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YEMEN: HUTHIS MUST END USE OF JUDICIAL SYSTEM TO SILENCE DISSENT

The Huthis must end the use of the judicial system to stifle freedom of expression, association and religion, by way of handing down harsh sentences, including the death penalty, following grossly unfair trials.

Amnesty International has documented the cases of 66 individuals, the vast majority men, whose proceedings are all ongoing – bar one - and were brought before the Sana'a-based Specialized Criminal Court (SCC) – a court traditionally reserved for terrorism-related cases, between 2015 and 2020. Journalists, human rights defenders, political opponents and members of religious minorities are among those subjected to unfair trial on spurious or trumped-up charges by this court. All of those individuals are being tried on charges of spying, which are mandatorily punishable by death under Yemeni law.

UNFAIR TRIALS

ARREST, EXCESSIVE PRE-TRIAL DETENTION AND UNDUE DELAYS IN COMPLETION OF TRIAL

In all the cases documented by Amnesty International, the Huthis and their allied forces carried out the arrests of the defendants from their homes, at security check points, at workplaces, or in public venues, without arrest warrants. They were detained incommunicado and in solitary confinement without access to the external world, including their families or a lawyer, for periods ranging from a few days to several months. Finally, they were held without charge or trial and without any means to challenge their detention for up to four years.

In most cases, the Huthis have subjected the individuals to enforced disappearance, holding them in secret locations and then refusing to disclose their whereabouts to their families or information such as the reasons and legal basis for their imprisonment, in what conditions they are being held, not to mention denying them access to legal counsel and family visits. Enforced disappearance is a crime under international law, and when committed in connection with an armed conflict, is a serious violation of international humanitarian law and may constitute a war crime.

Within these patterns of arbitrary arrest, the Huthis and allied forces targeted political opponents from a variety of affiliations, as well as journalists, human rights defenders, activists and members of religious minorities. The majority of the individuals targeted, whether politicians, journalists or activists, have some form of association with al-Islah (a Sunni Islamist political party), which opposed the Huthi takeover of power and announced its support for the Saudi Arabia and UAE-led coalition in April 2015. Others were apparently targeted for being peaceful critics of the Huthis' takeover of state institutions and of their conduct since they have been in power. In the case of religious minorities, individuals are being held and tried on account of their conscientiously held beliefs and peaceful activities as members of the Baha'i community.

After being held without charge or trial and without any means to challenge their detention for over two years, five Baha'is were charged in September 2018 with various serious offences including espionage for foreign states, some of which can carry the death penalty. After being initially charged, two more sessions were held in 2018 after which the case was only brought to court in January 2020. Their trial is part of a mass trial involving 24 Baha'is in total – the other 19 were charged in absentia, including the teenage daughter of another Baha'i detainee.

The International Covenant on Civil and Political Rights (ICCPR), to which Yemen is a party, states in Article 9(3) that anyone detained on a criminal charge has the right to trial within a reasonable time or to release pending trial, and that it shall not be the general rule that persons awaiting trial shall be detained in custody. Detention once a trial has commenced still amounts to detention pending trial, which ends only upon judgment in the first instance.¹ The ICCPR also underlines, in Article 14(2), that everyone charged with a criminal offence shall have the right to be presumed

¹ See for example, the judgment of the European Court of Human Rights in *Solmaz v Turkey* (27561/02), (2007) §§23-26.

innocent until proven guilty according to law, and, inter alia, to be tried without undue delay (Article 14(3)(c)). The obligation to respect these rights to presumption of innocence and to liberty means that if an accused person is detained pending trial, the state has an obligation to prioritize the case and expedite legal proceedings.²

PROLONGED DETENTION AND TORTURE OF 10 JOURNALISTS³

A group of 10 journalists, Abdelkhaleq Amran, Hisham Tarmoom, Tawfiq al-Mansouri, Hareth Humid, Hasan Annab, Akram al-Walidi, Haytham al-Shihab, Hisham al-Yousefi, Essam Balgheeth and Salah al-Qaedi have been held since the summer of 2015 and are being prosecuted on trumped-up spying charges for peacefully exercising their right to freedom of expression. Over the course of their detention the men were forcibly disappeared, held in intermittent incommunicado detention, were deprived of access to medical care and at least three of them were subjected to torture and other ill-treatment. In one incident, on 19 April 2019 a prison warden entered their cell at night, stripped off their clothing and brutally beat them, according to trusted sources. They have been held in solitary confinement since that day.

