



# **Yemen: Alarming deterioration of civil and political rights**

**Report submitted to the Human Rights Committee for the  
review of the fifth periodic report of Yemen**

**1 February 2012**

## About Alkarama

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*Alkarama* (الكرامة) is a registered Swiss foundation headquartered in Geneva, established in 2004 by volunteer human rights lawyers and defenders. It works on human rights violations in the Arab world with offices and representatives in Lebanon (Beirut), Qatar (Doha), Cairo (Egypt) and Yemen (Sana'a).

Its work focuses on four priority areas: extra-judicial executions, disappearances, torture and arbitrary detention. Related activities include protecting human rights defenders and ensuring the independence of judges and lawyers.

Alkarama engages with the United Nations (UN) human rights mechanisms. It has submitted thousands of cases and urgent appeals to the United Nations Special Procedures including the Special Rapporteur on Torture, the Office of the High Commissioner for Human Rights and various UN human rights treaty bodies. Additionally, Alkarama has submitted numerous reports on the human rights situation in Arab states reviewed under the Universal Periodic Review, and to UN human rights treaty bodies.

Basing its work on principles of international human rights law and humanitarian law, Alkarama uses UN human rights mechanisms on behalf of victims of human rights violations and their families. It works constructively with sovereign states, the Office of the High Commissioner for Human Rights and national human rights institutions, as well as victims' lawyers and human rights defenders. It also organizes seminars and undertakes campaigns to raise awareness of human rights issues in the Arab world.

In Arabic, Alkarama means 'dignity'.

## TABLE OF CONTENTS

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<b>TABLE OF CONTENTS .....</b>	<b>3</b>
<b>1 INTRODUCTION .....</b>	<b>4</b>
<b>2 POLITICAL CONTEXT AND BACKGROUND .....</b>	<b>6</b>
2.1 THE 2011 YEMENI POPULAR YOUTH REVOLUTION.....	6
2.2 THE FIGHT AGAINST TERRORISM.....	8
2.3 THE HOUTHY REBEL MOVEMENT.....	9
2.4 THE CONFLICT IN SOUTHERN YEMEN .....	11
2.5 MILITARY AND SECURITY FORCES INVOLVED IN HUMAN RIGHTS VIOLATIONS.....	12
<b>3 APPLICATION OF THE ICCPR IN YEMEN.....</b>	<b>13</b>
3.1 VIOLATION OF THE RIGHT TO LIFE (ART. 2, 6) .....	13
3.1.1 <i>Excessive Use of Force by Law Enforcement Personnel and Armed Forces</i> .....	13
3.1.2 <i>Enforced Disappearances</i> .....	17
3.1.3 <i>Impunity for Extra-judicial Executions</i> .....	17
3.2 TORTURE AND ILL TREATMENT OF DETAINEES (ART. 2, 7).....	18
3.2.1 <i>Lack of comprehensive definition of torture in domestic law</i> .....	19
3.2.2 <i>Torture and Ill-Treatment by Security Forces and Agents of the State</i> .....	19
3.2.3 <i>Impunity for Torture and Ill-treatment</i> .....	22
3.2.4 <i>Forced Return to Countries where Torture is Systematically Practiced</i> .....	22
3.3 ARBITRARY ARREST AND INCOMMUNICADO DETENTION (ART. 2, 9, 19) .....	23
3.3.1 <i>Domestic law</i> .....	23
3.3.2 <i>Systematic policy of arbitrary arrests and incommunicado detentions</i> .....	23
3.3.3 <i>Cases of Arbitrary and Incommunicado Detention of Foreign Nationals</i> .....	26
3.4 INHUMAN CONDITIONS IN DETENTION CENTRES AND PRISONS (ART. 2, 7, 9, 10).....	27
3.4.1 <i>A proliferation of places of detention</i> .....	27
3.4.2 <i>Dire Detention Conditions</i> .....	27
3.5 THE RIGHT TO FAIR TRIAL AND EQUALITY BEFORE TRIBUNALS (ART. 14) .....	28
3.5.1 <i>Justice System's Lack of Institutional Independence</i> .....	28
3.5.2 <i>The Existence of a 'Special Criminal Court' and the Principle of Fair Trial</i> .....	29
3.5.3 <i>Unfair trials Before the Special Criminal Court</i> .....	30
3.6 RESTRICTION ON FREEDOM OF EXPRESSION (ART. 17, 19) .....	31
3.6.1 <i>Domestic Legislation Restricting Freedom of Expression</i> .....	31
3.6.2 <i>Cases concerning violations of the right to freedom of expression</i> .....	33
<b>4 CONCLUSION .....</b>	<b>35</b>
<b>5 RECOMMENDATIONS .....</b>	<b>36</b>

# 1 Introduction

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1. Yemen was formed on 22 May 1990 upon the unification of the Democratic People's Republic of Yemen (South Yemen) and the Yemen Arab Republic (North Yemen). After a civil war that lasted from 5 May to 7 July 1994, the Government in Sana'a consolidated its hold on power. Following the resolution of this conflict, Yemen's strategic interest increased due to its geographical position.
2. Yemen is a republic, divided into 21 governorates and municipalities. The legislature branch is composed of two chambers: the parliament, which has 301 members elected every six years by direct suffrage, and the *Shura*, an advisory board of 111 members appointed by the President. The last elections were held in 2003; those scheduled for 2009 were postponed.
3. The President is elected for a term of seven years. Ali Abdullah Saleh has been the president of united Yemen since 1990. He was previously president of North Yemen from 1978 to 1990. He was re-elected in September 2006 for another term of 7 years. However, according to reports, Saleh is said to have relinquished office on 23 December 2011, one month after he signed a Gulf Co-operation Council-sponsored agreement on 23 November 2011 in Riyadh, granting him and others immunity from prosecution in exchange for leaving office. Under the agreement, President Ali Abdullah Saleh will hand over his powers to Vice-President Abed Rabbo Mansour al-Hadi and presidential elections will be staged within 90 days<sup>1</sup>.
4. The Constitution of Yemen, proclaimed on 16 May 1991, was revised in 1994 and again in 2001. Following the war of 1994, a number of amendments were made to the 1990 constitution. Fifty-two clauses were amended and a further 29 clauses added. One was deleted. The changes were approved by parliament on 29 September 1994. One of the most debated changes was to Article 3, which made Islamic shari'ah "the source of all legislation";<sup>2</sup> previously it had been "the main source".
5. Yemen is party to eight of the nine core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR; the Covenant) (ratified on 9 February 1987) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) (ratified on 5 November 1991)<sup>3</sup>. However, it has not signed up to the Optional Protocol to the UN Convention against Torture, nor to the Optional Protocols to the International Covenant on Civil and Political Rights.
6. Under Article 6 of the Yemeni Constitution<sup>4</sup>, 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 system in the country to implement such international agreements, including the Covenant, national courts do not do so, making no reference to international law and agreements that Yemen has ratified. In addition, there is no record of any judicial decision referring to international agreements such as the Covenant.
7. Economically, Yemen is considered to be the Arabian Peninsula's poorest and most populous country, with a high percentage of unemployment and widespread corruption. In the 1990s, the

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<sup>1</sup> UN News Centre, *Political transition settlement reached in Yemen – UN envoy*, 23 November 2011; available at <http://www.un.org/apps/news/story.asp?NewsID=40499&Cr=yemen&Cr1>, (accessed 5 December 2011).

<sup>2</sup> See Article 3 of the Yemeni Constitution. For the official Arabic text of the Constitution, as amended via public referendum, held on 20 February 2001, see بوابة الحكومة اليمنية (Yemeni Government's Web Portal), available in Arabic at: <http://www.yemen.gov.ye/portal/Default.aspx?tabid=2618>, (accessed 5 December 2011). For an unofficial English translation of the constitution, see: <http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,YEM,4562d8cf2,3fc4c1e94,0.html> (accessed 5 December 2011).

<sup>3</sup> Other international treaties include the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the 1951 UN Refugee Convention and its 1967 Protocol; the 1949 Geneva Conventions and their Additional Protocols I and II.

<sup>4</sup> Article 6 of the Yemeni Constitution stipulates the following: "The Republic of Yemen confirms its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and principles of international law which are generally recognized". See *supra* note 2.

International Monetary Fund (IMF) imposed a structural adjustment program requiring the privatization of public enterprises, cuts in civil servants and oil subsidies, as well as tariff reductions, all measures which worsened social conditions. In 2002, the IMF and World Bank paid Yemen 300 million dollars of a total of \$ 2.3 billion pledged at a donors' conference.<sup>5</sup> In return, the Government has accelerated its reforms. In July 2005, the Government adopted economic measures that were strongly challenged by the population. These included a reduction of subsidies for petroleum products which resulted in the doubling of fuel prices and triggered riots. The World Bank was promised \$ 4.7 billion by donors to support the development of the country, to be paid out between 2007 and 2010. However, delivery was much slower than expected and remains incomplete.<sup>6</sup>

8. In general, these measures are unpopular because they do not improve the economic situation of the majority of Yemenis and aid is more often than not channelled into corruption.
9. The human rights situation in Yemen must be seen in the context of a precarious balance between competing external and internal pressures. Despite the country's legislative advances, in practice the principles set forth in various laws are not sufficiently respected and abuses committed by agents of the State or local potentates are not prosecuted and punished. Arbitrary and incommunicado detention, torture, inhuman prison conditions, unfair trials, extrajudicial executions, forcible returns to countries that do not respect human rights, and other human rights violations are common, and have been exacerbated by the uprising of 2011.
10. Internal factors include conflicts occurring in the north and south of the country, but also from the nature of power, poverty and social structures, which triggered what has become widely known as the "Popular Youth Revolution" or the "Yemeni uprising" of 2011, which will be discussed in more detail later.<sup>7</sup>
11. Conflict in the north centers around a Houthi rebellion that began in the 2000s which has been systematically crushed with bombings and mass arrests. The conflict has kept the central Government on edge – several peace agreements have been signed but they are never respected.
12. In the south of the country, demonstrations are regularly held to denounce the economic inequality between the two regions of the country, and also to protest against the authoritarian central government. These are often repressed harshly. Some political groups even seek secession.
13. All these factors determine and aggravate the extremely precarious situation in Yemen, which is currently beset by such difficult problems that some observers fear the country's collapse. "In fact, the obsession with security, imposed by the dominant Western discourse, is probably the main source of instability. The priority given to Western security at the expense of security for Yemenis will prove to be a long-term miscalculation."<sup>8</sup>
14. This report is based primarily on information obtained from our representatives in Yemen who are in regular contact with local actors including victims of human rights violations, their families, lawyers and human rights defenders, other human rights organizations and non-governmental organizations (NGOs). Our organization also undertook a research mission in the country in December 2011.
15. Cases of human rights violations referred to in this report are mainly cases collected by our field workers in Yemen, many of which have already been submitted to the relevant United Nations Special Procedures.

