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The International Federation for Human Rights (FIDH) and its member and partner organisations in Yemen, Sisters Arab Forum for Human Rights and the National Organization for Defending Rights and Freedoms (HOOD) jointly mandated a fact-finding mission to Yemen in August 2009 to assess the respect of human rights in the framework of the fight against terrorism in Yemen.

At the occasion of the examination of Yemen by the UN Committee against Torture, FIDH and HOOD are keen to share the first conclusions of their fact-finding mission with the experts of the Committee.

The present report will focus on the monitoring of the implementation of CAT's recommendations pertaining to human rights violations committed in the context of the campaigns against people accused of terrorist or security offences and in particular in the light of the recommendation calling upon Yemen to “ensure that all counter-terrorism measures taken are in full conformity with the Convention”.

Introduction

In a letter addressed to human rights organizations, an Egyptian citizen detained in the Political Security Prisons from 2004 in Yemen until his release to the Egyptian authorities in March 2007 wrote:

"I write you from Political Security hell where I have been since my abduction over three years ago – the whole time not knowing what charges are against me. In fact, nobody here knows what the charges against me are. One time I was told I am a terrorist, the next I am a spy or an embassy agent. I have requested to be put on trial but they tell me they don't have any evidence against me. I say, then deport me to my country or any country, even Israel. Allow me visitations or let me call to ask about my wife and children. But all this is forbidden here. A few days ago they let my wife send me some food but I have been deprived of seeing her for more than three years. Throughout them I have seen the unthinkable; things that are not heard of even in Guantanamo. I am in an isolated cell with no sun or air, the chains on my legs weigh no less than 10 kilograms – the same chain restrains my hands. I don't know what damage has happened to my feet because of it. The food is not fit for a dog, and the clothes I was given are rotten, I almost die of the cold. Degradation and torture, physical and mental, is beyond imagination- I never imagined that this occurs here in Yemen. I urge you all to move to resolve my case, ask them to put me on trial or even execute me, it would be better than what I am in right now- or send me to any country. Ask them what my case is, and why they deprive me from seeing my wife and children. I am ready to accept any solution, even if it is the death penalty.

*And peace-
Gamal Hamam*

This letter summarizes what deterioration has afflicted the human rights situation in Yemen in the past few years. Forgotten prisoners, criminal abductions and enforced disappearances; arrests and arbitrary detention; solitary imprisonment isolated from the outside world; torture and ill-treatment; deprivation from legal and medical help; violations of freedom of speech and expression; security persecution of sectarian identities or political views.

There has been a consistent degradation of human rights since the inception of the so-called war on terror in 1997. The level and intensity of violations in this context especially acts of torture, arbitrary arrest and enforced disappearances notably increased- after the bombing of the American Destroyer USS COL in October 2001: hundreds of people were detained and tortured. Following the September 2001 attack, those hundreds became thousands.

Definition of torture

The Yemeni Constitution¹ prohibits torture². It affirms that crimes of physical or mental torture during arrest, detention or imprisonment is a crime not subject to a statute of limitations, and punishable to all those who participate in, order or practice it³. However Yemeni laws lack an

¹ <http://www.parliament.gov.ye/dostoor/part2.htm>

² Article 47 b of the Constitution « No individual can be arrested, searched or detained unless caught in the act (*in flagrante delicto*) or served with a summons from a judge or the Public Prosecutor, which is necessary for the progress of an investigation or the maintenance of security. No person can be put under surveillance unless in accordance with the law. Any person whose freedom is restricted in any way must have his dignity protected. Physical and psychological torture is prohibited. Forcing confessions during investigations is forbidden. The person whose freedom is restricted has the right not to answer any questions in the absence of his lawyer. No person may be imprisoned or detained in places other than those designated as such and governed by the law of prisons. Physical punishment and inhumane treatment during arrest, detention or imprisonment are prohibited. »

³ Article 47e « Physical or psychological torture at the time of arrest, detention or jail is a crime that cannot be prescribable. All those who practice, order, or participate in executing, physical or psychological torture shall be

unambiguous definition of torture that abides by CAT principles, despite the Committee's explicit recommendation in this regard.

During his meeting with the FIDH delegation last August, the Deputy Minister for Human Rights stated that his ministry had submitted a proposal to the Cabinet to adopt a definition of torture but it remains uncertain whether the ministry's suggestions have any resonance in the government's decisions. The government of Yemen did not ratify the Optional Protocol to CAT, in another disregard of the CAT committee recommendations, as well as those released by the UPR working group in 2009.

That tenet notwithstanding, since Yemen's last review by CAT in 2004, allegations of torture have noticeably increased. In the framework of an expanding "war on terror" and the intensification of clashes in Saada's region- the security situation has greatly deteriorated resulting in an even more systematic torture policy. A member in the Parliamentarian Committee on Rights and Liberties, describes torture in Yemen as being more institutionalized and organized than in the past. The two visit requests submitted by UN Special Rapporteur, first in 2005 then in 2007, have gone unheeded. Most cases of torture documented by the FIDH delegation were perpetrated by the 3 known security organs: the central authority for Political Security, the National Security authority and the department of Anti-Terrorism under the Ministry of Interior.

