



Yemen

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1. Context
2. Disrespect for the law
3. Arrests and incommunicado arbitrary detention
4. Torture
5. Violations of the right to life: excessive use of force and summary executions
6. Recommendations

Yemen

1. Context

The Republic of Yemen was founded in 1990 upon the unification of the *Democratic and Popular Republic of Yemen* (South Yemen) and the *Arab Republic of Yemen* (North Yemen). A civil war shook the newly unified country from 5 May to 7 July 1994, before power was given to the government in Sanaa.

During the Second Gulf War (1990-1991), Yemen supported Iraq, without approving its annexation of Kuwait. In reprisal, the United States withdrew its economic aid and Saudi Arabia and the other neighboring countries allied to the Americans expelled more than a million Yemeni employees from their respective countries.

The attack on the US warship the USS Cole in October 2000 and the attacks on New York and Washington the following year had important repercussions in Yemen. Listed as a 'rogue state' after 11 September 2001, Yemen, due to its very fragile economic and social climate, was forced to accept the conditions laid down by the USA in its international fight against terrorism. The country accepted the establishment of an FBI office in Sanaa (the capital) and its military forces are now trained by US instructors.

This cooperation provoked serious internal opposition and amplified the already high tensions in the country. The government reacted by simultaneously repressing and attempting to co-opt the different social and political groupings into the state apparatus. Hussein al-Houthi's rebellion during the early 2000s in the north of the country was repressed by bombardments and mass arrests. Since then, the rebels have kept the central government on edge despite the various peace accords that have been signed. In parallel to this repression, a dialogue with armed groups was initiated, aiming to encourage their members to give up their armed struggle in exchange for economic compensation. However, this policy of warming to certain groups hostile to the US presence in the country was perceived negatively by the Americans, who increased the pressure on the government to repress these groups.

In addition to this, Yemen is a country in which the state structure is superposed on tribal organizations, who are still very influential, and are sometimes in contradiction with the interests of the state. Hence, the state must function without always being able to impose itself, divided as it is by tribal conflict.

It is in this context of a precarious equilibrium between competing internal forces and external pressures that Yemen's human rights situation should be seen. The country has, in the years following its reunification, reworked its legislation: introducing a new constitution in 1991, which was amended in 1994, and promulgating a Criminal Procedure Code, amended in 1994. In the field of human rights, the state has acceded to several international treaties, and its legislation relating to arrests and detentions is in accordance with international norms. Many human rights associations have been authorized, and a Ministry of Human Rights was established in 2003.

Although Yemen has made enormous progress on the legislative level, the implementation of the principles inscribed in various laws is lacking, and abuse by agents of the state and local rulers are not prosecuted or sanctioned. Hence protests about economic or social issues are also often brutally repressed at a high cost in human lives, and with hundreds of arbitrary arrests.

2. Disrespect for the law

The Yemeni authorities themselves recognise that national legislation and principles of international law are ignored but that they are forced to do so to “*fight against terrorism*” and avoid

the risk of a US military operation against Yemen in the aftermath of the events of September 11th.”¹

A special criminal court for judging cases of terrorism was established by (Presidential) decree as of 1999. Many Yemeni lawyers consider the court anti-constitutional as its existence was never discussed in, and approved by, parliament. They criticize the fact that the General Prosecutor has the power to refer all cases to this tribunal. They consider that international norms of fair trial are not upheld by this special court. They also highlight numerous defects in the court: sentences are hurried and the procedures too swift for lawyers to ensure an effective defense of their clients. Therefore, the right to defense is not always upheld. Lawyers complain that they do not have access to their clients' files, nor are they allowed to visit them during their pre-trial detention, and the right to legal assistance is not upheld. 'Confessions', obtained using torture and inscribed in the minutes of the auditions, are used by the court as evidence; moreover, the court never investigates allegations of torture, abuse or prolonged pre-trial detention. Families of the accused are prevented from attending the hearings, even though these are public.

In many cases, persons who are arrested are not notified of any judicial warrant, and without any legal proceedings against them, no lawyer can take responsibility for the case. Defendants are often unaware of the legal reasons for which they are detained or the duration of this detention.