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<sup>5</sup> European Commission, *Yemen – European Community Strategy Paper for the period 2007-2013*, p. 19; available at [http://ec.europa.eu/external\\_relations/yemen/csp/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/yemen/csp/07_13_en.pdf) (undated) (accessed 5 December 2011).

<sup>6</sup> US Department of State, Bureau of Near Eastern Affairs, *Background Note: Yemen*, December 2007; available at <http://www.state.gov/r/pa/ei/bgn/35836.htm>, (accessed 5 December 2011).

<sup>7</sup> For an overview and political analysis regarding the Yemeni uprising, see: Kate Nevens, *Yemen's Youth Revolution*, November, 2011; available at <http://cmec.org.uk/blog/yemen%E2%80%99s-youth-revolution/>, (accessed 6 December 2011).

<sup>8</sup> Laurent Bonnefoy, *Entre pressions extérieures et tensions internes, un équilibre instable au Yémen* (Between External Pressures and Internal Factors; an Unstable Situation in Yemen), October 2006, available at <http://www.monde-diplomatique.fr/2006/10/BONNEFOY/14054>, (accessed 12 October 2009).

## 2 Political context and background

### 2.1 The 2011 Yemeni Popular Youth Revolution

16. The Yemeni uprising of 2011 was born as a popular youth protest movement<sup>9</sup>, which started in early February 2011 in Sana'a and several other cities nationwide. At certain times, and despite the generally peaceful nature of the protests, it has been associated with episodes of armed combat between Yemen's competing rival elite factions. The urban youth which initiated the revolt, initially independent of political parties, has gradually been joined by the traditional opposition, including a six-party opposition coalition, known since the mid-2000s as the "Joint Meeting of Parties" (JMP), and includes the Socialists, Nasserites and the Muslim Brotherhood.<sup>10</sup>
17. Inspired by previous Tunisian and Egyptian protests, the peaceful demonstrations were further fuelled by the collapse in late 2010 of the national dialogue between the government and the JMP, which had been negotiating a series of constitutional amendments including the reduction of the Presidential term from seven to five years and the removal of the two-term presidential limit, while introducing an electoral quota for women.<sup>11</sup> Demonstrators demanded democracy, an end to corruption and better living conditions and the departure of President Ali Abdullah Saleh who has been in power for 32 years.
18. The protest movement started at the University of Sana'a in late January, and continued to grow in the form of sit-ins and mass demonstrations, with the revolutionary youth being joined by other parts of the population.<sup>12</sup> At its peak in early May 2011, the protest camp in Sana'a alone, at 'Change Square', covered approximately one square mile, housing over 10,000 people.<sup>13</sup> Despite the tens of millions of weapons in circulation in the country, and the violent repression by security forces who have repeatedly used live ammunition and other excessive force, causing the death of hundreds of protesters with thousands more injured, the protest movement continued to be peaceful. It undertook different actions: sit-ins, peaceful marches, demonstrations, etc., while "*Irhal!*" (Leave), the common slogan of Arab revolutions, was adopted progressively by all.<sup>14</sup>
19. At the beginning of the uprising, the President refused to accept calls for his resignation, and on 2 February 2011, he announced that he would leave office only in 2013 when his presidential term expired, promising a constitutional reform in early March 2011, and elections within a year.<sup>15</sup> The move was interpreted by many as an attempt to absorb the anger and gain time, but was not sufficient to calm the demands for regime change.
20. On 8 April 2011, a Gulf Cooperation Council (GCC) initiative proposed the creation of a "Cabinet of National Accord". According to the proposed agreement, the President would transfer his powers to his Vice-President, while an election and amendments to the constitution, would

<sup>9</sup> The 'Civic Coalition of Revolutionary Youth', an umbrella group which brings together Yemen's four main youth organizations, is well networked across Yemen. According to many observers, they have clear and well defined targets, including the establishment of a genuine parliamentary system and adopting an electoral system based on proportionate representation. They share major part of their vision with Yemen's formal opposition parties, as well as the President elite political rivals, who are also competing to put an end to his regime. For further background information and analysis, see Kate Nevens, *Yemen's Youth Revolution*, November, 2011, p. 25; available at <http://cmec.org.uk/blog/yemen%E2%80%99s-youth-revolution/>, (accessed 6 December 2011).

<sup>10</sup> Laurent Bonnefoy, *Yémen : La révolution inachevée*, June 2011, available at <http://www.cetri.be/spip.php?article2250&lang=fr>, (accessed 8 December 2011).

<sup>11</sup> Report of the High Commissioner on OHCHR's visit to Yemen, 13 September 2011, A/HRC/18/21, para. 8; available at <http://www.ohchr.org/Documents/Countries/YE/YemenAssessmentMissionReport.pdf>, (accessed 7 December 2011).

<sup>12</sup> According to Amnesty's report from April 2011, the momentum was built up on 22 January 2011 when students and civil society activists participated in a large demonstration in the capital to express "not only their solidarity with the Tunisian public but also their desire for regime change in Yemen...", See Amnesty International, *Moment of Truth for Yemen*, April 2011, p. 5, available at <http://www.amnesty.org/en/library/asset/MDE31/007/2011/en/5fa56895-8601-49c5-a7d0-a2fdecdfab5b/mde310072011en.pdf>, (accessed 7 December, 2011).

<sup>13</sup> Kate Nevens, *Yemen's Youth Revolution*, November, 2011, p. 25; available at <http://cmec.org.uk/blog/yemen%E2%80%99s-youth-revolution/>, (accessed 6 December 2011).

<sup>14</sup> Laurent Bonnefoy, *Entre pressions extérieures et tensions internes, un équilibre instable au Yémen* (Between external pressure and internal factors; an unstable situation in Yemen), October 2006. <http://www.monde-diplomatique.fr/2006/10/BONNEFOY/14054>, (accessed 9 December 2011).

<sup>15</sup> Le Monde, *Le président du Yémen renonce à briguer un nouveau mandat*, 2 February 2011, available at [http://www.lemonde.fr/afrique/article/2011/02/02/le-president-du-yemen-renonce-a-briguer-un-nouveau-mandat\\_1473867\\_3212.html#ens\\_id=1466828](http://www.lemonde.fr/afrique/article/2011/02/02/le-president-du-yemen-renonce-a-briguer-un-nouveau-mandat_1473867_3212.html#ens_id=1466828), (accessed 8 December 2011).

follow. According to the proposed agreement, the President and those who served under his command would be granted immunity from prosecution. Initially, the President agreed to sign the deal, only to back away out of the agreement on three separate occasions only hours before the scheduled signing.<sup>16</sup>

21. Meanwhile, competition between Yemen's three rival elite factions – President Saleh's family, the family of tribal leader, Sheikh Abdullah bin Hussein Al-Ahmar and (the now-defected) General Ali Mohsin Al Ahmar – which has been going on for several years, continued as well.<sup>17</sup> On 22 May 2011, armed fighting erupted in Sana'a between the Government and the Al-Ahmar family supported by their tribal followers.<sup>18</sup> Residential and public buildings were heavily damaged in the exchange of fire which involved artillery, forcing thousands of residents to flee.<sup>19</sup> Violence further escalated on 3 June, when an explosion inside the mosque of the presidential palace killed 11 and injured President Saleh and some other senior officials, who were then evacuated to Saudi Arabia for medical treatment.<sup>20</sup> President Saleh survived the attack, and returned to Yemen on 23 September.<sup>21</sup>
22. Finally, Saleh agreed to sign the GCC agreement on 23 November 2011 in Riyadh, handing over his powers to Vice-President Abed Rabbo Mansour al-Hadi, and promising presidential elections will be staged within 90 days<sup>22</sup>. However, the text of this agreement has not been made public.
23. On 7 December 2011, in line with the GCC agreement, Vice-President al-Hadi issued a decree approving the creation of an interim government of national unity<sup>23</sup>. The new government, headed by Prime Minister Mohammed Basindwa<sup>24</sup>, was comprised of 35 ministerial positions equally divided between President Ali Abdullah Saleh's party and the opposition. According to the media, Basindwa's cabinet will carry out its duties for three months, after which elections will be held and al-Hadi will formally take over the presidency. Saleh's ministers for foreign affairs and defence, Abu Bakr al-Kurbi and Mohammad Nasser Ahmad Ali respectively, have retained their old positions.
24. However, despite the appointment of this interim government, many Yemenis were still expressing their dissatisfaction with the fact that the GCC agreement gives President Saleh and those who served under his rule blanket immunity from judicial prosecution. The announcement on 8 January 2011 of the Cabinet's approval of an amnesty law which provides President Saleh and those who had worked under him, amnesty against prosecution again sparked protests by thousands across the country, which were violently repressed leading to at least one death.<sup>25</sup>

<sup>16</sup> Aljazeera (English), *Yemen transition deal collapses*, 22 May 2011, available at <http://www.aljazeera.com/news/middleeast/2011/05/201152216373928689.html>, (accessed 8 December 2011).

<sup>17</sup> Kate Nevens, *Yemen's Youth Revolution*, November, 2011, p. 25; available at <http://cmec.org.uk/blog/yemen%E2%80%99s-youth-revolution/>, (accessed on 6 December 2011).