Torture : a widespread practice in Security services premisses

The practice of torture is widespread in Yemeni prisons and moreover in State Security prisons, and the levels of sophistication and order that have evolved therein is a grave cause of concern, as is the disregard of allegations of torture brought forth by prisoners during trials.

The institutions have become associated with far reaching human rights violations: torture and ill treatment, abduction and forced disappearance, arbitrary detention and kidnaps, impunity. The most infamous security organization is the Central Authority for Political Security- known as Political Security- which was created by presidential decree No 121 of 1992 to identify and combat political crimes and acts of sabotage. This organ is the primary perpetrator of the violations documented during the FIDH mission. This authority has also targeted journalists, political activists, human rights defenders and clergymen. According to its founding statutes, the director of Political Security should hold a position of Minister, affiliated with the President of the Republic. The authority of National Security also carries the stigma of violation and impunity. Also created by presidential decree, No. 261 of 2002, this authority is affiliated and accountable to the President of the Republic. With reference to its founding statutes, the National Security body aims at guaranteeing the safety of the country, protecting its national security from external threats and safeguarding the rule of the Republic and its interests. Its competencies also include combating acts of sabotage and antagonism which threaten the security and safety of the Republic. While seemingly mandated to tackle external threats to the country's security, in practice the past years have demonstrated that the power and activities of this authority were similar or overlapped directly with those of Political Security- whose jurisdiction lies in internal politics and security. The department of Anti-Terrorism in the Ministry of Interior is the third organ dealing with security issue and also known for human rights violations.

Various forms of torture are reported: hanging prisoners by the arms and lifting them up while hands are chained; beating their hands and feet with a metal stick after suspending them from above; forcing them to stand for long durations carrying heavy weights; binding their legs with heavy chains; electrocuting different parts of the body; unclothing the prisoners, beating their heads on the walls and other parts of the body.

Mohamed Abd Al Rahman Abdallah, an unemployed 21-year-old male was arrested on July 15th, 2008 by the Political Security and was subjected since to severe forms of torture: beating of his body and genitals, punches, kicks and slaps on the face that led to breaking his teeth. He was beaten on the soles of his feet with an electric cable while being suspended by his arms, with his arms tied behind his head. He was threatened with rape repeatedly and to confirm the seriousness of the threat he was almost undressed as his torturers asked how he would prefer to be raped. On another occasion a gun was placed to his head while he received threats that his brains would be shot out if he did not cooperate with the political security officers. In fact the trigger was actually pulled – only to reveal that there was no ammunition in the gun. Abdallah recounts that torture episodes usually start around midnight and end at sunrise. Torturers are usually unidentifiable, masked men, and the victims are frequently blind folded as well.

In a public seminar held on April 23rd, 2007, Sha'ef Ali Al Heimy spoke about his detention and torture that started on January 24th 2007 when he was arrested by National Security officers on suspicion that he had stolen one of the officers' mobile phone. Al Heimy recounts events of a full month of torture, despite threats from his torturers that they would capture and torture his family members if he spoke out. He said in the seminar, with torture marks still apparent on his body, "I was forced to take off my clothes, I was electrocuted, hot water was thrown on my body, I was beaten with a metal stick. They made me drink urine then rammed a piece of soap in my mouth for several days. They took out the piece of soap and taped it to my lips. Sometimes the interrogators would put a shoe in my mouth. They would hit me on my ears with heavy army shoes; I have become deaf in my left ear. I was left thirsty without food or drink for 3 days. "

Nasser Saleh Mohamed Gabran (27 years) was detained by the Anti-Terrorism department on suspicions of his relation to Houthi groups. He was held in a cell no larger than 2x1 meters, where two other inmates were already detained. His arms were bound behind his back while he was made to carry heavy objects above his head with his legs spread open until his leg muscles cramped and he collapsed. His head was banged into the wall from the front and the back alternatively until he lost consciousness. His legs were suspended and tied to a stick to beat the soles of his feet with an electric cable – they became swollen and black. The swelling remained for three months after his release. Gabran's suffering was used to intimidate and scare others: he would be beaten, humiliated and dragged to and from interrogation in front of other prisoners.

Yasser Abd Al Wahab Al Wazeer an engineer was beaten thoroughly during his detention in June 2008. The violence was directed on his right leg, on which he had undergone two surgeries before his arrest. Former prisoners who had seen Al Wazeer before their release claim that he can now barely walk on his right leg.

Inducing sectarian animosity among detainees is another form of ill treatment the Yemeni state employs. The strategy is holding detainees from rival or different sectarian backgrounds in the same cell and inciting violence between them, even arming some of them with sticks. The FIDH delegation met a victim of this form of set-up that pitted Hashimite Zaidi detainees against others suspected of belonging to Al Qaeda factions. To punish his "lack of cooperation", Nasser Saleh Mohamed Gobran, a Zaidi, was detained with a large number of prisoners accused of belonging to Al Qaeda where prison officials used sectarian differences and sensitivities against Gobran.

Detention of "Hostages" : an additional method to further intimidate or coerce suspects

One practice that distinguishes Yemeni security institutions from its counterparts in other parts of the world is detaining and keeping relatives of "wanted" individuals as hostages for years at a time.