More than three years into their detention, in December 2018, the journalists were formally charged after being questioned in the presence of their lawyers, and their cases were referred from the Political Security Office (PSO) to the SCC. They were charged with a series of offences including spying – which is punishable by death in the Yemeni Criminal Code – and helping the Saudi Arabia and UAE-led coalition. Their trials have not started yet and it is not clear when they might take place.

TORTURE AND OTHER ILL-TREATMENT

Out of the 66 cases documented by Amnesty International, 47 individuals are currently in custody, of whom at least six reported being tortured or ill-treated in custody since 2014.

During one of the trial sessions on 2 April 2019 at the SCC, Youssef al-Bawab, a 45-year-old father of five who was arbitrarily arrested in October 2016 and is now being tried alongside 29 others, stated how he and others had been subjected to torture and other ill-treatment throughout their detention at the PSO in Sana'a, including beatings, being hung from the ceilings and tied up using iron chains. The court did not respond to his statement and the judge failed to order an investigation into these claims.

The prohibition of torture and other ill-treatment is absolute and allows of no limitation; it applies at all times and in all circumstances. The ICCPR explicitly states that no derogation from it is allowed, even in a situation of public emergency which threatens the life of the nation. The UN Human Rights Committee has reiterated that no justification or extenuating circumstances may be invoked to excuse a violation of this prohibition for any reasons. Yemen is also party to the Convention against Torture which requires states to exclude from evidence in all proceedings statements and other forms of evidence obtained as a result of torture, except in a case against an alleged perpetrator of torture or other ill-treatment. The Convention also requires that states conduct prompt and impartial investigations into allegations of torture.

YOUSSEF AL-BAWAB AND OTHERS

Youssef al-Bawab, a 45-year-old father of five, is a linguistics professor and political figure. On 9 July 2019, the SCC sentenced him and 29 others, mostly academics and political figures, to death on charges of spying for the Saudi Arabia and UAE-led coalition. The trial consisted of only three court sessions. The defendants had no access to their legal counsel to prepare their defense or and were not given an opportunity to examine the evidence against them. The 30 men, who were all arrested between 2015 and 2016 by the Huthis and allied forces, are in the process of appealing their sentence.

On 20 October 2016, Youssef al-Bawab was arbitrarily arrested as he exited his local mosque in Sana'a. Later that night, the Huthi de facto authorities raided his house, where his wife and five children live, and confiscated his belongings, including his personal computer and 150 academic documents. It took his relatives three months before they were able to locate him at PSO and were permitted to visit him. The circumstances of his arrest, followed by the authorities' refusal to disclose his fate and whereabouts constituted enforced disappearance. He was interrogated for the first time in March 2017 in the presence of his lawyer, the only time he was permitted to have legal counsel. He was then charged on 8 April 2017, alongside 35 others, with several offences, including assisting the Saudi Arabia and UAE-led coalition with intelligence regarding military objectives and organizing assassinations; most of these

² See for example, the judgement of the Inter American Court of Human Rights in *Barreto Leiva v Venezuela*, (2009) §§120-122.

³ Amnesty International, *Yemen: Prolonged detention and torture of 10 journalists illustrates risks faced by media workers* (Press release, 30 April 2019).

charges carry the death penalty. Throughout his detention, proceedings against Youssef al-Bawab have been seriously flawed. These irregularities have included enforced disappearance, prolonged pre-trial detention, undue delays in his trial, incommunicado detention, allegations of torture and other ill-treatment and lack of access to legal counsel and medical care.

ACCESS TO LEGAL COUNSEL DURING PRE-TRIAL DETENTION, INCLUDING INTERROGATION

Out of the 66 cases documented by Amnesty International, 47 are currently in custody. All 47 have had irregular or patchy access to their lawyer following arrest and throughout their interrogation during different stages of their detention. At best, they were permitted to meet their lawyers only at the court session of their trial. If the lawyer was told of the court session in the first place, they usually were informed less than 24 hours in advance.