Yemen has ratified most international treaties related to human rights, and has modified its legislation to be in conformity with international norms. However, the Committee Against Torture deplores, in its concluding observations of 5 February 2004, the lack of a complete definition of torture based on that of the international convention.

The Human Rights Committee had, for its part, already stated in 2002 its concerns regarding the non-respect of the law by security forces, and in particular the "Political Security, which arrests and detains anyone suspected of links with terrorism, in violation of the guarantees set out in the Covenant (art. 9)".² It also noted that foreigners suspected of terrorism were expelled without being able to appeal the measures taken against them via legal channels. The Yemeni government responded to these allegations in their last periodic report by justifying these draconian measures: "the nation has understood the imperious necessity of aligning itself in support of the Government's determination to confront this dangerous phenomenon, and as a result all citizens are committed to putting the higher national interest ahead of any other consideration and are backing the effort to address the issue of terrorism."³

3. Arrests and incommunicado arbitrary detention

The Yemeni constitution forbids any arrest without a warrant established by a judge or prosecutor (art. 47b). The person arrested must immediately be informed of the reasons of his arrest; they may contact anyone and be assisted by a lawyer (article 73 of the Criminal Procedure Code, CPC). Persons arrested must be presented before a judge in the 24 hours following their arrest (CPC art. 76) and may challenge the justification for their detention. The Criminal Procedure Code provides that any official who makes an arbitrary arrest is liable to a maximum sentence of 5 years imprisonment (art. 246).

Investigations cannot exceed six months and when a person is taken into custody, the investigation must be accelerated (CPC art. 129).

¹ Amnesty International, YEMEN : The rule of law sidelined in the name of security, AI Index : MDE 31/006/2003

² Human Rights Committee, Concluding Observations, Yemen, 12 August 2002, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/440/24/pdf/G0244024.pdf?OpenElement>

³ Fourth periodic report, 3 December 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/404/97/PDF/G0540497.pdf?OpenElement>

In reality, many government opponents, including human rights defenders and journalists, have been subjected to arbitrary detention and arrests. *Alkarama* communicated to the Working Group on Arbitrary Detention the case of Mr Louay Al-Mouayyad, a member of the Organisation for Democratic Rights and Freedoms; a journalist, Executive Director of the information portal “Free Yemen”. Arrested on 30 June 2008 at his home by members of the Political Security (Al Amn Assiyassi) in civilian clothing, and accompanied by military personnel in uniform, he was taken to an unknown location and detained in secret. He was released on 12 September 2008, after 74 days of incommunicado detention. No legal procedure was opened against him, and he was released without ever having been presented before a judicial authority.⁴

Incommunicado detentions lasting anywhere from several days to several months are common. For instance, Mr Adel al-Shahrani whose case was also submitted to the Working Group on Arbitrary Detention by *Alkarama*, was arrested on 15 August by Political Security (Al Amn Assiyassi) in Sanaa and detained as of 15 August 2007 without any legal proceedings. It was only on 1 October 2007 that his family was allowed to visit the offices of the Intelligence Services in Sanaa where he was detained. After this, they were unable to renew their visit. Mr Al-Shahrani was released on 27 May 2008 without having ever been subjected to any legal procedure.⁵

Mr Saqar Abdelkader Al Chouiter was arrested on 7 April 2007 at his workplace by agents of the Intelligence Services and taken to an unknown location. He was released after 52 days of detention incommunicado, without access to a lawyer and no possibility of challenging the legality of his detention. Informed by *Alkarama*, the Working Group on Arbitrary Detention also noted the arbitrary nature of this detention.⁶