<sup>18</sup> Report of the High Commissioner on OHCHR's visit to Yemen, 13 September 2011, A/HRC/18/21, para. 8; available at <http://www.ohchr.org/Documents/Countries/YE/YemenAssessmentMissionReport.pdf>, (accessed 7 December 2011), p.6

<sup>19</sup> Report of the High Commissioner on OHCHR's visit to Yemen, 13 September 2011, A/HRC/18/21, para. 8; available at <http://www.ohchr.org/Documents/Countries/YE/YemenAssessmentMissionReport.pdf>, (accessed 7 December 2011), p.6

<sup>20</sup> Report of the High Commissioner on OHCHR's visit to Yemen, 13 September 2011, A/HRC/18/21, para. 8; available at <http://www.ohchr.org/Documents/Countries/YE/YemenAssessmentMissionReport.pdf>, (accessed 7 December 2011), p.6

<sup>21</sup> BBC, *Yemen Clashes as President Ali Abdullah Saleh Returns*, 23 September 2011, available at <http://www.bbc.co.uk/news/world-middle-east-15044261>, (accessed 8 December 2011).

<sup>21</sup> Mohammed Al-Ahmady, *Relations between Yemen and the United States after the attacks of 11 September 2001*, available at <http://almoslim.net/node/85268> (text in Arabic, accessed 7 December 2011).

<sup>22</sup> UN News Centre, *Political transition settlement reached in Yemen – UN envoy*, 23 November 2011; available at <http://www.un.org/apps/news/story.asp?NewsID=40499&Cr=yemen&Cr1>, (accessed 5 December 2011). The text of this agreement has not been made public yet, however many news websites in Arabic and English published what was titled as the "Executive Steps" of the GCC agreement. For Arabic language source, see for instance the Jordanian newspaper Aldustour, *نص المبادرة الخليجية لحل أزمة اليمن* ("Text of the Gulf Initiative for the crisis in Yemen"), 24 November 2011; available at [http://www.addustour.com/ViewTopic.aspx?ac=\ArabicAndInter\2011\11\ArabicAndInter\\_issue1498\\_day24\\_id371253.htm#\\_Ts\\_L4lakxAA](http://www.addustour.com/ViewTopic.aspx?ac=\ArabicAndInter\2011\11\ArabicAndInter_issue1498_day24_id371253.htm#_Ts_L4lakxAA) (accessed 1 January 2011).

<sup>23</sup> Aljazeera (English), *Yemen forms new unity government*, 7 December 2011; available at <http://www.aljazeera.com/news/middleeast/2011/12/2011127124649367762.html> (accessed 27 December 2011)

<sup>24</sup> Mohammed Basindwa served as a Minister of Foreign Affairs under President Saleh from 1993 to 1994. He was member of Yemen's ruling party, but resigned in the early 2000s to join the opposition as an independent.

<sup>25</sup> Ahmed Al-Haj and Ben Hubbard, *Thousands of protesters took to the streets across Yemen to reject the law and call for Saleh to stand trial*, Associated Press, 10 January 2012 – available from <http://www.guardian.co.uk/world/feedarticle/10032531> (accessed 13 January 2012)



## 2.2 The fight against terrorism

25. The attacks in the United States of 11 September 2001 had significant implications for Yemen. Due to its extreme economic and social fragility, but also because of its refusal to align itself with the United States during the 1991 conflict with Iraq, the country was forced to submit to conditions imposed by the U.S. in the international fight against terrorism. Many human rights defenders, especially in Yemen's interior, are convinced that the increase in human rights violations in recent years is a direct result of repressive measures taken by the Government under pressure from United States, which seeks to establish concrete results in its combat against terrorism.
26. Beginning in 1997, cooperation with the United States in counter-terrorism and security began. The Americans trained hundreds of police, sold equipment, and a restructuring of the security services was carried out at their behest. FBI experts have closely followed investigations conducted by the Yemeni security services since then.<sup>26</sup>
27. In October 2000 the American warship USS Cole was attacked by an armed group off Aden as it sailed to the Persian Gulf to monitor the embargo imposed on Iraq. Nearly 100 officers from various U.S. agencies, including the FBI, assisted the Yemenis in their investigations.<sup>27</sup> The U.S. subsequently stationed approximately 1,000 troops in Yemen. The country accepted the establishment of an FBI office in Sana'a, and its military is now trained by American instructors.<sup>28</sup>
28. This cooperation, however, aroused strong internal opposition and exacerbated already high tensions in the country. When a U.S. drone killed Abu Ali al-Harith and his five companions in a moving vehicle on 3 November 2002, the country's political parties vehemently condemned the extrajudicial execution. Yemen is paying the price for this, since in their statements and press releases, Al-Qaida groups used the execution of Al-Harith to justify attacks on oil installations in September 2006 in the region of Maarab and Hadramaut, as well as the assassination of the Director of Investigations in the Maarab province in April 2007.<sup>29</sup> The Government responded with repression and attempts to co-opt the various social and political structures of the State. Meanwhile, a dialogue was established with the armed movements in order to make their members abandon the armed struggle in exchange for economic incentives. However, this policy of rapprochement towards elements hostile to the U.S. presence is resented by the United States; the latter has increased its pressure on the Government to intensify its repression, particularly since 2006.
29. A number of extra-judicial executions of suspected terrorists, including Fawwaz Al-Rabii in October 2006 and Hamza al-Qait and four other men on 11 August 2008 strengthened the hostility of armed groups close to Al-Qaida to the government. Their actions, which had thus far mainly affected Western and American interests, subsequently shifted to include tourist and economic targets, such as the 17 September 2008 attack by Al Qaeda in Yemen on the U.S. embassy which resulted in 18 deaths. The group claiming responsibility referred explicitly to the death of al-Qait.
30. This has led some people to conclude that U.S. pressure has led to an open confrontation between Yemeni security forces and armed groups close to Al-Qaida. In the past, the Government's method of balancing repression and tolerance seemed to bear fruit: the dialogue programs and financial aid offered by the Government had appeased the situation. However, after the crackdown, armed groups intensified their actions and gained in strength by attracting new recruits.

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<sup>26</sup> Mohammed Al-Ahmady, *Relations between Yemen and the United States after the attacks of 11 September 2001*, available at <http://almoslim.net/node/85268> (text in Arabic, accessed 7 December 2011).

<sup>27</sup> Mohammed Al-Ahmady and Laurent Bonnefoy, *Chronologie politique du Yémen*, (Yemen's Political Chronology), 2001, <http://cy.revues.org/document113.html>, (accessed 7 December 2011).

<sup>28</sup> Laurent Bonnefoy, *Entre pressions extérieures et tensions internes, un équilibre instable au Yémen* (Between external pressure and internal factors; an unstable situation in Yemen), October 2006. <http://www.monde-diplomatique.fr/2006/10/BONNEFOY/14054>, (accessed 9 December 2011).

<sup>29</sup> Mohammed Al-Ahmady, *Relations between Yemen and the United States after the attacks of 11 September 2001*, 23 September 2003 <http://almoslim.net/node/85268> (text in Arabic, accessed 9 December 2011).



31. Bemoaning the lack of cooperation from the Yemeni authorities following their request for the extradition of two men involved in an attack on the USS Cole: Jabr Al-Banna and Jamal Al-Badawi<sup>30</sup>, the U.S. Government noted in its report on terrorism released in April 2008, that "despite U.S. pressure, the Yemeni Government continued to implement a surrender program with lenient requirements for terrorists it could not arrest, which often led to relatively lenient prison terms"<sup>31</sup>. The U.S. also criticized the fact that former Guantanamo detainees, once back in Yemen, were released after a short period of assessment and rehabilitation as part of a program that lacks strict control measures.
32. Many observers note that the level of violence increased after the Yemeni Government abandoned or reduced its program of dialogue with people detained on suspicion of terrorist activities. The Yemeni Government's explanations in its periodic reports to treaty bodies are vague in that they indicate that a series of discussions with "persons who hold mistaken ideas [about Islam]"<sup>32</sup> began in 2002; however, they did not clarify whether this program was later continued. On the ground, security has been the overriding priority for the last four years: extrajudicial killings have taken place and hundreds of terrorist suspects have been arrested in many provinces, sometimes using extreme violence. Individuals have been tried in proceedings which did not meet accepted standards of fair trial; others were arbitrarily detained without being brought before a court. Since this change of strategy, clashes between security forces and armed groups have increased and the general human rights situation has deteriorated.
33. The position of the United States is contradictory with regard to the issue of human rights in the context of the fight against terrorism. On the one hand, they demand a more repressive stance from the regime, express regret about the lack of concrete results, criticize the lack of an anti-terrorism law and the fact that the Government focuses its forces on internal security and in particular on the Houthi rebellion in the north instead of intensifying the fight against terrorism, for which Yemen is a fertile ground.<sup>33</sup> On the other hand, the U.S. regularly challenges the regime about human rights violations committed in its fight against armed groups.

### 2.3 The Houthi Rebel Movement

34. The Al-Haqq party, founded by former MP Hussein Al-Houthi, has a strong presence in the Zaidi community in the region of Sa'ada in the north-west of the country and has opposed the central Government since 2000. In June 2004, President Saleh intensified the struggle against this movement, resulting in armed clashes between the two parties; Hussein Al-Houthi was killed in September of that year.<sup>34</sup> After several months of calm, the conflict resumed.
35. This movement is an integral part of the Zaidi (Shiite) community, which has no secessionist aspirations. Its demands include State recognition of social and cultural rights, more development funding (it is one of the poorest regions of the country), as well as religious autonomy, something that is frowned upon by Yemen's large northern neighbor, Saudi Arabia. The latter backs President Saleh's efforts in his war against the Houthi. But support also comes from the United States: [T]he U.S. embassy in Sana'a has quietly sent a team of experts to Sa'ada to assess the needs of the Yemeni army so that it can finally overcome the rebellion.

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<sup>30</sup> Ian Hamel, *Yémen, Pression des Etats-Unis pour enfermer Al-Badaoui*, (The US applies pressure to lock up Al-Badaoui) Rue 89, 18 November 2007, <http://www.rue89.com/2007/11/18/yemen-pression-des-etats-unis-pour-enfermer-al-badaoui>

<sup>31</sup> United States Department of State Publication Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2007*, released April 2008, <http://www.state.gov/documents/organization/105904.pdf>, p. 129 (accessed 9 December 2009).

<sup>32</sup> Fifth periodic report of Yemen submitted to the Human Rights Committee under article 40 of the Covenant, 14 December 2009, (CCPR/C/YEM/5), paras. 146 – 149.

<sup>33</sup> United States Department of State Publication Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2007*, released April 2008, <http://www.state.gov/documents/organization/105904.pdf>, p. 139, (accessed 9 December 2011).

