

Mandates of 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 and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL OTH 97/2023
(Please use this reference in your reply)

22 August 2023

Mr. Sharaf,

We have the honour to address you in our capacities as 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 and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 51/8, 45/3, 52/9 and 50/17.

In this connection, we would like to bring to your attention information we have received concerning the alleged arrest by members of the Yemeni Security and Intelligence Services, subsequent alleged acts tantamount to enforced disappearance, and detention without charge of human rights defender Ms. **Fatima Saleh Al-Arwali** in apparent retaliation for her promotion and protection of human rights.

Ms. Al-Arwali is a human rights expert and board member of the Arab League's Union of Women Leaders and head of its Yemen office. She was a vocal supporter of human rights and women's rights on her social media pages and led a non-governmental organization for human rights training.

According to the information received:

On 12 August 2022, Ms. Al-Arwali was on her way south from Sana'a to Aden, when she was stopped at the Al-Hawban checkpoint controlled by forces belonging to the Ansar Allah movement (the Houthi movement and de facto authority in Sana'a and northern Yemen). She was told there was an arrest warrant issued against her by the Houthi Security and Intelligence Service (SIS). She was then reportedly subjected to acts tantamount to enforced disappearance and deprived of her liberty, with no contact with her family or legal counsel. The Houthi authorities initially denied any knowledge of her arrest or detention or whereabouts when asked by her lawyer. Her family later found out that she had been taken to the SIS prison in Sana'a. At the time this communication was sent, she was still being held there.

Shortly before her arrest, Ms. Al-Arwali had criticised on her social media account decision makers in Yemen.¹ It was not immediately clear if that tweet had triggered her arrest. Prior to that, Ms. Al-Arwali tweeted often on child

¹ <https://twitter.com/fatimaalarwali/status/1553639728213270528>

rights concerns in light of the recruitment of children to the armed conflict and on women's rights against a background of traditional and conservative societal norms.

On 29 November 2022, Ms. Al-Arwali's lawyer submitted a motion to the Houthi Prosecutor-General to request the release of Ms. Al-Arwali from the detention by SIS, claiming they were holding her without legal grounds.

On 3 December 2022, the Houthi specialised criminal prosecutor in the state security prosecution office (SCP) asked the SIS for Ms. Al-Arwali's file for investigation. On 28 February 2023, the SCP asked the SIS again to transfer Ms. Al-Arwali's file to them or release her if she faced no charges. Her file was transferred a few days later.

On 14 March 2023 Ms. Al-Arwali's lawyers were informed that they should attend her interrogation that day. However when the lawyer met her, Ms. Al-Arwali was in tears, and allegedly refused their counsel.

On 22 March 2023, Ms. Al-Arwali's brother received permission from the head of the SCP to visit his sister in prison, but the local prosecutor claimed that she did not want to see her brother. Ms. Al-Arwali was in touch with her mother, who resides in the United Arab Emirates, until early May 2023.

On 28 March 2023, Ms. Al-Arwali's lawyers wrote to the Houthi Grievances Committee requesting the release of Ms. Al-Arwali.

On 23 May 2023, Ms. Al-Arwali's lawyers were told by the SCP that her file was in the process of preparation to be presented to the specialised criminal court.

In early August 2023, Ms. Al-Arwali's lawyers learned that the indictment against Ms. Al-Arwali was prepared and that she was accused of aiding the enemy, being the United Arab Emirates in this case. No trial date has been set. If convicted Ms. Al-Arwali could face the death penalty.

Ms. Al-Arwali's lawyers have so far not been officially provided with her case file. One of her lawyers learned indirectly that she might have confessed during her interrogations; it is not known under what condition Ms. Al-Arwali's interrogations took place, nor how she has been treated while in detention.

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

Special Procedures mandate holders have previously conveyed their concerns to the de facto authorities about systematic violations of women's and girls' rights in Yemen, perpetrated by the Ansar Allah movement (AL OTH 124/2022).

Against this backdrop, we express concern at the manner in which Ms. Al-Arwali was allegedly arrested, and subsequently subjected to enforced disappearance for at least three months; at the conditions of her detention which may amount to incommunicado detention and at her repeated interrogation in the absence of legal counsel, all of which appears to be in retaliation of her legitimate exercise of human rights, including her rights to freedom of opinion and expression, and freedom of peaceful assembly and of association.