They are kept hostage until suspects turn themselves in. Several international legal documents express deep condemnation of hostage-taking. This is explicitly denounced in the International Convention against Hostage Taking which states that state parties should punish any person who commits an offence of hostage-taking as defined in the convention.

Security organs continue to imprison suspects' relatives as hostages until the targeted suspect appears: children and the elderly are not exempt from this practice. In some occasions the hostage is a notable religious figure or trader who had "sponsored" the release of a suspect on the condition that they would be returned, and were unable to secure the suspect's return. Security agencies may release suspects in cases where evidence is insufficient to incriminate them; however – even after the accused is proven innocent- with the conditions that prisoners is guaranteed to return whenever called upon. In cases where the released prisoner's "sponsor" is late or fails to secure their return, that sponsor is imprisoned instead as a hostage to pressure the original prisoners to surrender. This practice has caused many Yemenis to fear asking about their missing friends and family in various prisons, in dread of the retribution security officials may inflict.

Early morning, July 19th 2007, three brothers were arrested - Amir, Mo'az and Mohamed- sons of Abdallah Thabet Mohsen Al Abab. There were no warrants for their arrest, and they received no charges. In fact, security was actually after their elder brother, Adel Thabet Mohsen Al Abab, a professor of Arabic language and wanted for charges of belonging to Al Qaeda factions. His three brothers were arrested simply because Adel was not home when they arrived. Their elderly father was also arrested and released two days afterwards, but Adel's younger brothers remain hostages pending his capture.

Security forces pay no heed to hostages' age or make any other consideration. Occasionally they may be minors or aged individuals. On February 23rd 2009, while Ahmed Mohsen Yehia Al Mehfeli - a 15-years-old child – was asleep with 11 members of his family when their home was bombarded by officers from the Anti-Terrorism department. They grabbed Ahmed from the arms of his father and shot bullets in the air. Ahmed was taken in the place of his brother, Omar (18) who had fled the house before they arrived. They dragged Ahmed away in the midst of his families screams and tears without telling them he would be taken to the department of Anti-Terrorism. They found out his place of detention one month and a half later when he was able to call them to inform them of his location. His family was permitting to visit him three months after his "arrest". Without the least consideration for his halted education, or the fact that he is a minor held in adult prison, the family was told that Ahmed would remain in prison until Omar takes his place.

In a seminar organized by human rights organizations in Sanaa on April 23rd 2007, Amal Al Houthi appealed for the release of her 13-year-old brother Amin Abd Al Qader Al Houthi who was abducted in front of his home in San'aa. Many members of the Houthi family have been abducted and imprisoned, kept as hostages by Security forces.

Incommunicado detentions

Far from taking “all appropriate measures to abolish de facto incommunicado detention” as recommended by CAT's experts in 2004, the Yemeni authorities seem to turn a blind eye on a recurrent punitive measure.

The legal basis for this practice is uphold ⁴ and this punitive measure remains at large and can be imposed at the discretion of prison administrators, as one of the applicable disciplinary measures against prisoners who violate prison regulations. This punishment also entails depriving the prisoners from joining group sports and activities, correspondence or buying consumer products.

While disciplinary measures that the prison administration levies should not last longer than 2 weeks, this rule is rarely abided by: prisoners are likely to spend months or years in solitary confinement to pressure them into cooperating with security institutions. For instance, on July 29th, 2007 three brothers Ameer (31), Mo'az (24) and Mohammed (25), all sons of Abdallah Thabet Mohsen Al Abab were arrested by Political Security forces in San'aa and detained in solitary confinement for 2 months, rather than the legally permissible 2 weeks. Abdel Hameed Ahmed spent 8 months of his 2-year detention held in solitary confinement. His solitary cell in the Political Security prison was no larger than 1 meter by 2. Egyptian citizen Gamal Hammam was imprisoned by National Security forces and remain in solitary confinement from his arrest in 2004 until he was transferred to the Egyptian authorities in March 2007.

Enforced disappearances, arbitrary arrests and detentions

The Yemeni Constitution (Article 48d) states that « at the time of arrest, the accused may designate a person to be immediately notified of the arrest and of any court order extending his detention. Should the arrested person be unable to designate a specific person, his relatives or whoever it may concern, should be notified »⁵.

However arbitrary arrests and/or enforced disappearances in Political Security detention centers for months or even years before arraignment are common in flagrant violations of the international human rights standards and the Constitution of Yemen (Art. 48 see infra)⁶ as well.

The victims of enforced disappearances and therefore subjected to arbitrary arrests, are often subjected to arbitrary detention as well. The cases of persons detained for prolonged periods without any charge or trial are numerous. The UN Working Group on Arbitrary Detention (WGAD) gave several opinions on arbitrary detentions in Yemen in the framework of measures countering terrorism over the past years.

The National Security authority and the department of Anti-terrorism in the Ministry of Interior underwent significant developments in the end of 2002. The latter partnered with the Political Security authority to carry out unconstitutional waves of arrests, detaining hundreds of suspects and their relatives for long periods of time. Cases of enforced disappearances may last a few months, or several years. According to the information received, on occasion, some suspects were unlawfully executed.