<sup>34</sup> BBC, *Yemeni Forces Kill Rebel Cleric*, 10 September 2004, available at [http://news.bbc.co.uk/2/hi/middle\\_east/3643600.stm](http://news.bbc.co.uk/2/hi/middle_east/3643600.stm), (accessed 9 December 2011)

With the same concerns in mind, the Gulf Cooperation Council sent its Secretary-General to Sana'a to assure President Saleh of its solidarity.<sup>35</sup>

36. Since 2004, several rounds of negotiations have taken place, but so far they have not led to a lasting resolution of the conflict. The army launched a new offensive in January 2007 and in the months of April to August 2008, used excessive measures: so far, heavy shelling and airstrikes have killed hundreds of people and displaced entire villages, and thousands of people have been arrested.
37. It is only when the humanitarian situation became catastrophic that international opinion was forced to pay attention to the conflict, having previously been primarily perceived as a purely humanitarian issue. Given Yemen's cooperation in the fight against terrorism, the West and (in particular the U.S.) treat the problem as if it were a revolt to be dealt with by the central Government. For the same reasons, the Yemeni Government is trying to label this movement as "terrorist".
38. On 11 August 2009, a new military offensive called "Operation Scorched Earth" was launched in the region of Sa'ada. The Yemeni authorities had rejected a proposed agreement to end the hostilities by the Houthis, instead demanding that the six points outlined by a 'High Security Commission' be respected, including a withdrawal from official buildings, the lifting of roadblocks and the return of weapons stolen from the armed forces. To justify this offensive, the Government accused Houthis of kidnapping nine foreigners in June 2009, including three women who were found murdered; the others have disappeared. The rebel movement has always rejected these accusations and demands that the Government respect the cease-fire signed in June 2007 and the February 2008 agreements. Both parties accuse each other of failing to respect the agreements.<sup>36</sup> The Government's commitment to release all prisoners and those detained arbitrarily was not respected.
39. There are no official numbers of fatalities<sup>37</sup>: in May 2005, the Prime Minister acknowledged the death of 525 members of the armed forces during fighting that opposed the Houthis, but did not give figures for deaths among combatants and civilians.<sup>38</sup> The bombings regularly cause victims among the civilian population. For example, witnesses reported that an army raid on 16 September 2009 on a makeshift refugee camp in the province of Abu Sufyan caused the deaths of at least 87 civilians, mostly women and children.<sup>39</sup>
40. The United Nations estimates that 150,000 people have been displaced since 2004 (55,000 since July 2009).<sup>40</sup> More than 5,000 houses have been destroyed and anti-personal mines abound. The situation continues to be critical.<sup>41</sup>
41. There are reports of summary executions committed by security forces during military offensives. In its 2008 annual report, the Yemeni Human Rights Observatory showed that over a period of four years of conflict, nearly 2,000 arrests were made. It also reports that at the end of 2008 approximately 350 people in the region of Beni Husheish remained in custody without having had any charges brought against them and without having been tried.

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<sup>35</sup> Georges Malbrunot, *La guerre civile fait rage au nord du Yémen* (Civil war rages in North Yemen), Le Figaro, 7 September 2009, available at <http://www.lefigaro.fr/international/2009/09/07/01003-20090907ARTFIG00428-la-querre-civile-fait-rage-au-nord-du-yemen-.php>, (accessed 9 December 2011).

<sup>36</sup> Karin Leukefeld, *Tausende Tote durch Krieg in Jemen* (Thousands die in the war in Yemen), Junge Welt, 3 September 2009.

<sup>37</sup> Valérie Samson, *Le Yémen à l'épreuve de la guerre antiterroriste, (Yemen faces the War against Terror)* Le Figaro, 14 October 2007. See also: *Defusing the Sa'ada Time Bomb*, Crisis Group, Middle East Report N°86, 27 May 2009, [http://www.crisisgroup.org/library/documents/middle\\_east\\_north\\_africa/iraq\\_iran\\_gulf/86\\_yemen\\_defusing\\_the\\_Sa'ada\\_time\\_bomb.pdf](http://www.crisisgroup.org/library/documents/middle_east_north_africa/iraq_iran_gulf/86_yemen_defusing_the_Sa'ada_time_bomb.pdf) (accessed 9 December 2011).

<sup>38</sup> Laurent Bonnefoy, *Entre pressions extérieures et tensions internes, un équilibre instable au Yémen* (Between external pressure and internal factors; an unstable situation in Yemen), October 2006. <http://www.monde-diplomatique.fr/2006/10/BONNEFOY/14054> (accessed 9 December 2011).

<sup>39</sup> See also: Office of the United Nations High Commissioner for Refugees, *HCR choqué par le décès de civils au Yémen, (Human Rights Committee shocked by civilian deaths in Yemen)*, 17 September 2009, <http://www.unhcr.fr/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=4ab25cbc2> (accessed 9 December 2011).

<sup>40</sup> IRIN, *Yemen: Are the Peace Accords About to Fail?*, 22 April 2008, <http://www.irinnews.org/Fr/ReportFrench.aspx?ReportId=77870> (accessed 9 December 2011).

<sup>41</sup> CNN, *Medics: Militants Raid Yemen Town, Killing Dozens*, 27 November 2011, available at <http://edition.cnn.com/2011/11/27/world/meast/yemen-clashes/index.html>, (accessed 9 December 2011).

42. A number of violations have been committed by the government in the conflict. Individuals have been arrested as hostages to force their family members to give themselves up; members of the 'Mediation Committee' working to resolve the conflict have been arrested, like Sheikh Salih Aal Wajman who was released in late August 2008 after two years of arbitrary detention. More than 130 hostages due to the conflict have been released, while 60 are still held in custody.<sup>42</sup> Because a veil of secrecy has been imposed by the Government, the number of prisoners is not known.
43. Journalists are forbidden from covering the conflict and face reprisals if they do so. Newspapers have been suspended and journalists and human rights defenders such as Abd al Karim al Khaiwani have been threatened with death or imprisonment. Arrested on 27 August 2007, al Khaiwani was sentenced to six years in prison on 9 June 2008 on the basis of false accusations of terrorist activities. He was eventually pardoned by the President on the following September 25.<sup>43</sup> The case of the journalist Mr Mohamed Al-Magaleh described below (see paragraph 169), is another such example.

## 2.4 The Conflict in Southern Yemen

44. The reunification of Yemen in 1990 did not go smoothly: the two sides clashed in 1994 in a civil war, which finally established the supremacy of the North over the South. President Abdullah Saleh, leader of the North since 1978, became the President of unified Yemen. However, the differences between the two sides have not been resolved, and the southern population regularly agitates for reforms. These very large protests focus especially on issues of expropriation, and the dismissal of officials and soldiers who had previously worked for the southern army. Peaceful rallies were held in 2006 and 2007 to demand both the restitution of private and public property and the reinstatement of those dismissed during the civil war.
45. At the end of civil war, the central Government took severe measures against supporters and sympathizers of the secessionist cause. Tens of thousands of officials and soldiers were dismissed and excluded from the benefits of their status. The Observatory said that of 23,000 people affected, the majority were from the military (15,000). Many were forced into early retirement, among them high-ranking officers who had worked for reunification. The President of the Republic issued a decree in 2008 allowing their reintegration into the armed forces and the granting of compensation. However, according to the veterans' association, only 6% of retired military staff have benefited from this measure.
46. Having failed to achieve their goals, former military staff began forming associations in 1997, and have regularly organized peaceful demonstrations since then. However, the Government has made use of disproportionate force to quell this movement, ordering the military to fire on protesters with live ammunition, leading to the death of at least two people, and wounding others. When, in the year 2000, political parties, professional organizations and unions began to express solidarity with the former military, the authorities declared they would address the problem. However, no concrete measures were undertaken and the protests have grown and multiplied. This has developed into a wider movement among certain segments of the southern Yemeni population who feel discriminated against by the State which they feel is over-representative of former North Yemen.
47. From March 2008, a wave of arrests was orchestrated against leaders and activists of the southern movement by the security services. Many were arrested in Aden and Lahij. During 2008, 860 demonstrators who participated in rallies were arrested. They were held, often incommunicado, without being subject to any formal charges. Their conditions of detention were particularly inhumane and they were subjected to abuse. Finally a number of them were tried before the Special Criminal Court (also see section 3.5.2 relating to Special Courts below), and sentenced. The Government finally passed an amnesty for the detainees due to the volume of protests, after which they were released.

<sup>42</sup> Cairo Centre, State of Human Rights in the Arab Region in 2008: *From Exporting Terrorism to Exporting Repression*, December, December 2008.

<sup>43</sup> Rue 89, *Yémen: le journaliste d'investigation al-Khaiwani libéré*, (*Investigative journalist al-Khaiwani freed*) <http://www.rue89.com/2008/09/26/yemen-le-journaliste-dinvestigation-al-khaiwani-libere> (accessed 9 December 2011)

