a memorandum requesting their presence. When the presiding judge inquired as to their whereabouts, the Security and Intelligence Service reportedly told the court that they had been transferred in October 2020 from the Al-Amn Al-Siyassi Security Intelligence Prison to the Exchange House prison, located in the central security camp in the center of Sana'a, pending their release as part of a prisoner exchange, however the exchange has not yet occurred.

The presiding judge ordered the Security and Intelligence Service to provide an official statement to the Specialised Criminal Prosecution on the release of the journalists. The hearing was adjourned until 14 March 2021.

On 28 March 2021, the Specialised Criminal Appeals Court held another hearing for the case of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid, for which none of them were present either. The court heard that the Prosecution had not received any information from the Security and Intelligence Service as to the whereabouts of the journalists, in spite of the previous order by the judge to do so. The hearing was adjourned to 23 May 2021.

On 23 May 2021, a new hearing for the appeal of the four journalist's case was held before the Specialised Criminal Appeals Court in Sana'a. None of the four individuals were present for the hearing. The Specialised Criminal Prosecution Office submitted a written memorandum from the Security and Intelligence Service, dated 24 April 2021, which confirmed that the four journalists had been transferred to the control of the National Committee for Captives' Affairs, which oversees prisoners of war. The transfer was allegedly ordered by the President of the Supreme Political Council.

On 21 August 2021, Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid were reportedly physically assaulted and subjected to torture and ill-treatment in the Exchange House.

Following the alleged assault, the four men were placed in solitary confinement, where they were reportedly subjected to further ill-treatment amounting to torture. After two days, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid were released from solitary confinement, however Mr. Amran was reportedly transferred to an unknown location.

Mr. Al-Mansouri was reportedly subjected to torture on another occasion after being released from solitary confinement, allegedly being hung and beaten with iron rods and electrical wires in several sensitive areas of his body, including his back and stomach.

On 3 October 2021, the Specialised Criminal Appeals Court held a hearing for the four journalists, who were not present. The defense team presented statements of appeal for Mr. Al-Mansouri and Mr. Hamid, and requested a

week's extension to present appeals for the other two journalists. The judge agreed to hear these at the next hearing, scheduled for 14 November 2021. The defense team also sought the court's permission to visit their clients, which was denied.

According to recent allegations, Mr. Amran was moved to an unknown location two months ago, suffered from unspecified ailments, and his relatives have been denied contact with him.

While we do not wish to prejudge the accuracy of these allegations, we wish first to remind that as the de facto authority, the Houthi movement is required to uphold its obligations under international humanitarian law, and respectfully implore that international human rights law and standards be upheld in a mutually enforcing way, in the territories under its control.

In this regard, we wish to express grave concern with reference to the continued detention of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid as part of an alleged prisoner exchange scheme and the ill-treatment and torture they have reportedly been subjected to whilst detained. If confirmed, the allegations of torture of the abovementioned individuals would be in contravention of its absolute and non-derogable prohibition. The physical and verbal abuse that the journalists have allegedly been subjected to, if correct, may amount to cruel, inhuman, degrading treatment or punishment, and constitutes a violation of international law. In this connection, we express particular concern in relation to the allegations that Mr. Amran is held incommunicado, following his reported transfer to an unknown location, rendering him at risk of being subjected to torture or ill-treatment. Since his whereabouts are unknown, he is currently disappeared. We wish to recall the obligations of the Houthi movement, as party to the ongoing non-international armed conflict, to uphold common article 3 of the Geneva Conventions, which establishes minimum requirements of humane treatment for civilians, those no longer participating in the hostilities and civilian objects, and specifically prohibits torture, cruel, humiliating and degrading treatment. Under customary international humanitarian law, enforced disappearance is prohibited.

We reiterate our utmost concern that the apparent reasoning for the prolonged arbitrary detention of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid is their occupation as journalists, and that they have been criminalised under reportedly unfounded allegations of “spying”, “creating websites... and social media sites” and “broadcasting rumours, fake news and statements in support of the Saudi-led coalition against the Republic of Yemen”. We recall that the deprivation of liberty of an individual for exercising the right to freedom of expression renders that detention arbitrary and therefore in violation of international human rights law. We are concerned that the continuation of the allegedly arbitrary detention and ill-treatment of these journalists is both symptomatic of and serves to perpetuate an environment in which exercising the right to freedom of expression is not only stifled but also harshly penalised, and with detrimental consequences to the enjoyment of all other human rights and fundamental freedoms.

We further reiterate our concern that Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid have been sentenced to death, despite several alleged violations of due process and fair trial guarantees and that the alleged offences do not meet the

“most serious crimes” threshold, which would render any executions arbitrary deprivations of life.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

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 fate and whereabouts of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid.
3. Please provide detailed information as to the conditions of detention of the abovementioned individuals and their access to health facilities, and visits from their families and lawyers. In the case that the above allegations are correct, that they continue to be denied such visits, please provide detailed information as to the factual and legal basis for this denial.
4. Please provide information as to the specific details of the alleged prisoner exchange and when it is foreseen to occur.
5. Please provide detailed information as to the current status of the appeal case of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid.
6. Please provide detailed information as to the factual and legal basis for the charges against, conviction and death sentence of Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid.
7. Please provide detailed information about any investigation which may have been undertaken with regards to the allegations of incommunicado detention, torture and/or ill-treatment suffered by Mr. Amran, Mr. Al-Mansouri, Mr. Al-Walidi and Mr. Hamid, 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.

¹ Article 41 ICJ Statute ‘Interim Protection’: Part III, Section D (Incidental Proceedings), Subsection 1.

8. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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 prevent any irreparable harm to the life and physical integrity of the four persons concerned, 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.

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

Irene Khan

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

Miriam Estrada-Castillo

Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

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.²

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 former 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 armed non State actors' (ANSAs) control; (ii) the level of ANSAs governance and (iii) consequently, the extent of their capacity.³

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 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.

² IV Geneva Convention Relative to the Protection of Civilian Persons in time of War. 12 August, 1949. Part 1. General Provisions. Article 2.

³ A/HRC/38/44.

With reference to the prohibition of cruel, inhuman or degrading treatment or torture, we wish to refer to Common Article 3 to the Geneva Conventions, which 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 to 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.

With regards to the right to life we reiterate that the right to life constitutes peremptory norm (*jus cogens*) and cannot be derogated from (CCPR/C/21/Rev.1/Add.6). We highlight that sentence of death may be imposed only for the most serious crimes involving intentional killings and can only be imposed following a legal process which rigorously complies with fair trial guarantees (CCPR/C/GC/36).

With regard to journalists and the right to 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).

We further wish to refer to the right to liberty and the prohibition of arbitrary deprivation of liberty by parties to non-international armed conflicts, as is established in customary international humanitarian law (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) and a grave violation of multiple human rights. Indeed, enforced disappearance is prohibited under customary international humanitarian law (ICRC Customary IHL study rule 98). We also wish to note that APII Article 5 places certain minimum standards on the treatment of individuals deprived of their liberty.

Finally, we would like to refer to 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.

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

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- 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 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.