Four Cameroon citizens: Mouafo Ludo, Pengou Pierpe, Mechoup Baudelaire and Ouafu Zacharie, sent a letter to the national committee for the defence of rights and freedoms on August 13th 2004 describing their abduction from Sanaa Plaza hotel in March 1995 by Political Security forces and their consequent imprisonment in a solitary cell underground for years without appearing before a judge. Ten years after their abduction, in 2005, Minister of Interior Rashad al Eleimy acknowledged their existence after an MP asked him to validate or deny the story. He stated that they would be referred to courts soon on charges of "forming a gang targeting the national economy" through

⁴ Article 34 of the Prisons Regulations Act No. 48 of 1991

⁵ Unofficial translation.

⁶ Unofficial translation

committing acts "including drugs, money laundering and counterfeiting currencies"⁷. Today, after 14 years of enforced disappearance and illegal detention, none of them have been tried or presented to the General Prosecutor.

Yasser Abdel Wahab Al Wazeer left his house on June 5th 2007 and has not returned since. He has been in a Political Security prison for over a year. His family was notified of his detention by Political Security only after three and a half months of searching for him. He had been arrested outside a mosque with no warrant and was not allowed to appear before a court or General Prosecution.

Al'Ezzy Saleh Ahmed Rageh Al Omar (30) disappeared when he was arrested without a warrant on May 7th 2005. Two months after his arrest his family found out he was detained with Political Security for unknown charges.

Many cases of detention were recorded during the events known as the "Bani Hashish events" in May 2008, when a group of Houthis seized Rajam Mountain in Bani Hashish district (40 kms North East of the capital San'aa). Violent clashes with the armed forces led to casualties on both sides. The conflict instigated a wave of arrests by the government in an effort to contain the situation. This campaign was not limited to those who participated in the violence but whoever happened to be in the area at the time, as well as family members of the suspects.

Yehia Ali Abdallah Luqman and his nephew Ibrahim Mohamed Ali Luqman were arrested while they were in the Bani Hashish area in May 2008 and were not heard from for 3 months after the Bani Hashish events. Their family discovered that they had suffered some wounds during the conflict. They are held in a Political Security detention center in deteriorating health conditions as their wounds and the shrapnel on their bodies have not been tended to medically.

In another case, Abd Al Rahman Yehia Al Ahgy, also arrested during his stay in Bani Hashish, was found by his family after three months of searching. When they found him his body was swollen, he was unable to speak, and shrapnel fragments still remained in his head. His injuries have received no medical attention.

Families who search for their loved ones are sent away by Securities officers who deny their presence in the facilities. Meanwhile, the disappeared person is relentlessly subjected to psychological and physical torture and ill-treatment. Interrogation and questioning occur amidst a context of sustained isolation and solitary confinement. Suspects' statements are extracted in this framework of enforced disappearance and complete separation from society or even fellow inmates. When and if suspects do appear in court, judges usually neglect to investigate the legitimacy of their prior detention.

Illegal methods used by Security officers to catch suspects have been denounced. To cite but one instance, Mohamed Ahmed Al Muftah, a man in his mid-40s, was driving his car with his children as three cars appeared, blocking the road suddenly and forcing him to swerve over the side walk. A group of armed men wearing civilian clothing came out of the cars, opening fire at the car and destroying it completely. The children were injured and their father, struck by fear and disbelief and

⁷ <http://www.hoodonline.org/det.php?sid=568>

still unsure about the safety his children, was arrested without a warrant and taken to the Political Security prison. He was not visited there by any General Prosecution representatives and only met them after he was released in September 2007. This is not uncommon: most prisoners in security organ prisons do not meet any judicial body before they are released.

Yasser Abdel Wahab Al Wazeer an engineer and activist left his house to pray on the afternoon of June 5th 2008. When he didn't return that evening his wife, Alaa Al Shamy, tried to contact him on his mobile phone repeatedly, but it was switched off. Accompanied by some family members, Al Shamy approached police stations to ask about her husband but did not succeed at finding his whereabouts or possible reasons for his arrest. The family was notified that Yasser was in a Political Security prison after three and a half months of searching. They received a phone call from Political Security to inform them of his detention. At the time of writing the report, Yasser was still detained in Political Security prison without any legal justification.

On December 29th 2007 a Yemeni human rights organization⁸ was informed by the family of Delmi Ali Delmi (30) of his disappearance since his return from Syria at the end of 2006. The family stated that they had heard of his return and that he is suspected to be detained with Political Security, but had been unable to see or communicate with him in any way. The situation remained that way until the end of 2008. On February 22nd 2009, Political Security forces in the capital abducted a young man called Hussein Nasser Ali Almoroula from the streets of San'aa. He was hidden from his family and deprived all forms of communication. His family was only informed of his location in early July 2009.

In January 2005, the Department of Anti-Terrorism arrested Abdallah Abd El Mo'ez Taha Al Hatar (23) on suspicions of involvement with Al Qaeda factions. By the end of August 2007 he had not been transferred to a court or General prosecution or received any charges for his arrest.

The arrest of Taha Hassan Ali Al Seheily (25) in November 2004 also occurred without a warrant or any judicial decision. He was detained in several prisons including Qahza prison in Sa'dah governorate, the Political Security and Central prisons in Ta'izz and the Central prison in San'aa. Taha El Seheily, imprisoned five years to date, has still not appeared before any judicial body.