## 2.5 Military and Security Forces Involved in Human Rights Violations

48. There are a number of security services in Yemen, all of which are involved in human rights violations. Given their proliferation, it is difficult to provide a complete picture of all security and military services which exist at present, but those listed below are regularly referred to by victims and are all notorious for their abuses. Most of these forces are under the direct authority of President Saleh.
49. The Criminal Investigations department (البحث الجنائي Al Baht al Jinai) is under the authority of the Ministry of the Interior. This department is responsible for investigations into specific criminal cases. They provide information to other security forces, in particular the counter-terrorism forces, and have been responsible for acts of ill-treatment and torture.
50. The Directorate General for Counter-Terrorism (الإدارة العامة لمكافحة الإرهاب Al Idara Al Aama li Mukafahat Al Irhab) is also subordinate to the Ministry of the Interior. This directorate, whose main purpose is intelligence gathering on crimes against state security.
51. The Counter-Terrorism Unit (وحدة مكافحة الإرهاب Wahdat Mukafahat al Irhab), which is similar to the above-mentioned Directorate, is part of Central Security (الأمن المركزي Al Amn Al Markazy). Its main purposes are to implement decisions and carry out combat operations. The Central Security is under the control of the Interior Ministry, but in reality it is under the authority of President Saleh, who handed it to his nephew, Brigadier-General Yahya Mohamed Abdullah Saleh, granting him broad powers. These forces have barracks in all the country's provinces. They are responsible for the supervision of state organs. This section receives support from the US, receiving for example 114 lightly armoured Hummers in January 2007.<sup>44</sup> This section employs women to participate in siege operations and house searches in the cities. In December 2010, the President established four further units to combat terrorism in the following four provinces: Abyan, Marib, Shabwa and Hadramout (located in the north-east of the country).
52. The Central Service for Political Security, or simply Political Security (الجهاز المركزي للأمن السياسي Al Jihaz Al Markazi Al Amn As Syiassi) is an intelligence service, created after the unification of Yemen on the basis of Presidential Decree No. 121 of 1992. It is dependent on the Presidency and is responsible for national security. However, the United States considers that it has been infiltrated by the Islamists. This charge arose after a promise made to Islamist groups to release their members in return for their support of President Saleh during the 1994 civil war. It has been argued that this was the basis for the creation of a new information unit, the National Security Apparatus, to be financed by the United States.
53. The National Security Apparatus, or National Security (جهاز الأمن القومي Jihaz Al Amn Al Qawmy) is under the control of the Presidency. Created in August 2002 by Presidential Decree No. 261 following pressure from the U.S., it is headed by the Director-General of the Office of the Presidency, however, in reality it falls under the control of one of President Saleh's nephews, Ammar Muhammad Abdullah Saleh. This service and Political Security are the two groups responsible for the fight against Al-Qaida and other armed groups. They coordinate and organize operations to control, repress and fight against terrorism on the ground.
54. There is also the Yemeni Armed Forces, under the authority of the Ministry of Defense, which conducts violent operations during which serious human rights violations are committed. For example, the army is carrying out operations in the province of Sa'ada, where it is fighting the armed Houthi rebellion by waging war against the population. It is also used to violently suppress social protests, for example in the south. Key elements of the military include the Republican Guard, directly under the control of President Saleh and his family, as well as the Special Forces and Military Intelligence. The Republican Guards control a Counter-Terrorism Force, which is under the direct control of former President Saleh's son, Colonel Ahmed Ali Abdullah Saleh. These forces have carried out operations against Al-Qaeda elements in Marib, Abyan, as well as the recent fighting between President Saleh and his tribal rivals in Al- Hasnah district in the capital Sanaa. At present, in the wake of the 2011 Yemeni uprising, some

<sup>44</sup> Nabanews, *United States supporting counter-terrorism units with Hummer vehicles*, 31 January 2007, <http://www.nabanews.net/2009/7394.html> (text in Arabic, accessed 16 October 2009).

elements of the military, who are also responsible for violations, have defected to join the protestors, for example those under the command of General Ali Mohsen Al-Ahmar.

55. All these apparatus are beyond the control of the parliament and the law. Some of them have secret detention facilities where suspects are often held incommunicado for long periods without judicial review (also see section 3.4.2, on the proliferation of places of detention, below).

### **3 Application of the ICCPR in Yemen**

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#### **3.1 Violation of the Right to Life (Art. 2, 6)**

56. Alkarama remains concerned that the Yemeni authorities do not comply with their obligation to respect the inherent right to life of those under their authority and control, as stipulated in article 6 of the Covenant. Violations of article 6 occurred due to the excessive and disproportionate use of force by its law enforcement personnel and armed forces, and in particular against peaceful protesters during the ongoing Yemeni uprising of 2011. However, violations to the right to life in 2011 were only the continuation of an entrenched phenomenon which is characteristic of the authorities' policy concerning the ongoing conflicts in the south and north of the country, as well as in its efforts to deal with the terrorist threat posed by Al-Qaida. In the following chapter we first focus on violation to the right to life throughout 2011, and then prior to 2011, providing examples of cases that our organization has dealt with in recent years to illustrate the continued nature of this violation.

##### **3.1.1 Excessive Use of Force by Law Enforcement Personnel and Armed Forces**

57. Yemeni security forces resorted to excessive use of force in response to peaceful demonstrations during events related to the Yemeni uprising of 2011.<sup>45</sup> Hundreds of protesters have been killed and thousands injured by security forces during this period of unrest alone.<sup>46</sup>
58. The excessive use of force includes the use of live ammunition (such as automatic weapons, but also anti aircraft weapons and Rocket Propelled Grenades), tear gases, rubber bullets, electroshock batons, riot guns and the spraying of polluted water, as well as the use of aerial bombing, for example on the village of Arhab, suspected by the authorities of being under the control of protestors, attacked at the end of May 2011. A total of 140 civilians, including women and children, were reported killed in this attack, and hundreds injured, with many houses and other infrastructure destroyed. Parts of the population have sought shelter in nearby caves for fear of further attacks.<sup>47</sup> In certain cases, gunmen belonging to security forces fired on protesters from armoured vehicles, while in others, they were placed on rooftops and targeted peaceful protesters marching or protesting peacefully in public squares.<sup>48</sup> Police and security forces also refrained from protecting demonstrators while they were shot at by armed men in plain clothes.
59. As of 25 February 2011, at least 17 people had been killed and scores wounded during different protests across the country, as a result of excessive use of force by Yemeni security Forces.<sup>49</sup> Previously, on 18 February 2011 in the governorate of Ta'izz, it was reported that a supporter of the ruling party threw a bomb at a gathering of protestors in Tahrir Square, leading to the death of at least one person and the wounding of 87 others. A similar attack in the capital Sana'a ended with two dead and 38 wounded, when armed "thugs" opened fire on protestors in

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<sup>45</sup> See Alkarama (Press release), *Yemen: extra-judicial executions on the rise*, 20 May 2011; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=736](http://en.alkarama.org/index.php?option=com_content&view=article&id=736), (accessed 14 December 2011).

<sup>46</sup> On 2 October 2011, Yemeni Deputy Information Minister Abdu al-Janadi told reporters that at least 1,480 people have been killed in Yemen since the clashes between pro-democracy protesters and security forces began in February 2011. The toll, according to Deutsche Presse-Agentur who quoted the Deputy Minister included "civilians and military and security personnel", and "covered the period from when the unrest started until September 25." See DPA, *Yemen says 1,480 killed since beginning of unrest*, 2 October 2011; available at <http://www.stripes.com/news/middle-east/yemen-says-1-480-killed-since-beginning-of-unrest-1.156698> (accessed 1 January 2012).

<sup>47</sup> Alkarama researcher in Yemen who visited the area to interview victims in December 2011.

<sup>48</sup> BBC, *Yemen unrest: 'Dozens killed' as gunmen target rally*, 18 March 2011; available at <http://www.bbc.co.uk/news/world-middle-east-12783585>, (accessed 14 December 2011).

<sup>49</sup> Alkarama (Press Release), *Investigate attacks on demonstrators*, 25 February 2011, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=695:yemen-investigate-attacks-on-demonstrators&catid=40:communiqu&Itemid=216](http://en.alkarama.org/index.php?option=com_content&view=article&id=695:yemen-investigate-attacks-on-demonstrators&catid=40:communiqu&Itemid=216), (accessed 8 December 2011).



Change Square in front of Sana'a University. According to Alkarama's sources in Sana'a, the on-looking security forces failed to defend the protestors, and allegations contend that they were directly involved in facilitating the attacks.<sup>50</sup> Alkarama in fact submitted the names of 20 individuals who were summarily executed by Yemeni security forces during protests that took place in February 2011, accompanied by another list of 129 injured in the same or similar attacks to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in early March 2011.<sup>51</sup>

60. The majority of those killed during the month of February 2011 were shot with live ammunition by security forces who were trying to break up protests. Others were victims of grenade attacks by security forces. Some died of their injuries in hospital. At least one of the victims was shot by a Government sniper and another was killed during an attack by pro-Government forces on a protestor camp in the middle of the night. Alkarama is particularly alarmed to note that three minors, **Abdel Hakim Mohamed Awad, Ali Abdallah Khlaqi, Hayel Waleed Hayel**, aged 14, 15 and 17 respectively feature among those who were killed, and some as young as 12 were listed among the injured.<sup>52</sup>
61. On 18 March 2011, 53 persons were killed in the Change Square in Sana'a.<sup>53</sup> The incident led to the resignation of a number of ministers, ambassadors, members of the Shura Council and the ruling party, as well as the defection of one of Saleh's previous loyalists, General Ali Mohsen.
62. In a separate incident, a 15-year-old child, **Muhayb Abdallah Husayn Al-Ya'uri** was brutally beaten to death by security agents in Sana'a on 28 March 2011.<sup>54</sup> Eyewitnesses confirmed that security forces in a police vehicle came to Muhayb's home in the Shamila district, Sana'a. They arrested him for his alleged role in previous day's "hand-to-hand fighting" with children from a neighbouring district. During the arrest, Muhayb escaped, but the agents tackled him to the ground and brutally beat him with their rifle butts. An hour later, Muhayb's death was confirmed. The Seyaj Organization for Protecting Childhood, another local Yemeni organization, said that as of 28 March 2011, with Muhayb Al Ya'uri's murder, the number of children killed in the wake of peaceful protests since mid-February 2011 had reached 23.<sup>55</sup>
63. Another example of excessive use of force against peaceful demonstrators occurred on 24 April 2011, resulting in the killing of at least two protesters and involved the attempt to assassinate **Mr Abdul Wahab Al-Humaiqani**, a member of Alkarama's in Yemen. During the incident, troops from the Republican Guard fired shots at a peaceful gathering of residents from Al-Zahir, in Albaida province. As a result, **Ali Abdo Al-Kawi Al-Humaiqani**, 36, and **Ibrahim Abdul Ilah Albasji**, a 15-year-old shepherd, were killed. Others were wounded.<sup>56</sup>
64. As of 1 April 2011 an additional 94 protesters were killed in the protests, including at least 59 in Sana'a, 28 in Aden, 2 in Ta'izz, 2 in Harf Sufyan, 1 in Ibb, 1 in Almukalla and 1 in Baydah. Hundreds more were reportedly injured.<sup>57</sup> On 29 May 2011, police stormed the peaceful sit-in

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<sup>50</sup> Alkarama (Press Release), *Investigate attacks on demonstrators*, 25 February 2011, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=695:yemen-investigate-attacks-on-demonstrators&catid=40:communiqu&Itemid=216](http://en.alkarama.org/index.php?option=com_content&view=article&id=695:yemen-investigate-attacks-on-demonstrators&catid=40:communiqu&Itemid=216), (accessed 8 December 2011).

