

## **The Status of Torture in Yemen**

### **Second Parallel Report by Yemeni Civil Society Organizations on Yemen's Compliance with the Convention against All Forms of Torture and Other Forms of Inhuman and Degrading Treatment (CAT)**

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## Background

The Republic of Yemen is located in the Southern part of Arabian Peninsula, with Sana'a as its capital. Yemen covers 527,000 km<sup>2</sup> and has a population of 22 million, 86% of whom live in rural areas. The illiteracy rate rises to 54% among adults, most of whom are women. Apart from a very small Jewish minority, most Yemenis are Muslims of the Shafi'e or Zaidi sect. There is also a small Ismaeli minority.

The President of the Republic, Field Marshall Ali Saleh, has ruled Yemen since 17 July 1978. The Constitution provides for the separation of powers. Although the President has relinquished his post as head of the Supreme Judicial Council, the separation of powers remains elusive to-date.

Oil represents 80% of Yemen's income. According to official statements, the country produces less than 300,000 barrels of oil per day. Most of the population works in the agriculture and fishing sectors. The UN Development Programme estimates that 54% of the population lives under the poverty line. The annual population growth stands at 3.2%. Malaria, typhoid, hepatitis and cancer are endemic, but health expenditure constitutes only 3.3% of the state's public budget.

Democratic freedoms and the structure of a multiparty system are set out in the Constitution that followed the unification of North and South Yemen in May (1990?). However, the outbreak of the war in 1994 seriously undermined democracy. The Yemeni Socialist Party (YSP) was expelled from the power and thousands of civil servants and soldiers were dismissed. Due to political imbalances, democratic accountability diminished with a decline in the number of political parties and independent Members of Parliament (MPs) after the 1997 elections which the YSP boycotted. In the 2003 elections, the ruling party (the General People's Congress) secured an absolute majority

(223 out 301 Parliamentary seats), leading to a decline in effective government opposition in Parliament. The number of women MPs declined from 11 in 1990 to only one in 2003. The current single constituency electoral system is a point of controversy amongst political parties.

Yemen is currently witnessing a political crisis. The peaceful 2007 movement against discrimination and deteriorating living conditions which began in the country's Southern governorates in 2007 has evolved into demands for a separation of North and South. The government has used violence to suppress the movement, killing a number of citizens and detaining many of the movement's leaders (who are mainly people dismissed or forced to retire following the end of the civil war in 1994). Since 2004, Yemen's northern Sa'da governorate, with a population of about 700,000 mainly Zaidi Shia, has also witnessed sporadic fighting between government forces and an armed group known as the Huthis. The violence in Sa'da has forced thousands of people to flee their homes, and international aid organizations have appealed for assistances to meet the needs of the displaced. Due to the unrest in the Southern governorates and the war in Sa'da, public freedoms were further suppressed. Many journalists, activists and others have faced arbitrary arrest and detention, abduction, intimidation, unfair trials and the government has closed newspapers, blocked websites and denied licenses to papers publishing articles that refer to the Sa'da war or to the Southern secessionist movement or that criticize officials.

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## Part one

### General Remarks on the National Report on CAT

1. Yemen's second national report was submitted in June 2008, two years late. Nevertheless, the submission of the report is a positive achievement when viewed within the context of a commitment to prepare and submit reports on time. The report tries to justify state actions and violations.
2. The second report is different from its predecessor in that it follows the required presentational guidelines, addressing one by one each of the CAT's Articles.
3. For the second time, despite observations made on the first report and contrary to explicit guidelines for preparing the report, the report avoids citing cases of torture. The report fails to describe the reality in Yemen and the violations that are part of daily life. Despite the fact that the number of torture cases has increased, the only incident of torture mentioned in both reports is the case Al Kokabany who was tortured to death in Al Tawila district in Al Mahweet in 1999. This proves that the authorities have not achieved any practical progress. Instead, incidents of violations over the past six years underline and make clear that there has been an increase in torture. The report ignores well-known cases dealt with by the courts, such as the cases of Samy Al Shargabi, Ahmed Hagar, Moeen Al Zary and Hashem Haggar, who died during his trial at the Specialized Criminal Court (State Security Court).
4. The second report mirrors the first in talking theoretically about the applicable legal framework without linking it to specific Articles in the CAT.
5. The national report does not answer the remarks and demands made by CAT Committee.
6. The national report does not address the reality of torture and inhuman treatment. It does not link the recognition of the state of torture to the challenges faced. Instead, it presents idealistic image of the law despite its poor implementation.