According to Category III of arbitrary detention as defined by the WGAD, "the total or partial non-observance of the international norms relating to the right to a fair trial" makes detention arbitrary. Fair trial guarantees include among others "pre-trial" rights, access to court, trial within a reasonable time etc. The Yemeni authorities largely failed to ensure the respect of these guarantees in contradiction with international human rights standards and the Yemeni law as well. Article (48) of the Constitution of the Republic of Yemen upholds that: « i. The state shall guarantee, for its citizens, their personal freedom, dignity, and safety. The law shall specify cases of depriving a citizen of his freedom. No one may be deprived of his freedom except under a ruling by a competent court » (see below).

Prisoners' relatives often fear approaching detention centers or inquiring about reasons of detention, due to the likelihood of suffering retaliation from security officers who are known for acts of revenge and arresting relatives who persistently search for their loved ones. On July 21st 2007,

⁸ Information received by HOOD

Mohamed Ahmed Ali Al Hamati was arrested for repeatedly asking about his brother, who had been arrested by Political Security forces in the capital.

Extended detention without charges and/or trial

According to the Yemeni Constitution, security forces have the right to detain suspects for 24 hours before referring them to the Public Prosecution, which could renew the detention for a further 7 days.⁹ The delay before appearing in court before a judge may reach 45 days, and the court can renew the detention period for a duration not exceeding six months. The Constitution stipulates that all those arrested on suspicions of committing a crime must appear in a court within 24 hours of his/her arrest wherein the judge or public prosecutor must inform him/her of the reasons of their arrest, question them, and provide him/her the opportunity to give a statement. A decision to continue detention or release the detainee must be made immediately, and under no circumstances can public prosecution hold detainees for longer than 7 days without a judicial decision.¹⁰ The law states that the maximum duration of pre-trial duration, whose conditions and proceedings are outlined in the penal code, is 6 months.

These legal provisions are rarely abided by. Detainees are imprisoned for months or years without appearing in court or to the Public Prosecutor, or even meeting their lawyers and relatives. Justifications for the non-compliance of security forces with Yemeni law were attempted by Ali Saleh Tayseer, Deputy Minister of Human Rights and Alsayed Ahmed Aljandebi, President of the Technical Office of the Public Prosecutor during their meeting with FIDH. Their reasoning indicated that security institutions are distracted from factors such as the maximum duration of detention due to the massive amounts of cases they deal with. They denied, however, that such distractions have led to months or years of illegal detention.

The responsibilities of the General Prosecution put forth by law include monitoring prison conditions and records, as well as direct communication with prisoners and securing the immediate release of those who are illegally detained¹¹. There are indeed General Prosecution offices in

⁹ Article 47e and 48 c of the Yemeni Constitution.

¹⁰ Article 76 of the Code on Criminal Procedures « Anyone who is temporarily arrested, due to being suspected of committing a crime shall be presented to the Judiciary within 24 hours from the time of the arrest at most. The Judge or the member of the Prosecution shall advise him of the reason for the arrest and to interrogate him and allow him to make his defenses and protests; they shall also issue an order with cause for his provisional arrest, or else release him. Article 189: The arrest warrant issued by the General Prosecution is effective for only seven days after its issuance following the arrest of the suspect, or his hand-over to the General Prosecution, if he is arrested by before; the implementation of the arrest warrants or summons or arrest issued by the General Prosecution shall not be honored after the lapse of six months following their issuance, unless otherwise extended. Article 190: If the General Prosecution felt the need for extending the provisional arrest of a subject, it must, prior to the expiry of the period of arrest show the papers to the Judge of appropriate jurisdiction to issue the appropriate instructions which he considers to appropriate after hearing the statements of the General Prosecution and the suspect. The judge may extend the arrest period or periods as necessary but it shall not exceed a total of forty-five days. Article 191: If the investigation is not yet finalized even after the end of the period of provisional arrest mentioned in the previous article, the General Prosecution shall present the papers to the Appellate Court in the governorate of appropriate jurisdiction, while is in session in the Court Chamber, to issue its orders after hearing the statement of the General Prosecution and the suspect. It may extend such arrest for periods that do not exceed in total forty-five days if that would be in the interest of the investigation or the release of the suspect under bail, or without bail. Available on: <http://www.unhcr.org/refworld/docid/3fc4bc374.html>

¹¹ Article (13) of the Code of Criminal Procedure, No. 13 of 1994, states that « Anyone who is aware of any person having been arrested without any legal justification or in a place that is not set up for such arrests, shall immediately

governorates' central prisons to guarantee the legality of any detention process.¹² It is therefore all the more alarming to consider the Prosecutor's silence and indeed deliberate efforts to conceal prolonged and illegal arrests and violations occurring in detention centers. The failure of the Prosecution to uphold the law and its implication in perpetrating violations has meant that illegal detention is left to continue for years at a time. These concerns are reinforced given the fact that many high-level officials in the Public Prosecution come from military and security backgrounds. Over the past years, hundreds of "suspects" who were detained for months or years never received the charges against them.

Hence Yemen definitely failed to "take immediate steps to ensure that arrests and detentions are carried out under independent and impartial judicial supervision".

Unfair trial guarantees

Illegal interrogation led by Security officers and leniency of the Judiciary

Security institutions have multiplied in recent years and their power and competence have stretched considerably.