We are appealing to de facto authorities to ensure the right to life, liberty and security of person, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the right to fair trial and equality before the law, the right not to be subjected to arbitrary arrest, freedom of expression, freedom of peaceful assembly and of association, which are enshrined in art. 3, 5, 7, 9, 10, 11, 19 and 20 of the Universal Declaration on Human Rights (UDHR) and which appear to have been violated or at risk of violation in the above mentioned circumstances. The right to life constitutes an international customary law and jus cogens norm from which no derogation can be made under any circumstances (CCPR/C/GC/36, para. 2). We would also like to stress the absolute and non-derogable prohibition of enforced disappearance, which has attained the status of jus cogens, recalling that enforced disappearance is prohibited also under customary international humanitarian law (rule 98).

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.

We are issuing this appeal in order to safeguard the rights of Ms. Al-Arwali from irreparable harm and without prejudicing any eventual legal determination.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal basis for the arrest and detention of Ms. Al-Arwali, the charges brought against her and the conduct of the proceedings, and detail the measures taken to guarantee the right of Ms. Al-Arwali to a fair trial and due process.
3. Please provide information on the measures taken to ensure the physical and psychological integrity of Ms. Al-Arwali.
4. Please provide detailed information on the measures undertaken to search for and establish the fate and whereabouts of Ms. Al-Arwali. If no investigation has taken place, please explain why. Please also inform on the measures put in place to secure the respect of the absolute prohibition of enforced disappearance and conduct investigations into the alleged crimes, identify those responsible, prosecute and sanction them.

We would like to underline that this letter addressed to the de facto authorities in Yemen does not in any way imply expression of any opinion concerning the legal status of any country, territory, city or area, or of its authorities.

While awaiting a reply, we urge that all necessary interim measures be taken to avoid any irreparable damage to the life or physical integrity of Ms. Al-Arwali, 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.

Kindly note that a copy of the letter is transmitted to the Government of Yemen.

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

Matthew Gillett

Vice-Chair on communications of the Working Group on Arbitrary Detention

Aua Baldé

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

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with the above-mentioned allegations and concerns, we would like to draw your attention to the following:

At the time of the above-mentioned events, there was an armed conflict ongoing between the Houthi movement and the government forces. All parties to the conflict, including 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 hostilities and civilian objects. The parties 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.

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 addition, where the Houthi 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. In practice, this means that the Houthi movement is legally bound to respect freedom of expression and these rights should be protected without discrimination on any of the grounds prohibited by international law. The prohibition of acts tantamount to enforced disappearance and the right to a fair trial should be guaranteed.

In areas of substantive overlap between international humanitarian law and international human rights 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 Houthi movement has over a territory or individuals, the greater is the extent to which human rights law will constitute the appropriate legal framework.

In this context, we wish to stress that in accordance with article 3 and 9 of the UDHR, everyone has the right to life, liberty and the security of person, and no one shall be subjected to arbitrary arrest, detention or exile. We wish to emphasize that in accordance with the jurisprudence of the Working Group on Arbitrary Detention arrest or detention as punishment for the legitimate exercise of rights such as freedom of opinion and expression is arbitrary.

In this regard, we also refer you to article 19 of the UDHR that protects the right to freedom of opinion and expression, and article 20 of the UDHR, which provides that everyone has the right to freedom of peaceful assembly and association, as well as 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.

We would like to recall that enforced disappearance is prohibited under customary international law (rule 98). We draw your attention to the absolute and non-derogable prohibition of enforced disappearances (articles 2 and 7) which has attained the status of jus cogens. Moreover, we also recall the Working Group's General comment on women affected by enforced disappearances (A/HRC/WGEID/98/2) and the Working Group's study on Enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5), the considerations expressed therein apply *mutandis mutandis* to acts tantamount to enforced disappearance. Accordingly, we would like to recall the Guiding Principles for the Search for Disappeared Persons, and in particular Principle 4, which requires the adoption of a differential approach when searching for girls and women. With regard to the latter, especially, Principle 4.3 establishes that "in cases involving adolescent girls and women who have disappeared or are involved in the search, all stages of the search should be conducted with a gender perspective and staff, including female staff, who have received proper training". Relevant indications on how to perform the search for disappeared girls and women and adopt adequate and effective measures of psychosocial support are also enshrined in the general comment on women affected by enforced disappearances issued by the Working Group on Enforced or Involuntary Disappearances.