In the case of the Baha'is' mass trial, defendants and their lawyer have consistently been barred from meeting despite direct orders from the court for the prison authorities to allow them to do so. According to statements by the defendants as well as their lawyer during the last court session on 25 February 2020, they have not had access to their lawyer since being detained nearly three years ago. On 27 March 2019, the lawyer was permitted to sit with them for less than five minutes under heavy supervision, contrary to their right to adequate time and facilities to communicate confidentially with counsel.

According to the families of the 10 journalists (see box on p 2), these defendants were subjected to at least a dozen interrogation sessions since their detention in 2015. However, according to their lawyer, he was not present for any of the sessions, except for one at the end of 2018. At the time, they questioned the journalists in groups of three or four in the presence of their lawyer. Their lawyer told Amnesty International that he had consistently requested records of interrogations that he was not permitted to attend, but his request went unheeded.

Under international law and standards, everyone arrested or detained and everyone facing a criminal charge has the right to the assistance of legal counsel, to enable them to protect their rights and begin to prepare their defense and to enable them to challenge their detention. This right also serves as an important safeguard against torture and other ill-treatment and coerced "confessions". The right to legal counsel pre-trial includes the rights of access to a lawyer, to have time to consult the lawyer in confidence, and have the lawyer present during questioning and be able to consult them during questioning. While the ICCPR does not expressly state the right to assistance of a lawyer during detention, questioning and preliminary investigation, the Human Rights Committee, in its General Comment 32 on the right to fair trial and its concluding observations on states parties' reports, has clarified that it is required for the meaningful exercise of the right to a fair trial set out in Article 14 of the ICCPR.

RECOURSE TO DEATH PENALTY

Amnesty International is concerned that some of the charges – most of which are linked to espionage - in all the cases documented are mandatorily punishable by death under Yemeni law. In 2018, 22 people were sentenced to death across Yemen, all by the Sana'a-based SCC, for charges of aiding the enemy and espionage. One defendant, Baha'i prisoner of conscience Hamid Haydara, was also handed down the death penalty based on an extra charge: proselytizing. However, in 2019, the number of individuals sentenced to death by the Sana'a-based SCC more than doubled, the majority on account of espionage. The Huthis' prosecution authorities appeared to have brought the charges as a means to persecute political opponents, journalists, academics and religious minorities. The organization's concerns on this point are heightened by the violations of right to fair trial noted above. As recently as 6 March, the Sana'a-based SCC sentenced 35 parliamentarians to death - in absentia - on treason charges.⁴

Article 6(2) of the ICCPR states that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". The UN Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure".⁵ The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, recommend that crimes punishable by death should "not go beyond intentional crimes with lethal or other extremely grave consequences",⁶ and in this regard the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has clarified that the death penalty "may be imposed only for those crimes that involve intentional

⁴ See UN Office of the High Commissioner for Human Rights, *Yemen: Due Process*, 6 March 2020, <https://bit.ly/33fv6dr>

⁵ Human Rights Committee, General Comment No. 6 on the Right to Life, para. 7.

⁶ Safeguard No. 1 of UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984.

killing”.⁷ This is confirmed in the Human Rights Committee's updated general comment on the right to life, which states that “the term ‘the most serious crimes’ must be read restrictively and appertain to crimes of extreme gravity, involving intentional killing.”⁸

The Human Rights Committee has underlined that the fundamental principles of fair trial, including the presumption of innocence, must be complied with at all times, including in states of emergency. In particular it has expressly underlined that any trial leading to the imposition of the death penalty must conform to the provisions of the ICCPR, including all the requirements of Article 14, and no statements or confessions obtained in violation of the prohibition of torture and other ill-treatment may be invoked as evidence in any proceedings.⁹

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; the guilt, innocence or other characteristics of the offender; or the method used by the state to carry out the execution. The death penalty violates the right to life as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

BAHA'I COMMUNITY

Since 2015, Amnesty International has documented a number of incidents in which members of the Baha'i community in Yemen were detained by the Huthi de facto authorities. At the moment, six Baha'i men are detained, including some who have been subjected to enforced disappearances, torture and incommunicado detention. Five of them face charges that carry the death penalty: one, who had been held for nearly four years, was accused of apostasy; four were charged in September with serious offences, including espionage for foreign states.