Political Security and National Security are granted the legal right to carry out large scale investigations and their officers enjoy the same authorities as judicial enforcement officers¹³, as per Article (7) of the founding document of the Political Security organ and Article (5) ii of Decree No. 262 of 2002 which denotes the structure and functions of the authority for National Security. Alarming, these provisions allow security institutions privileges that match those usually reserved for judicial institutions while also creating a framework of impunity in which they can operate (cf. infra).

However, as Judicial Enforcement Officers, Political Security and National Security officers are legally delegated as under the supervision of the General Prosecution and allocated jurisdiction as such. But the clasp of the General Prosecutor on Judicial Enforcement Officers is lenient and porous if existing at all. The Political Security organ detains people for years without bothering with orders from judges or the General Prosecution. The location of detention is concealed for several months and may exceed one year in some cases.

In fact, according to Yemeni law, Security and police officers may only question detainees in cases of non-grave crimes for which the penalty would not exceed 3 years imprisonment. They are thus not entitled to do so in grave crimes, for which penalties may surpass 3 years imprisonment, which must be directly investigated by the General Prosecutor. The law does not ascribe Intelligence or Security agents the right to investigate the case or interrogate the suspect: bearing in mind a legal differentiation between interrogating the defendant and evidence collection. The former implies conducting detailed questioning that will be associated to the defendant and evidence collection, which does not go past transcribing the arrested person's testimony without any questioning, would lie exclusively in the jurisdiction of members of the general Prosecutor, as prescribed in Article 117 of the Code of Criminal Procedure ("the member of the General Prosecution may delegate a Judicial

inform the General Prosecution thereof. The member of the General Prosecution shall immediately move [to the place of arrest] and release the detainee without any justifiable cause. If the arrest is under due process of Law than he shall be moved to one of the penal institutions. In all cases, report shall be written of the measures that are taken. » (unofficial translation).

¹² General Prosecution Act, Article 7(e)

¹³ These officers are identified according to the 84th article of the Yemeni Code on Criminal Procedures law and consist of 9 categories, including members of the General Prosecution and various divisions of police officers, as well as employees such as Political Security and National Security officers.

Enforcement Officer to carry one or more tasks in the investigation of a crime, except the interrogation of the suspect" ...).

In effect, it follows therefore that the so-called "Evidence Collection Records" is data collected by questioning defendants illegally: in violation of the legal jurisdiction of law enforcement officers and constitutes a breach of all the rights ascribed in the Code of Criminal Procedure.

These invalid records do in fact reach the competent Prosecution (State Security Prosecution), which fails to renounce their legitimacy and instead, endorses the substance permitting its use against the defendant. In further annihilation of the suspect's rights, usually they are not transferred to a pre-trial detention centre monitored by General Prosecution¹⁴, but remain under the iron clench of the same Security organ- thereby ensuring the threat of repeated torture and prolonged imprisonment if suspects attempt to change or amend their statements.

In further violation of the national constitution, interrogations carried out by Security and intelligence organs, or even ordinary police, may never occur in the presence of the suspect's legal counsel.

Admissibility of confessions obtained under torture

Despite the constitutional guarantees (Art. 48 b)¹⁵ and provisions of the Code on Criminal Procedure regulating the general proceedings for conducting arrests (Art. 70 to 83), which prohibit the infliction of physical or psychological harm to procure a confession or for any other reason, no investigations were ordered to support those who claimed during trials that they had been tortured in detention.

Yemeni courts do not appear to take allegations of torture seriously, investigate them or have forensic physicians validate them. Examining the reasoning for court decisions in cases where torture claims were made indicates that such allegations are not taken seriously by judges. For example, one defendant, 20 years-old Taha Ali Mohamed Al Hada' is reported¹⁶ as saying "that he was arrested in Mareb and deprived of sleep and a bed for 3 days, that he received threats that his nails would be pulled out, was transferred to Political Security in Sanaa. He stayed there for 5 months without investigation: he was the youngest in the group and the one who suffered the most torture."

The testimony of 20-years-old Bandar Mohamed Mohsen Al Akoo' is noted in the court reasoning, which reads¹⁷

"He replied that he has signed and impressed his fingerprint on many things he didn't know under conditions of mental and physical torture, the prosecution was permitted to read his statement from the prosecutor's investigation...after that he was asked by the court if he signed the prosecutor's statement, he said he was interrogated by the prosecution inside the headquarters of Political Security, he had been moved, blindfolded, by the same officers of the national security- he recognized their voices."

¹⁴ Except in rare occasion in particular, at the stage of the ruling for appeal.

¹⁵ Art. 48 b stipulates that « Physical and psychological torture are prohibited. No one may be forced to give a confession during an investigation. Anyone whose freedom is restricted has the right to remain silent and to speak only in the presence of an attorney. No one may be jailed or detained in places other than those governed by the law regulating prisons. Physical punishment and degrading treatment at the time of arrest or during jail or detention are prohibited » (unofficial translation).

¹⁶ Criminal case No. 13 for 1438 AH of the Specialized Criminal Court; Court Order No. 13 dated 7/11/2007.