7. The national report ignores the fact that courts and organizations do not enforce CAT's articles and other relevant regional and international laws due to a lack of information among judges and law enforcement officers on ratified international agreements.
8. The state report fails to mention legislative or jurisprudential shortcomings and fails to comment on whether there have been legislative amendments in response to the CAT Committee's observations. It also fails to promise any progress in this respect.
9. The national report repeatedly refers to government projects relating to law enforcement bodies and other concerned parties, even though there has been no implementation of any such projects in the past six years.
10. Because they do not exist, the national report fails to refer to rehabilitation programs or plans to support torture victims, including material and moral compensation. In addition, the courts do not take into account complaints and allegations of torture raised by defendants at trial.
11. The government of Yemen continues to refuse to sign and ratify the CAT Optional Protocol, as stated in the government's response to Human Rights Council's observations made in its 12<sup>th</sup> session in September 2009.

## **Deficit and Noncompliance of National Legislation with International Standards**

### ***First: The Constitution***

1. Under Article 6 of its Constitution, the Republic of Yemen is obliged to apply the UN Charter, the Universal Declaration of Human Rights, the Charter of the Arab League and international law. However, due to the lack of clear constitutional and other legal provisions obliging the judiciary to implement such international agreements, including the CAT, national courts do not do so, making no reference to international

law. There is no record of any judicial decisions referring to international agreements such as the CAT.

2. Yemen's Constitution does not comprehensively define torture and does not comply with the CAT's definition. It bans torture only as a means of coercing a confession during arrest, investigation, detention and imprisonment. Punishment is limited to individuals who order or carry out acts of torture and does not extend to individuals who are otherwise complicit in such acts, as required by the CAT. It is necessary for the constitutional and legislative amendment process to bring the national definition of torture into line with the CAT's definition, as already noted in the November 2003 recommendations of the Committee against Torture.
3. Article 150 of the Constitution prohibits without exception the establishment of special courts. Nevertheless, in violation of Constitutional provisions upholding the principle of unity of the judicial system, the Specialized Criminal Court, a special judicial body, was established by a Republican Decree in 1999. In May 2009, a special court was created to deal with media cases as part of a campaign targeting the media during which many newspapers were unlawfully closed and websites blocked for addressing issues of public concern including unlawful acts in the South, in Sa'da and other areas.

### ***Second: Criminal Procedure Law No. 13 of 1994***

1. In contradiction to reasonable laws of redress, Article 26 of the Criminal Procedure Law provides that "criminal lawsuits may not be filed against a law enforcement officer or a public employee for any crime committed while carrying out his job or caused thereby, except with the permission of the General Prosecutor, a delegated Public Attorney or Heads of Prosecution." This provision is a serious obstacle for individuals wishing to pursue criminal cases against officials including those involved in the crime of torture. This provision must be annulled and replaced by one that

guarantees the right of any victim of torture or violence to file a criminal lawsuit. The legal system should produce rulings against anyone committing torture, even if the case is not filed by the General Prosecutor, given there is evidence that the General Prosecutor consistently declines ordering investigations into most allegations of violence and torture alleged to have been committed by law enforcement officers and public employees. At best, the General Prosecutor has blocked investigative procedures and has delayed them, thereby decreasing victims' willingness to pursue their cases. The few cases in which investigations did take place were ones involving the public interest. There have also been cases in which law enforcement officers have been registered as "fugitives" from justice, although the authorities know of their whereabouts and of the work they continue to carry out without obstacles.