In January 2018, the Huthi de facto authorities sentenced 52-year-old prisoner of conscience Hamid Haydara to death for allegedly collaborating with Israel and forging official documents. This sentence came after Hamid Haydara had been detained since December 2013, and following a fundamentally flawed process, including trumped-up charges, an unfair trial and credible allegations that he was tortured and ill-treated in custody. He is currently in the process of appealing the sentence.

In September 2019, a group of 24 Baha'is of varying ages, including the teenage daughter of Hamid Haydara and his wife, were charged with various serious offences, including espionage for foreign states, some of which can carry the death penalty. Currently, the detainees who are attending court sessions in person and continue to be detained are 47-year-old Keyvan Qadri, detained since 10 August 2016; 68-year-old Badi'ullah Sanai, detained since 25 May 2017; 52-year-old Waleed Ayash, detained since 20 April 2017; Akram Ayash, detained 22 October 2017; and 43-year-old Wael al-Oreiqi, detained 24 May 2017.

BACKGROUND

The Sana'a-based SCC and its Specialized Criminal Appellate Division were established in 1999.¹⁰ They have jurisdiction over a variety of security-related crimes, including armed robberies, kidnapping, piracy, drug trafficking, and offences detrimental to state security and public interest.¹¹ However, in December 2017, the Huthis consolidated their control, including over the judiciary, after assassinating their ally and former president Ali Abdullah Saleh. Even though the Sana'a-based SCC was relatively active and functional up to that point, the assassination led to the expediting of cases before the court. In August 2019, the Huthi-established Supreme Political Council issued a decree that dictated the consolidation of two structures where the majority of the aforementioned detainees are being held - National Security Bureau and the Political Security Office - into one umbrella structure called the Intelligence and Security Services. The Group of Eminent Experts on Yemen expressed “concerns over the independence of the judiciary in territories controlled by the [Huthi] de facto authorities” in their 2019 report.¹²

⁷ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 9 August 2012, A/67/275, para.122.

⁸ Human Rights Committee, General Comment 36, para. 35.

⁹ Human Rights Committee General Comment 32, para. 6.

¹⁰ Law No. 391 (1999), Article 1. In 2009, Law No. 131 led to the establishment of three more Specialized Criminal Courts and Appellate Divisions in Aden, Hodeidah and Hadramawt. A Specialized Criminal Court and an Appellate Division were established in Marib according to Law. No. 22 (2018).

¹¹ Law No. 391 (1999), Article 3; Law No. 8 (2004), Article 1; The majority of these offences, however, were already covered by the Penal Code Law No. 12 (1994), except for crimes relating to kidnapping, piracy and drug trafficking.

¹² UN Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014: Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen*, 3 September 2019, UN Doc. A/HRC/42/CRP.1, para. 377.

All parties to the conflict, including Huthi forces, the Yemeni government, the Saudi Arabia and UAE-led coalition and UAE-backed Yemeni forces have engaged in arbitrary detention practices. In areas they controlled, Huthi forces arbitrarily arrested and detained critics and opponents as well as journalists, human rights defenders and members of the Baha'i community, subjecting scores to unfair trials, incommunicado detention and enforced disappearance. The majority of those targeted have been leaders, members or supporters of the political party al-Islah. The internationally recognized Yemeni government harassed, threatened and arbitrarily detained human rights defenders and other activists. Meanwhile, UAE-backed Yemeni forces in southern Yemen conducted a campaign of arbitrary detentions and enforced disappearances. In May 2018, Amnesty International published a report detailing the cases of 51 men held in a network of secret prisons by UAE and Yemeni forces operating outside the command of Yemen's government, including individuals detained between March 2016 and May 2018.¹³

¹³ Amnesty International, *Yemen, God only knows if he's alive: Enforced disappearance and detention violations in Southern Yemen* (Index: MDE 31/8682/2018)