¹⁷ Ibid

While the trial records and the decisions produced by exceptional courts document the existence of torture allegations raised by the defendants, there is nothing that indicates whether the judge had any reaction and ordered any investigations to authenticate the claims or was simply satisfied to hear the stories. The disregard demonstrated by judges toward the possible occurrence of torture raises serious question about their integrity and independence from political and security organs. This doubt is fortified by the fact that many positions of leadership in judicial institutions are taken up by individuals from security or military backgrounds.

Impunity for those responsible of torture

While designating them some responsibilities that overlap with those of public security as well as judicial authorities, it is impossible to refer an officer working under the National or Political Security institutions to a normal judicial court- civil or criminal – thus establishing a status for those institutions that is entirely separate from other police organs. Their employees can be pursued only within military courts, completely lacking transparency and independence, effectively depriving afflicted parties from true legal recourse and creating a setting in which violations can be committed with no fear of consequence.

Despite the prevalence of torture allegations against Political Security, National Security and Anti-Terrorism forces, no officer of these security institutions has been pursued in conformity with the legal standards. Ali Saleh Tayseer, Deputy Minister of Human Rights and Ahmed Al Jandaby, head of the Technical Office for the Public Prosecution argued that there had in fact been torturers who faced legal recourse. Both failed, however, to cite any names or other facts and figures about these alleged cases. Neither could they present a single verification of the claim that such prosecution has ever occurred. It is expected that perhaps some rare individual cases were tried for torture or ill treatment, but those cases did not involve individuals working under the security organs addressed for the purposes of this study, that is, those dealing with cases pertaining to national security, political security and terrorism.

Victims of human rights violations rarely submit complaints against torturers in fear of the revenge that might be inflicted upon them by these security organs. Many released prisoners are threatened that they and their families will be captured and tortured if they speak out about the suffering they endured. It should be noted that such acts of revenge have in fact taken place in some instances where threats of retribution were made against former victims of torture.

Sha'ef Ali Al Heimi was detained on January 24th 2007 by National Security forces and endured a month of continuous and systematic torture. In a rare occurrence, he was bold enough to disclose the details of his torture in a public seminar organized by human rights organizations, despite the threats of revenge on him and his family made by his torturers before his release. After the seminar he was arrested again and referred to a criminal court where he was accused of heading a gang of thieves who posed as security agents. He stayed in jail for 4 months before the court released him.

It is therefore unsurprising that most victims of crimes committed by security institutions whom the FIDH delegation met seemed extremely fearful. Many of them asked the FIDH delegates not to disclose their names to protect themselves and their families from acts of revenge such as that which befell Al Heimi.

Another obstacle to bringing torturers to justice is the impossibility of identifying them: victims are often blindfolded during their torture, and the perpetrators may also be masked. The absence of a specialized authority in Yemen to receive complaints against security organs and police officers poses another serious challenge to the implementation of justice.

Restricted access to Security agencies' premisses

The General Prosecution, the authority mandated to monitor prisons and the legality of detaining prisoners, appears not to have carried out its role with integrity or independence as many prisoners remain in detention for months or years at a time without appearing in front of the General Prosecution or any judicial body.

Despite the fact that vast numbers of those who were detained by Security organs claim they were subjected to torture or humiliating treatment by Security Forces, no judicial or parliamentary proceedings are taken to validate such allegations and no human rights organizations are permitted to enter detention centres where suspects arrested in the context of the "war on terror" are held. Security officers often warn those released from approaching human rights activists or organizations.

In its response to the Committee against Torture, dated September 26th 2005, the Yemeni government indicated that the International Committee of the Red Cross (ICRC) had visited prisoners and talked to them. No local¹⁸ or international human rights organization has been permitted to enter the prisons run by National Security, Political Security or Anti-Terrorism authorities. It appears that the ICRC's visit occurred in 2004, i.e- before the Committee against Torture's review and consequent recommendations.

To date, the state of Yemen has not responded to any invitation request put forth by local and international organization. Even Yemeni members of parliament¹⁹, some of whom requested visits repeatedly to look into allegations of torture, receive no reply.

On the other hand, the government of Yemen informed CAT that an independent parliamentary committee had been established to monitor the conditions of prisoners and has produced an impartial report of its findings. Unfortunately, the FIDH delegation was unable to meet this committee, find its members or see the aforementioned report. Indeed, MP Ahmed Seif Al Hashed – member of the parliament's Rights and Liberties Committee and president of Change organization for the Defence of Rights and Liberties – denied that such a committee was ever formed. MP Al Hashed has stated that his requests to visit the National and Political Security prisons submitted in his capacity as a member of the Rights and Liberties committee were all met with no response.

The Yemeni government also indicated in its 2005 response to CAT that prisoners are allowed to meet their relatives. This was unconfirmed by most detainees held for "security" or terrorism charges who said they were deprived visitation rights for months at a time. Some family members may be allowed irregular visitations while separated by a large partition, perhaps consisting of metal bars, deeming conversations extremely difficult, almost inaudible.

Proceedings before Specialized Criminal Court: a total disregard of fair trial guarantees

In the aftermath of the assault by the "Aden-Abeen Islamic army" against tourists in Abeen in December 1998, a Specialized Penal Court was established by the Republican Decision No. 391 of 1999. Many Yemeni legal experts consider this court as unconstitutional according to Article 150 of the Constitution of Yemen which states that, "Exceptional courts may not be established under any conditions".