2. Article 38 provides that the right to bring criminal lawsuits for serious or major crimes expires ten years after the date of the crime, except for crimes punishable by retribution, or where the blood money or wound money is one of the punishments stipulated for the crime. For less serious or minor crimes, only three years must elapse. This provision must be amended in accordance to Article 48 of the Constitution which provides that crimes involving physical or psychological torture should not be subject to a statute of limitations. In accordance with the Constitution, the law should be amended to exclude expiry of lawsuits. Article 167 of the Crimes and Penalties Law No.12 of 1994 provides that the abuse of official positions and the use of force and intimidation are "non-serious" crimes, punishable by a maximum of 3 years or a fine.
3. On the request of the Minister of Justice and in contravention of Article 9 of the law, the cabinet has not yet enacted a bylaw that provides for legal aid for the bankrupt and the poor. To-date, there has been no fund established to assist the poor with judicial proceedings. Instead, courts rely on lawyers of the BAR to volunteer their time on behalf of those who cannot afford legal fees.



### ***Third: Crimes and Penalties Law No. 12 of 1994***

1. Article 166 of the Crimes and Penalties Law fails to clearly set out that in cases of torture that lead to death, the punishment should be in line with the right to retribution (*qisas*) and with the statement "without prejudice to the right of the victim to retribution (*qisas*), blood money (*diyah*) or compensation for bodily injury (*arsh*)."  
It is necessary to unambiguously state that cases of torture leading to death are punishable, bearing in mind the right of the victim to retribution (*qisas*). This is especially important in light of the fact that beating a person to death, which is treated as an unintentional crime, does not qualify for the right of retribution. Therefore, the article should not provide that the penalty for torture is imprisonment for up to ten years with an entitlement to blood money (*diya*). This encourages the continuation of torture.
2. Article 168 refers to engaging in a "cruel" act and does not recognize such acts as torture. It mentions only "unlawfully inflicted cruel acts that cause bodily pain" and entirely overlooks forms of psychological and moral torture.
3. Neither the Criminal and Penalties Law nor the Law of Penal Procedures address the entitlement of torture victims to compensation or the need for rehabilitation.
4. The weakness and lack of independence of the judicial system leads to the continued impunity for torturers and to a lack of prosecutions.

### ***Fourth: Military Penal and Criminal Law of 1994***

Articles 48, 50, and 51 of the Military Penal and Criminal Law cover what legislators described as "the use of cruelty" and provide for between 1-2 years imprisonment. In reality, this provision refers to torture and the punishment should be increased to discourage its occurrence. Further, there are no inspection programs to monitor locations such as the Military Prison, Central Prisons, Political Security Prisons, National Security

Prisons, and other detention facilities, which leads to their transformation from rehabilitation places into penal facilities in which torture is widely practiced.

***Fifth: Law of Evidence No. 21 of 1992, as amended by law  
No. 20 of 1996***

This law has not been amended since the previous CAT report. Consequently, the observations made in the previous shadow report remain pertinent:

- 1- Article 45 states that in the case of all “*Hudud*” and retribution crimes (*qisas*), a court may only consider two statements by male witnesses. This clearly prohibits women from testifying in cases of torture, in clear violation of the right to testify in such cases.
- 2- Article 27(d) adds another prohibitive condition on accepting statements, providing that a person may not submit a statement if they would personally benefit or thereby deter harm. All courts interpret this provision to reject statements made by defendants' relatives, except in the case of those related in the fourth degree. The effect is to exclude statements of parents, children, spouses, siblings, and uncles or aunts.
- 3- A new provision should be added providing for an exception to normal rules of evidence for defendants who claim they have been tortured, particularly in cases in which arrest, detention, imprisonment and interrogation occurred in a manner prohibited by law. The occurrence of such unlawful procedures should be considered as strong indication that torture does in fact take place.
- 4- Article 5 relegates medical reports to sixth place in the evidence hierarchy. This clearly does not comply with the requirements of torture cases.