<sup>51</sup> Alkarama (Press Release), *Yemen: Alkarama informs UN Special Rapporteur on Executions of numerous protestor deaths*, 3 March 2011, available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=691](http://en.alkarama.org/index.php?option=com_content&view=article&id=691), (accessed 8 December 2011).

<sup>52</sup> Alkarama (Press Release), *Yemen: Alkarama informs UN Special Rapporteur on Executions of numerous protestor deaths*, 3 March 2011, available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=691](http://en.alkarama.org/index.php?option=com_content&view=article&id=691) (accessed 8 December 2011)

<sup>53</sup> UN News Centre, *Political transition settlement reached in Yemen – UN envoy*, 23 November 2011; available at <http://www.un.org/apps/news/story.asp?NewsID=40499&Cr=yemen&Cr1>, (accessed 5 December 2011), p.1

<sup>54</sup> Alkarama (press release), *Yemen: Security forces beat child to death in front of his father*, 30 March 2011; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=712&catid=40](http://en.alkarama.org/index.php?option=com_content&view=article&id=712&catid=40) (accessed 15 December 2011).

<sup>55</sup> Seyaj Organization for Childhood Protection, *Seyaj demands the United Nations to open an urgent and independent investigation on the murder crimes*, 28 March 2011; available at [http://seyaj.org/English/index.php?option=com\\_content&view=article&id=247:seyaj-demands-to-open-an-urgent-investigation&catid=23:organization-news&Itemid=38#myGallerySet1-gallery\(1\)-picture\(6\)](http://seyaj.org/English/index.php?option=com_content&view=article&id=247:seyaj-demands-to-open-an-urgent-investigation&catid=23:organization-news&Itemid=38#myGallerySet1-gallery(1)-picture(6)), (accessed 15 December 2011)

<sup>56</sup> Alkarama (press release), *Yemen: Assassination attempt against Alkarama member Al-Humaiqani*, 25 April 2011; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=724](http://en.alkarama.org/index.php?option=com_content&view=article&id=724), (accessed 14 December 2011).

<sup>57</sup> Amnesty International, *Moment of Truth for Yemen*, April 2003, *supra* note 12, p. 9.

by opposition forces in the city of Ta'izz. They used live ammunition against the demonstrators and petrol bombs to set fire to the tents which were completely destroyed. These events left at least 7 dead and more than 150 wounded. Since then, the situation in Ta'izz turned more violent and bloody.<sup>58</sup> The month of September 2011 witnessed another escalation of the violence against peaceful demonstrators, especially after protests which took place in Sana'a on 18 September. As a result, 26 people were killed. The situation also worsened in the southern city of Ta'izz after security forces opened fire on protesters marching in solidarity with those killed in Sana'a.<sup>59</sup>

65. On 24 December 2011, in one of the latest episodes of repression against peaceful demonstrators, Yemeni security forces killed more than 13 protesters and wounded dozens of others, in an attack on a crowd of more than 100,000 protesters peacefully marching into the capital to protest against President Saleh.<sup>60</sup> The protesters had started their march on 20 December 2011 from the city of Ta'izz (280 km south of the capital Sana'a) in a demonstration called "the March for Life". Thousands of people joined the march along its way to the capital, to pressure the interim government not to grant President Saleh immunity from prosecution, in the first march of its kind in Yemen.
66. On 25 December 2011, Alkarama visited two non-governmental hospitals in Sana'a, where dozens of victims of "the March for Life" had been rushed for medical treatment. It heard testimonies from some 20 injured, among them 3 minors, and met with medical staff and personnel. All victims and witnesses that Alkarama met with confirmed that Yemeni security forces fired on them with live ammunition and tear gas grenades. According to the victims, they came under attack because they were marching on a road that led to the Presidential Palace.
67. Alkarama met also with Dr Shayma' Ghanem, who treated some of the victims of "the March for Life" who were rushed to the field hospital at Change Square, where she works. She explained to Alkarama that from the wounds she had seen, there was regular use by the security forces of what she considered as 'illegal bullets'. "These bullets create massive internal damage rather than simply passing through the body," she told Alkarama. According to Dr Ghanem, she treated several cases of patients or bodies which had very small entry wounds and massive, open exit wounds. "These are signs of the use of such bullets," she told our delegation. She also explained that there was regular use of explosives against the demonstrators. "Rocket Propelled Grenades (RPGs) are used, and cause massive damage to the victims – often blowing off entire parts of the body. One particular case was a body which arrived without a head." Further to RPGs, war munitions and fragmentation hand grenades seem to be used, as many victims arrive with small shards of metal in them, according to Dr Ghanem.
68. Dr Ghanem explained that one of the main problems was the use of gas on the demonstrators: "[T]his is apparently not only tear gas, but a more powerful gas which is usually used when fighting in open spaces, but not in crowded streets." People had come to her breathing with great difficulty, which lasted several hours, skin rashes, and some with spasms and muscle contractions.
69. Dr Ghanem also reported that medical staff had been targeted. This includes doctors wearing Red Crescent uniforms injured or even killed whilst collecting injured demonstrators or their bodies. Security forces and paramilitary militia (known as Baltagia in Arabic) have shot or beaten medical personnel. Alkarama was also shown photos of ambulances with bullet holes and some which looked like they had been hit by rounds of explosives. Medical staff were also arrested on occasion.
70. Unfortunately, the violation of the right to life through the use of excessive force and summary executions was not a pattern of behaviour limited to the unrest in the country during 2011.

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<sup>58</sup> See Aljazeera Sharek video of the events in Ta'izz posted on 1 June <http://sharek.aljazeera.net/node/22735> (accessed 27 January 2012)

<sup>59</sup> Amnesty International (News), *Yemen violence surges as protesters are killed*, 19 September 2011, available at <http://www.amnesty.org/en/news-and-updates/yemen-violence-surges-protesters-are-killed-2011-09-19> , (accessed 8 December 2011).

<sup>60</sup> Alkarama researcher interview with local civil society on 26 December 2011; see also Aljazeera (English), *Yemen forces attack 'March for Life'*, 25 December 2011; available at <http://www.aljazeera.com/news/middleeast/2011/12/201112241509927262.html>, (accessed 27 December 2011).



Other episodes of unrest in previous years, whether related to the conflict in southern Yemen, or the suppression of the Houthi movement in the north of the country or counter-terrorism efforts, have left many civilians dead and thousands injured.

71. In July 2005, at least 36 people were killed due to the excessive use of force by agents of the State during military and police interventions to suppress demonstrations organized to protest the deteriorating economic and social situation across Yemen.<sup>61</sup> The demonstrators were protesting against rising fuel prices imposed by the Government on the orders of the IMF.
72. In the south of the country, beginning in 2007, certain rallies were strongly repressed. According to the Yemeni Observatory for Human Rights, during the years 2005-2007, 623 rallies were held, 85 were brutally repressed by the armed forces using live ammunition and tear-gas bombs that killed 7 people and injured 75 others.<sup>62</sup> In May 2007, veterans of the former army of South Yemen held protests to decry their social situation after some 60,000 of them were demobilized. They demanded an increase in their pensions or the granting of work. The army intervened, killing several people and launching a wave of arrests.
73. In September 2007, 3 people died and dozens were injured in clashes between demonstrators and police during a protest against rising prices in Al-Mukalla, the capital of Hadramaut province. The protests against the rising price of bread spread to other parts of the country. The security forces intervened each time, using live ammunition.
74. The demonstrations that degenerated into clashes with the armed forces continued in the south of the country throughout 2009. On 13 January 2009, for example, it was reported that at least 4 people were killed at a rally organized by soldiers of the former southern army.<sup>63</sup>
75. There are allegations of summary executions during clashes between the Yemeni armed forces and the Houthi movement in the north. This includes civilian deaths as a result of aerial bombardment during the Yemeni government's "Scorched Earth" operation against the Houthi between August 2009 and February 2010. Eighty civilians, most of them women and children, were reportedly killed in September 2009 when the Yemeni forces bombed 'Adi village in the Harf Sufyan district of 'Amran.<sup>64</sup>
76. In the name of its anti-terrorism campaign (see section 2.2 above), the Yemeni security forces have killed a number of people in previous years. The excessive use of force, such as in the case of the attack which occurred on 17 December 2009 on the community of al-Ma'jalah in the Abyan area in the south of Yemen, resulted in the killing of 41 local residents, including 14 women, 21 children and 6 men. Another 14 people who were killed in the attack were alleged members of Al-Qaida.<sup>65</sup>
77. Highly-controversial drone attacks used in counter-terrorism operations, led by the United State's Central Intelligence Agency (CIA), in cooperation with the Yemeni authorities<sup>66</sup>, have also led to extra-judicial executions in the country. We refer for example to the highly-mediatised case of the killing of Anwar al-Awlaki, an American citizen with alleged ties to Al-Qaida living in Yemen, who was killed on 30 September 2011.<sup>67</sup> A further attack which caused

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<sup>61</sup> BBC, *Dozens dead in Yemen fuel riots*, 22 July 2005; available at [http://news.bbc.co.uk/2/hi/middle\\_east/4707145.stm](http://news.bbc.co.uk/2/hi/middle_east/4707145.stm) , (accessed 14 December 2011).

<sup>62</sup> Yemen Human Rights Observatory, *Report on the right to peaceful assembly*, November 2008, pp. 10-11.

<sup>63</sup> Francois -Xavier Tregan, *Emeutes au Yemen dimanche...vous en avez entendu parler? (Riots in Yemen on Sunday...have you heard?)*, Les Observateurs, 16 January 2008  
[http://observers.france24.com/fr/content/emeutes\\_au\\_yemen\\_dimanche%E2%80%A6\\_vous\\_en\\_avez\\_entendu\\_parler](http://observers.france24.com/fr/content/emeutes_au_yemen_dimanche%E2%80%A6_vous_en_avez_entendu_parler) (accessed 9 December 2011).