In addition to have been created unconstitutionally, the functioning of the court widely contradicts the international standards of fair trial. For instance, as previously detailed, the court validates and

¹⁸ HOOD has been denied its numerous visit requests

¹⁹ Press release <http://www.anhri.net/yemen/makal/2009/pr0812.shtml>

circulates "Records of Evidence Collection" that should be renounced for their legal fallibility, and continually fails to condemn illegal procedures of arrest and detention that may last for years. The court refuses to refer allegations of torture for investigation even when the marks of violence and violation are obvious on the defendant's body, as occurred in the case of El-Heimy who was tortured by National Security officials. In fact, even according to the unconstitutional stipulations of the court's jurisdiction, crimes of torture should not be referred to it. The Court also prevents lawyers from accessing their clients' case files despite a clear guarantee of this right in the Code of Criminal Procedures.

Concerns linked to the upcoming adoption of an "anti-terrorism" law

The concluding observations of the Universal Periodic Review on Yemen stated that measures should be taken to ensure that the campaign to combat terrorism is implemented in a framework of accountability towards human rights. In 2004 the Committee against Torture observed that anti-terrorism efforts must not preclude international obligations.

Apart from Republican Decision No. 391 of 1999 establishing the Specialized Penal Court, which many Yemeni legal experts consider to be unconstitutional, there has been no national legislation addressing terrorism- pending the draft laws on Money Laundering and Funding Terrorism, the draft Anti-Terrorism law and the draft amendments to the criminal and penal code.

On August 3rd, 2008 the Yemeni government submitted a draft Anti-Terrorism law consisting of 26 articles to the Parliament, which in turn transferred the draft to the specialized committee (the constitutional committee) where it remains to date. The law is expected to be put to vote in the October 2009 parliamentary session. The reference for the legislation is Arab Agreement for Combating Terrorism,²⁰ which was adopted by Arab ministers of Interior and Justice in Cairo in 1998 and ratified by Yemen the same year²¹. The Arab Agreement itself is widely criticized by human rights organizations²², and the draft law is expected to reflect many of the same dubious tenets. The Arab Agreement effectively disregards many rights that are guaranteed in international human rights and humanitarian law. Its definition of torture is broad, permitting manipulation and false interpretation. The violations of freedom of expression and opinion, personal privacy are cause for concern. Human rights organizations have expressed their distress with the absence of legal/judicial procedures pertaining to the delivery, arrest or detention of individuals.

Despite the concerns and recommendations raised by human rights organizations, the authorities do not intend to make any amendments to the law or even put it to public debate.

²⁰ The Arab agreement for combating terrorism <http://www.alerhab.net/look/article.tpl?IdLanguage=17&IdPublication=2&NrArticle=118&NrIssue=1&NrSection=6>

²¹ The Arab Agreement for combating terrorism was signed by Arab ministers of Justice and Interior in Cairo in 1998 and Yemen ratified in by Republican Degree No. 34 of 1999

²² Amnesty International, "The Arab Agreement for Combating terrorism: A great danger to human rights" <http://www.amnesty.org.ru/library/Index/ARAMDE010012002?open&of=ARA-312>

Recommendations

FIDH and HOOD urge the Government of Yemen to :

On respect of International Human Rights Law and cooperation with UN bodies:

- Adopt a definition of torture in conformity with Article 1 of the Convention Against Torture, as previously recommended by the Committee Against Torture
- Ratify the Optional Protocol to the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance
- Invite the UN Special Rapporteur on Torture who submitted two visit requests to Yemen in 2005 and 2007 but has received no replies
- Invite the Special Rapporteur on the promotion and protection of human rights while countering terrorism in order to benefit from his advisory services and technical assistance, in particular on the necessary amendments to the draft Anti-terrorism Law and Money Laundering and Funding Terrorism Law

On conditions of detention:

- Take measures to effectively end the practice of incommunicado detention, as previously recommended by the Committee Against Torture. In particular, ensure that relatives of detainees are promptly informed about their whereabouts
- Allow visits of all detainees by independent bodies

On guarantees of fair trial :

- Ensure immediate access of detainees to legal representation, including for detainees held by the Political Security Department, according to the recommendation accepted by Yemen during its UPR and previous recommendation by the CAT
- Ensure the subordination of security services to the Public Prosecutor, in particular their respect of maximal duration of pre-trial detention and delays of indictment
- Release all prisoners detained without charges for an unlawful period of time, or ensure their indictment and trial in a timely manner

On impunity and the rule of Law:

- Immediately investigate allegations of torture in a thorough and impartial manner (including those raised in this report) and ensure the accountability of those responsible
- Immediately end the practice of holding relatives of alleged criminals hostages in order to obtain the rendition of the later to the police
- Dissolve the Specialized Criminal Court, as it is contrary to Article 150 of the Constitution of Yemen

On human rights and the fight against terrorism :

- Ensure the full conformity of anti-terrorism measures with human rights obligations of Yemen, as recommended during its UPR with the support of Yemen. In particular, amend the draft Anti-terrorism and Money Laundering and Funding Terrorism laws, in a way that guarantees the protection of human rights, including on the definition of torture and the procedures related to the detention of suspects.

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