Persons arrested by coalition forces and held in secret prisons run by the U.S. authorities, their allies or in Guantanamo were repatriated to Yemen but held, at the request of the US, for prolonged periods without being judged. This is the case for Walid Mohamed Shahir Muhammad al Qadasi who was transferred from Guantanamo Bay to Yemen in April 2004. He was released without being charged in March 2006. Muhammad Abdullah Salah al Assad was arrested in December 2003 in Tanzania and incommunicado detained in different locations. Mohamed Faraj Ahmed Bashmilah and Salah Nasser Salim Ali were arrested in August and October 2003 in Indonesia, where they lived, and were transferred to different secret centres. All three were extradited to Yemen in May 2005. They were finally judged in February 2006, found guilty of falsifying documents and released the following month.⁷

4. Torture

Domestic law prohibits torture and the abstraction of confessions by force during investigations. “These provisions prescribe severe penalties for anyone who commits, orders, or participates in an act of torture and they designate physical or mental torture at the time of arrest or during the period of detention as a criminal offence in respect of which legal proceedings are not subject to any statute of limitations.”⁸ The Committee Against Torture, in its concluding observations of 5 February 2004, expressed concern regarding the practice of torture by agents of the state, the absence of investigation of these allegations and the absence of prosecutions of its authors.⁹ The

⁴ http://en.alkarama.org/index.php?option=com_content&task=view&id=131&Itemid=61

⁵ http://en.alkarama.org/index.php?option=com_content&task=view&id=97&Itemid=61

⁶ http://en.alkarama.org/index.php?option=com_content&task=view&id=118&Itemid=61

⁷ « Yemeni officials told Amnesty International representatives in October 2005 that they were “awaiting files” on the four men from the US authorities before deciding whether they would be charged or released. According to Yemeni officials, the men would be released immediately if the US authorities request their release», <http://www.amnesty.org/en/library/asset/MDE31/019/2005/en/dom-MDE310192005en.html>

⁸ Periodic Report presented to the Committee Against Torture, Yemen, 25 July 2003, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/432/81/pdf/G0343281.pdf?OpenElement>

⁹ Concluding Observations/Comments of the Committee against Torture, Yemen, 5 February 2004, (CAT/C/CR/31/4), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.31.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.31.4.En?OpenDocument)

Yemeni authorities do not deny that torture cases exist but assert that victims can submit complaints and that those responsible are prosecuted.

However, reality contradicts these assertions. When people are arrested and detained by the Political Security (Al Amn Assiyassi), they are often subjected to torture and abuse. Conditions of incommunicado detentions themselves alone qualify as inhumane and degrading treatment. Testimonies by victims describe beatings whilst blindfolded, long periods with handcuffs squeezed tight, no access to water or food, death threats, etc.

Abdullah Al Rimi, arrested on 3 April 2008, is being detained without any legal procedures by the intelligence services. He is a victim of a mistake over his name; a mistake which the authorities recognized and his family therefore expected his immediate release. Despite all the actions undertaken and interventions on his behalf, notably that of the President and vice-President of the parliament, he was not released. His family was finally allowed to see him some months later in presence of members of the State Security Services. They are particularly worried as his physical state clearly demonstrates that he has been tortured.¹⁰

On 20 September 2007, *Alkarama* submitted to the Working Group on Arbitrary Detention the cases of 37 persons, including a number of minors, who were arrested and detained since, for some, January 2007, following or in relation to the events which shook the Saada region. During these events, scores of people died in armed clashes between the security forces and members of the Zaidi community, followers of Hussein Al-Houthi. All of these people were detained incommunicado in a succession of locations, interrogated by the Political Security services, sometimes for several weeks, without contact with the outside world, without family visits and without the assistance of a lawyer. Most of them testify having spent the first days of incommunicado detention in very trying conditions, blindfolded and handcuffed; some affirm being beaten and forced to sign papers they had not read.

Party to the Convention against Torture since 5 October 1991, Yemen has nevertheless proceeded to expel non-nationals to countries where they had objective grounds for fear of being tortured and/or subjected to inhumane and degrading treatment.

For instance, in February 2004, at least 23 Egyptian nationals, among which are Messrs. Seid Abdulaziz Imam Al Cherif, Mohamed Abdelaziz Al Jamal, Athmane Al Semmane, Tarek Naïm Abdelajawed, Hilmi Chaabane and Fawzi Mohammed Atta, sentenced to death in absentia in their country, were delivered by Yemen to the Egyptian Intelligence Services.