<sup>64</sup> BBC, *Many killed in Yemen air raid*, 17 September 2009; available at [http://news.bbc.co.uk/2/hi/middle\\_east/8260414.stm](http://news.bbc.co.uk/2/hi/middle_east/8260414.stm) , (accessed 15 December 2011)

<sup>65</sup> Amnesty International, *Images of missile and cluster munitions point to US role in fatal attack in Yemen*, 4 June 2010; Available at <http://www.amnesty.org/en/news-and-updates/yemen-images-missile-and-cluster-munitions-point-us-role-fatal-attack-2010-06-04> , (accessed 15 December 2011)

<sup>66</sup> Nick Allen, *WikiLeaks: Yemen covered up US drone strikes*, The Telegraph, 28 November 2010, available from <http://www.telegraph.co.uk/news/worldnews/middleeast/yemen/8166610/WikiLeaks-Yemen-covered-up-US-drone-strikes.html> (accessed 15 December 2011).

<sup>67</sup> Alkarama researcher in Yemen; see also Mark Mazzetti, Eric Schmitt and Robert F. Worth, *Two-Year Manhunt Led to Killing of Awlaki in Yemen*, New York Times, 30 September 2011, available at <http://www.nytimes.com/2011/10/01/world/middleeast/anwar-al-awlaki-is-killed-in-yemen.html?pagewanted=all> (accessed 15 December 2011)

outrage was the killing on 14 October 2011 of Anwar al-Awlaki's son, 16-year old Abdul Rahman, also with drones.<sup>68</sup>

### 3.1.2 Enforced Disappearances

78. Some organizations report a worrying number of 300 disappearances over the last 30 years, some of which have been submitted to the UN Working Group on Enforced and Involuntary Disappearances (WGEID) by Alkarama.<sup>69</sup> In recent years, however, families of the disappeared have sometimes been able to obtain acknowledgements from the authorities that individuals were being detained. Disappearances were therefore resolved and retrospectively viewed as cases of prolonged incommunicado or secret detention.
79. Despite this, since the beginning of the uprising, local civil society organizations, including HOOD, the National Organization for Defending Rights and Freedoms in Yemen, have documented 21 cases of disappearances. However, this appears to represent only a small number of the total number of suspected disappearances, due to few families reporting disappearances to NGOs – and in fact, HOOD continues to receive months-old cases of disappearances.
80. This practise is not limited to recent events: over the past two years, security forces in Yemen have carried out enforced disappearances, both of a targeted nature and apparently at random. Alkarama has reported cases of security officers who have arrested wanted individuals on the street and from their homes, but also at checkpoints based on suspicions regarding their names or provenance. Security agencies, including Political Security, have failed to acknowledge some detainees' whereabouts, effectively disappearing them.
81. In a recent case, **Mohamed Hammam Al-Dobii**, aged 18 who lived in the neighborhood of "Nouqm" in Sana'a, was abducted on 23 March 2010 from his shop in Sana'a by masked officers in plain clothe from an unidentified intelligence force who drove three unmarked vehicles.<sup>70</sup> Following the arrest and the enforced disappearance of their son, Mr Al-Dobii's parents tried to find their son or at least learn of his whereabouts, but to no avail. On 31 March 2010, Alkarama submitted Mr Al-Dobii's case to the UN Working Group on Enforced or Involuntary Disappearances requesting their intervention with the authorities for his release. Mr Al-Dobii's case is far from being an isolated incident.
82. Alkarama recalls that in November 2009 the Committee against Torture reviewed Yemen's second periodic report. In its concluding observations, the Committee stated that the State party should take effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention, and in particular "the right to have prompt access to lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards".<sup>71</sup> It also recommended that the State party "should also ensure that all detainees, including minors, are included in a central register that functions effectively."<sup>72</sup>

### 3.1.3 Impunity for Extra-judicial Executions

83. Unfortunately, the response of the Yemeni authorities to the rising death toll of protesters during the events that occurred in 2011, as well as in past years, whether related to the conflict in southern Yemen, or the suppression of the Houthi movement in the north of the country, or in its counter-terrorism measures, has been inadequate. Calls from civil society groups to the

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<sup>68</sup> Yemen News, (Arabic) *Official document undermines US administration's explanation of the death of Anwar Al Awlaki's eldest son* [http://www.news-yemen.net/printn.asp?sub\\_no=1\\_2011\\_10\\_24\\_60259](http://www.news-yemen.net/printn.asp?sub_no=1_2011_10_24_60259) (accessed 27 January 2011)

<sup>69</sup> Interview by Alkarama researcher with the Arab Sisters' Forum in Sana'a, Yemen on 27 December 2011.

<sup>70</sup> Alkarama (press release), *Yemen: Mohamed Hammam Al-Dobii disappeared by state security forces*, 1 April 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=466](http://en.alkarama.org/index.php?option=com_content&view=article&id=466), (accessed 15 December 2011)

<sup>71</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para 9.

<sup>72</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para 9..

Yemeni government to open investigations into excessive use of force by the security services, and to punish those involved in the attacks that lead to the loss of life have gone unheard.<sup>73</sup>

84. On 12 March 2011, following the killing of protesters in Sana'a, SABA, the official Yemeni news agency, reported that President Saleh had ordered the establishment of a committee to investigate the events.<sup>74</sup> There was also a similar report regarding a presidential order to form a panel to investigate the 'Aden violence', following the killing of protesters in the city during the month of February 2011.<sup>75</sup> A further investigation was opened on 26 December 2011 to investigate the deaths committed during the 'March for Life', run by the Ministry of Defence and the Ministry of Interior. Those responsible for the investigation visited hospitals and interviewed 14 victims.<sup>76</sup> Despite this, it seems that most of these investigations are conducted by bodies that lack the mandate to carry independent and impartial investigations into the killings, and they are unlikely to lead to the prosecutions of persons who are responsible for the killings. It is therefore not surprising that reports by these bodies are rarely made public.
85. In fact, local lawyers and human rights defenders reported that no member of the security or armed forces have been charged or tried for the deaths of demonstrators to date. This is despite local organizations submitting a number of cases of extrajudicial executions to the Public Prosecutor.<sup>77</sup> The past record of the Yemeni authority in conducting such investigations and bringing perpetrators to justice is also poor. For example, Alkarama treated the cases of **Saleh Al-Wasabi** and **Majed Al-Odeini**, who were both killed by agents of the Yemeni security services, in July 2008 and July 2009, respectively. Despite orders from the Ministry of the Interior for the perpetrators to be arrested and handed over to the Prosecution, no action has been taken and the perpetrators remain at large. According to information received, members of the Prosecution investigating the killing have been subjected to pressure from security services, in an attempt to prevent it from pursuing the case and issuing arrest orders against the perpetrators.<sup>78</sup>
86. In certain cases, such as the attack which occurred on 17 December 2009 on the community of al-Ma'alah in the Abyan area in the south of Yemen, and which resulted in the killing of 41 local residents, including 14 women and 21 children (also see paragraph 76 above), a parliamentary fact-finding committee was established to examine the case.<sup>79</sup> The committee reached the conclusion that the raid caused the death of 41 innocent civilians, including women and children, and recommend, *inter alia*, that the government open an investigation into the killings in order to establish the identity of those responsible for the attack and ensure their prosecution. However, Alkarama is not aware of any such governmental investigation, let alone judicial proceedings initiated against the perpetrators.

### 3.2 Torture and ill treatment of detainees (Art. 2, 7)

87. Despite Yemen's review by the Committee against Torture in November 2009, which went ahead despite the lack of delegation (which attended the next Committee session in May 2010 during which the Committee's final concluding observations on Yemen were adopted), torture continues unabated in the country. We provide an analysis of the lack of comprehensive definition of torture, and provide a number of examples of cases of torture on which Alkarama

<sup>73</sup> Alkarama (press release), *Yemen: Investigate attacks on demonstrators, 25 February 2011*; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=695](http://en.alkarama.org/index.php?option=com_content&view=article&id=695), (accessed 15 December 2011).

<sup>74</sup> Saba News Agency, *رئيس الجمهورية يوجه بتشكيل لجنة للتحقيق في أحداث بوابة الجامعة* (« President of the republic orders formation of Committee to investigate events at University gate »); available at <http://sabanews.net/ar/news237583.htm>, (accessed 15 December 2011).

<sup>75</sup> Saba News Agency, *Saleh orders panel to investigate Aden violence, 28 February 2011*; available at <http://www.sabanews.net/en/news236788.htm>, (accessed 15 December 2011).

<sup>76</sup> Interview by Alkarama researcher with lawyers from HOOD on 26 December 2011 in Sana'a.

<sup>77</sup> Interview by Alkarama researcher with lawyers from HOOD on 26 December 2011 in Sana'a.

<sup>78</sup> Alkarama (press release), *Yemen: Further example of atmosphere of impunity among Yemeni security forces – extrajudicial killings go unpunished*, 23 December 2009; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=390](http://en.alkarama.org/index.php?option=com_content&view=article&id=390), (accessed 15 December, 2011)

<sup>79</sup> Special Parliamentary Commission for the investigation of the events of the Abyan province, Yemeni Parliament, *تقرير اللجنة المكلفة بتقصي الحقائق حول الأحداث الأمنية بمحافظة أبين ولحج (Report of the Commission for the investigation of the events of the Abyan province)*, 2010, p. 16. The Commission visited the area in January 2010. Available on: [http://ar.alkarama.org/index.php?option=com\\_docman&task=doc\\_download&gid=131&Itemid=142](http://ar.alkarama.org/index.php?option=com_docman&task=doc_download&gid=131&Itemid=142)

has worked, going back to 2007. Impunity for torture also continues to be an issue, as discussed below.