<sup>1</sup>Hudud crimes are crimes set out in Quranic doctrine.

## **General Issues**

1. Lawyers are persistently blocked by the General Prosecutor's failure to cooperate in cases relating to torture and forced disappearance. The prosecution considers that documenting testimony is enough, deeming it a time-consuming and unproductive channel of investigation.
2. The General Prosecutor's representatives frequently fail to inspect places of detention, in clear violation or relevant law.
3. In most cases, lawyers are prevented from being present during the entire interrogation process, from meeting defendants and from obtaining a copy of investigation reports in cases involving security organs such as National Security, Political Security, Police Divisions and the Criminal Investigations department. Lawyers are only allowed to attend at the Prosecution. This constitutes a breach of defendant's right to fair trial, particularly those on trial for political reasons.
4. To-date, no executive regulation relating to the Law of Criminal Procedure and Crime and Punishment law has been issued. Officials operate on the basis of guidelines issued by the General Prosecutor which are changed every time a new General Prosecutor takes up his office.
5. In blatant violation of the law, defendants are often interrogated by the Department of Criminal Investigation at night.

## **Torture, cruel, inhumane and degrading treatment cases**

1. Ali Moqbel Saleh Monser was detained in December 2003 in Ta'iz by the Local Security Forces. He was severely beaten before being imprisoned. He was denied the necessary medical attention. After he had finally been transferred to hospital, he was taken back into detention despite doctors' insistence that he should remain

- hospitalized. According to his medical report, his bladder was bleeding and infected. He died on December 19.
2. Hashem Hagar was arrested in September 2007 in Sana'a on charges of belonging to the Sana'a 2 terrorist cell. His health condition deteriorated in prison due to a Hepatitis infection. He was prevented from receiving medical treatment, despite judicial orders that he receive treatment. His testimony included allegations of torture that were never investigated. He eventually died on September 30, 2007 due to his serious health condition.
  3. Adel Ali Saleh Al Azany from Abyen was detained by the department of Criminal Investigation for over 50 days during which he was interrogated on accusations of looting a house. Before he was finally denied all visitors rights, he informed his family that he had been tortured. On May 18, 2008, his family was told he had committed suicide. They were told he was found in a prison bathroom with his hands tied behind his back and a noose tied around his neck, which a medical report identified as the manner of suicide. The report also stated that there were burn scars on his body, which corroborates the allegation that he had been tortured.
  4. Aballah Omar Bin Abdat, aged 15 years, was detained in 2009 in Hadramaut. He was detained in Seyo'on Security Department without charges. After undergoing several interrogations, the General Prosecution in Seyo'on ordered Abdallah's release due to insufficient evidence and due to the unlawful nature of his continued detention. Abdallah's father accused the Seyo'on Security bodies of detaining his son in inhumane conditions, referring to the fact that the temperature in his cell reached 45 degrees Celsius and that he was subjected to arbitrary procedures unsuitable for the physical capacity of a young boy, the consequences of which caused him to lose his memory, the ability to speak and to walk

normally. Abdallah now suffers very serious psychological and nervous disorders, verified by his medical reports.

5. Azeem Hassan Abdallah Al Wasaby, aged 14 year, was detained on May 14, 2007. He was tortured in the custody of Police Officers in the capital Sana'a who kicked, stripped and threatened to rape him.
6. Moneef Abad Al Khulany, aged 13, was arrested in Sana'a on May 1, 2008. Accused of stealing, he was tortured by police officers who beat him with cables, slapped his face, kicked him brutally and threatened to rape him, causing him to attempt suicide.
7. Lo'ay Abd Al-Wahab Al Moaed was detained in Sana'a on June 30, 2008 by National Security Forces and subjected to physical and psychological torture. He was suspended from the ceiling by his arms and parts of his back were burnt. He was beaten with a stick, slapped and kicked, prevented from using the toilet for long durations, denied food and threatened with rape. He was forced to speak dirty phrases and imitate animals.
8. Beginning on 27 August 2007, The journalist and writer Abdulkarem Al-Khewani, was subjected to repeated imprisonment, beating and abduction. He was threatened with having his hand cut off.
9. Beginning on 9 October 2006, Ali Al-Dailami, a human rights activist, was subjected to forced disappearance, detention, solitary confinement and torture for 33 days at the Political Security Prison.
10. Ms. Anisa Al-Shuaibi, accused of killing her husband, was detained with her children by the Criminal Investigation Department in Sana'a and was tortured and raped.
11. Ms. Basma Al-Zagher was accused of killing her parents and was subjected to torture, intimidation and nocturnal interrogation.