On 17 July 2007, nine people: eight military personnel and a civilian, Messrs. Farj Athmane Mohamed, Mohamed Abdou Lahada, Gebrait Dwit Haïlé Makele, Jamal Mahmoud Al Amine, Serradj Ahmed Daoud, Yassine Athmane Amar, Abdullah Ibrahim Mahmoud, Barkhat Yohanes Abraha and Mohamed Ahmed Abdullah, all of Eritrean nationality, fled their country on a military vessel and disembarked at Midi port, in north Yemen, where they surrendered to the authorities; they were however placed in detention centres to await their expulsion. Though Yemen ratified the 1951 United Nations Convention Relating to the Status of Refugees on 18 January 1980, these nine persons were not given the possibility of presenting an asylum request or of legally challenging their expulsion. In the end, they were refouled to their country the following September, and *Alkarama* remains without news from them since.

5. Violations of the right to life: excessive use of force and summary executions

Since 2000, the Al-Haqq party - founded by the ex-member of parliament Hussein Al-Houthi and solidly implanted in the Zaidi community in the region of Saada in the north of the country - has opposed the central government. Upon his return from the United States in June 2004, President

¹⁰ http://en.alkarama.org/index.php?option=com_content&task=view&id=129&Itemid=61

Al-Saleh intensified the battle against this movement; Hussein Al-Houthi was killed in September of the same year. Despite various peace accords, confrontations between law enforcement troops and the rebellion continue. To legitimize these military interventions, the government depicts the movement as “terrorist”. New offensives were initiated by the army in January 2007 and in the months of April to August 2008 with the mobilisation of disproportionate means: heavy artillery bombardments and air raids caused the death of thousands and the displacement of entire villages; thousands were arrested; yet national and international public opinion were not really informed of the magnitude of these events. A committee appointed by the government noted the destruction of 4000 houses and farms, 116 schools and 36 health centers¹¹, but no official figure for civilian casualties was included. A new peace accord was concluded between the various parties in August 2008. Journalists who attempt to cover this hidden war are persecuted, as demonstrated by the case of Abd Al Karim al Khaiwaini, arrested on 27 August 2007 and condemned to six years in prison on 9 June 2008 for terrorist activities, then amnestied by the President on 25 September 2008.

Alkarama also highlights the excessive use of force by agents of the state during interventions by the army to repress demonstrations organized to protest the deterioration of the economic and social situation in the country. The gatherings of July 2005 were repressed at a cost of some 50 lives. The demonstrators were protesting against the increase in petrol prices decided by the government on the advice of the IMF.

In May 2007, the veterans of the ex-South Yemeni army demonstrated to highlight their social situation since some 60,000 of them were demobilized. They demanded an increase in their pensions or the granting of work. In August 2007, thousands of people took to the streets to protest against the rising price of basic products and petrol. Here again, the army intervened using excessive force.

In all these cases, the Yemeni authorities failed to initiate any investigations against those responsible for these actions, nor did they prosecute those responsible for these actions.

6. Recommendations

The State should:

- Fight against the practice of prolonged detention without judgment and incommunicado detentions by establishing a system of controls on all detention facilities in the country by a control commission at national level, notably to ensure they are under the control and sole authority of the judicial institution.
- Effectively guarantee the right of all persons detained to a judicial review in order to challenge the lawfulness of their detention before an independent court, and the right for all those accused to be assisted by a lawyer at all the stages of the criminal procedure;
- Abstain from the use of excessive and disproportionate force to repress public demonstrations and engage in the prosecution of those responsible for summary executions.
- Ensure that the composition of the judiciary is in full conformity with the basic principles on the independence of the judiciary, ensuring in particular the principle of the tenure of judges.

On the normative level:

- Consider ratification of the Optional Protocol to the United Nations Convention against Torture in order to allow visits of Yemen’s detention centres by a designated body (responsible to the United Nations).

¹¹ http://en.qantara.de/webcom/show_article.php/_c-476/_nr-1023/i.html