12. Ms. Intisar Al-Sayani, accused of being a terrorist, was abducted by Political Security, intimidated and interrogated at night in clear violation of the law.

## Recommendations

1. Commit to respecting deadlines for submission of periodic reports every four years.
2. Ensure that any forthcoming legislative amendments incorporate an unambiguous definition of torture that conforms with that of the CAT.
3. Establish legislation addressing the shortcomings set out in the report to achieve conformity with the CAT.
4. Amend Article 166 of the Crimes and Penalties Law No. 12 of 1994 to ensure that where torture leads to death it is treated as murder with intent.
5. Amend Article 168 of the above-mentioned law to include all forms of torture and provide for more serious punishment to help prevent impunity.
6. Amend the Crimes and Penalties Law to ensure just compensation for victims and uphold their entitlement to rehabilitation.
7. Monitor the implementation of judicial decisions issued against perpetrators of torture.
8. Ensure General Prosecution staff carry out their role in monitoring places of detention and rehabilitation centers, and grant them the authority to inspect Military, National and Political Security Prisons.
9. Amend Articles 47, 50, and 51 of the Military Penal and Criminal Law to reflect the CAT's comprehension definition of torture and ensure sentencing reflects the seriousness of the crime.
10. Increase the evidential value of forensic and criminal medical reports in cases involving torture.

11. Ensure that detention is carried out in a lawful manner; permit the General Prosecution to inspect defendants' detention conditions; allow lawyers to attend questioning and upholding visitor's rights.
12. It is crucial that the State report includes reference to cases of torture, violations, relevant reasons, and steps taken to prevent recurrence.
13. To help ensure fair trials, oblige judicial organs to open new investigations into defendants' allegations of torture.
14. Oblige judges to implement the CAT and other ratified international covenants and agreements and take them into account when looking into cases and lawsuits.
15. Ratify the CAT's Optional Protocol and make prisons accessible to local and international organizations.
16. Uphold the right of victims of torture to compensation and rehabilitation.
17. Abolish solitary confinement and demonstrate increased concern for the health of prisoners and for humane detention conditions.
18. Ratify the Rome Statute of the International Criminal Court.
19. Provide technical and financial support to civil society organizations to implement rehabilitation and training programs and awareness campaigns for the judiciary, media and civil society to combat torture among security organs and law enforcement personnel.
20. Allow international human rights organizations to visit Yemen and provide entry visas to the country.
21. Respond to the request made by the Special Rapporteur on Torture to visit Yemen and end the current practice of rejecting such requests.
22. In accordance with the undertaking of the government of Yemen in its report to the 12<sup>th</sup> session of the Human Rights Council in September 2009, expedite the establishment of an independent human rights institution.

23. Reactivate the role of the national institutions and mechanisms at the Ministry of Human Rights, Parliament, the Shura Council, the Presidential Bureau, the Cabinet and the Ministry of Justice which receive complaints from individuals and groups, and deal with such complaints seriously in line with the constitution and other applicable laws.

### Organizations Prepared the Shadow Report

*The following organizations participated in preparing the report's themes and background papers Mr. Majed Al-Mdhaji and Mr. Abdulkareem Al-Khewani brought all the material together in the present report. Ms Amal Basha edited and revised the report.*

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