### **3.2.1 Lack of comprehensive definition of torture in domestic law**

88. On the legislative level, while the Yemeni Constitution does prohibit torture<sup>80</sup>, it does not comprehensively define torture and does not comply with the international standards of the definition of torture as stipulated, for instance, by the Convention against Torture. The Committee against Torture, in its recent concluding observations concerning Yemen's second periodic report submitted to it during its 43<sup>rd</sup> session in 2009, reiterated with concern that the current definition in the Constitution prohibits torture only as a "means of coercing a confession during arrest, investigation, detention and imprisonment, and the punishment is limited to individuals who order or carry torture and does not extend to individuals who are otherwise complicit in such acts."<sup>81</sup>
89. Moreover, while the Yemeni Constitution provides that crimes involving physical or psychological torture should be punished, other Yemeni legislation, such as Article 26 of the Criminal Procedure Law No. 13 of 1994<sup>82</sup>, provides that criminal lawsuits may not be filled against a law enforcement officer or a public employee for any crime committed while carrying out his job except with the permission of the Attorney General.
90. In addition, there are inconsistencies in Yemen's domestic law with regard to the statute of limitations concerning crimes involving physical and psychological torture. While the Constitution does not provide for any such limitations, other laws, including the above mentioned Criminal Procedure Law No. 13 of 1994, include such a statute of limitations.<sup>83</sup>

### **3.2.2 Torture and Ill-Treatment by Security Forces and Agents of the State**

91. The report provided by Yemen to the Committee in view of its 5<sup>th</sup> periodic review makes no serious attempt to address fundamental problems related to torture and ill-treatment (cruel, inhuman or degrading treatment) of those who were detained by state security officials, particularly those who were accused of terrorism or other security-related crimes.
92. Alkarama recalls that the Committee against Torture, in its recent concluding observations of 25 May 2010 concerning Yemen, noted with deep concern the numerous allegations and the widespread practice of torture and ill-treatment of detainees in Yemeni prisons, including State security prisons run by the Public Security Department, as well as others.<sup>84</sup> It deplored the use of torture by security agents, the lack of investigation into these allegations and the failure to prosecute those responsible.<sup>85</sup>
93. While the Yemeni authorities do not deny that cases of torture exist, they often argue that these cases are isolated and sanctioned. However the reality on the ground contradicts the assertions of the Yemeni Government. Alkarama has treated many cases concerning allegations of torture in Yemen following arrest and detention by security forces, including extended use of

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<sup>80</sup> See Article 48(b) of the Yemeni Constitution For the official Arabic text of the Constitution, as amended via public referendum, held on 20 February 2001, see بوابة الحكومة اليمنية (Yemeni Government's Web Portal), available in Arabic at: <http://www.yemen.gov.ye/portal/Default.aspx?tabid=2618>, (accessed 5 December 2011). For an unofficial English translation of the constitution, see: <http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,YEM,4562d8cf2,3fc4c1e94,0.html> (accessed 5 December 2011).

<sup>81</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para. 7.

<sup>82</sup> Criminal Procedure Law No.13 of 1994 ; English version of the law is available at <http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,YEM,,3fc4bc374,0.html> (accessed 16 December, 2011).

<sup>83</sup> Article 38 of the Criminal Procedure Law No.13 of 1994 provides that the right to bring criminal law suits for serious crimes expires after 10 years, while for less serious crimes only three years must elapse. These provisions and other similar ones are in contradiction with 48 of the Constitution which provides that crimes involving physical and psychological torture should not be subject to statute of limitations.

<sup>84</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para. 8.

<sup>85</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para. 8.

solitary confinement in recent years. Alkarama has also documented many cases of confessions made under torture being used against suspects in court proceedings.

94. Victims have reported that they were beaten: punched, kicked and hit with batons and rifle butts, often while blindfolded. Detainees were also deprived of food and water as well as receiving death threats, and being forced to drink their own urine. There were also cases of torture by burning with cigarettes as well as rape and use of electricity; some were hung by the wrists for long periods, and prolonged sleep deprivation as well as isolation are rife. It should also be noted that prison conditions are so deplorable that they constitute a form of abuse in themselves: overcrowded prisons, unhygienic conditions and on a number of occasions, lack of medical care. The objectives for torture and ill-treatment are numerous, but include to induce force confessions and to punish individuals. Long-term consequences of such treatment include the mental breakdown of some detainees, which had recently happened to four individuals detained by Military Intelligence and Criminal Investigation.<sup>86</sup>
95. Reports received by Alkarama, as well as other human rights organizations indicate that Yemeni security forces restored to the use of torture against peaceful demonstrators during events related to the Yemeni uprising of 2011. According to HOOD, more than 200 youth protesters were abducted and tortured by forces belonging to the Yemeni Government during the month of October 2011 alone.<sup>87</sup>
96. Dr Ghanem (see also paragraph 67 above), working at Saha Field Hospital, whom Alkarama interviewed on 25 December 2011, reported that approximately 50% of the people she had seen who had been arrested and released had been tortured. She said the majority were aged between 15 to 25, and were subjected to systematic torture by all arresting forces – including electric shocks, hanging in ‘stress positions’ and beatings with hard and/or sharp objects.
97. One such example is that of **Mr Rwishan Mohammad Albahr**, aged 33, who spoke at a public conference organized in Sana’a by Alkarama and other human rights organizations in October 2011.<sup>88</sup> Mr Albahr told the conference that he was abducted, together with a group of other protesters, by Yemeni security forces which infiltrated a peaceful demonstration that took place in Sana’a on 9 April 2011. According to Mr Albahr, he was held in an unknown detention centre, together with the rest of the group, for 10 days. During this period, Mr Albahr told the conference, they were subject to different forms of torture, including beatings, physical and psychological humiliations and prolonged sleep deprivation.<sup>89</sup> **Mujahid Nasser Mohammed Wahban**, aged 25, who also spoke at this public conference, lived through a similar experience. Detained for 14 days at an unidentified detention center from 1 September after his arrest at a protest, he was severely beaten and tortured during interrogations, in which he was asked about the reasons behind his support for the Youth Revolution. Mr Wahban also gave a detailed account of the deplorable prison conditions he experienced: unlit underground cell, with no mattress or bed to sleep or lie on, and unhygienic conditions. In addition he suffered from prolonged deprivations of food and water.<sup>90</sup>
98. Cases of torture were also recurrent in previous years. Alkarama has documented cases going back to 2007, as set out below.

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<sup>86</sup> Interview by Alkarama researcher with lawyers from HOOD on 26 December 2011 in Sana’a.

<sup>87</sup> HOOD, as cited in CNN, *Rights group: Hundreds of protesters abducted, tortured in Yemen*, 1 November 2011; available at [http://articles.cnn.com/2011-11-01/middleeast/world\\_meast\\_yemen-protesters-abducted\\_1\\_rights-group-president-ali-abdullah-yemeni-government?\\_s=PM:MIDDLEEAST](http://articles.cnn.com/2011-11-01/middleeast/world_meast_yemen-protesters-abducted_1_rights-group-president-ali-abdullah-yemeni-government?_s=PM:MIDDLEEAST), (accessed 18 December 2011). According to eyewitnesses, abductions and torture took place during almost every protest, while those who were released were covered in scars and wounds due to abuse.

<sup>88</sup> Alkarama (press release), اليمن: الكرامة تنشط مع منظمات محلية لكشف جرائم التعذيب والإختطافات (Yemen: Alkarama, together with local groups, reveals crimes of torture and abductions), 19 October 2011; available at [http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=4272:2011-10-19-06-31-52&catid=164](http://ar.alkarama.org/index.php?option=com_content&view=article&id=4272:2011-10-19-06-31-52&catid=164) (accessed 18 December 2011).

<sup>89</sup> Alkarama (press release), اليمن: الكرامة تنشط مع منظمات محلية لكشف جرائم التعذيب والإختطافات (Yemen: Alkarama, together with local groups, reveals crimes of torture and abductions), 19 October 2011; available at [http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=4272:2011-10-19-06-31-52&catid=164](http://ar.alkarama.org/index.php?option=com_content&view=article&id=4272:2011-10-19-06-31-52&catid=164) (accessed 18 December 2011).

<sup>90</sup> Alkarama (press release), اليمن: الكرامة تنشط مع منظمات محلية لكشف جرائم التعذيب والإختطافات (Yemen: Alkarama, together with local groups, reveals crimes of torture and abductions), 19 October 2011; available at [http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=4272](http://ar.alkarama.org/index.php?option=com_content&view=article&id=4272) (accessed 18 December 2011).



99. **Shayef Al-Haimi** was arrested in January 2007. During the first months of his detention in a National Security detention center, he was severely tortured, leading to paralysis in his right hand, left shoulder and legs. At a press conference on 23 April 2007, he reported that the authorities had offered him money to keep quiet about what he had suffered. He showed the evidence of his torture. A few days later he was arrested again, presumably for speaking out about his torture, and brought before the Special Criminal Court. He was released in October 2007 for health reasons.
100. A group of 37 detainees from the region of Sa'ada suffered ill-treatment following their arrests in January 2007.<sup>91</sup> They were held incommunicado in several successive locations, questioned by Political Security, sometimes for several weeks, without any contact with the outside world, family visits, or access to a lawyer. Most of them reported having spent the first days of their detention in harrowing conditions, blindfolded and handcuffed. Some say they were beaten and forced to sign documents they had not read.
101. Denial of medical care is a serious issue, and detainees have routinely been denied essential medical treatment, leading to numerous deaths. **Hashem Hajar** died in September 2007 due to lack of medical care, after the Special Criminal Court refused to release him, despite medical reports highlighting his critical condition.<sup>92</sup> In 2008, according to the Yemeni Observatory for Human Rights, both **Salem Saleh Abu Ash-Shabab** detained by the Abyan branch of Political Security and **Amer As-Suri**, held at Zanjibar Central Prison after being arrested during demonstrations in 2008, died as a result of lack of medical care.<sup>93</sup> Two other prisoners suspected of belonging to the Houthi movement died while they were being held in custody. On 20 October 2008, the Al Hududi family stated that their son **Abdelkarim Al-Hududi** had died on 12 October, barely 48 hours after his release by security services, due to lack of treatment for an illness contracted in prison. He had been arrested in early 2007 and held incommunicado. His family found out that he was being held in Sa'ada prison only 2 months before his release, which it seems was ordered because of his critical health conditions.<sup>94</sup>
102. In 2008, women prisoners also reported being raped by officers in women's' prisons. There were reports of unlit underground cells in the Political Security detention centres. Political prisoners were locked up with death row inmates, others were detained in isolation. Family visits were often prohibited.<sup>95</sup>
103. The case of **Ammar Hamid Moqbil Mahyoub Attayiar**, a technician from Ta'izz aged 23, is another example.<sup>96</sup> On 11 January 2010 plainclothes security agents arrested Mr Attayiar and held him at their premises, before transferring him to the Criminal Investigation's detention center, where he was held incommunicado and severely tortured by three officers between 16 and 27 January 2010. They questioned him in order to extract false confessions regarding his supposed criminal activities. During the torture sessions he was electrocuted, which caused several second degree burns on his hands and the backs of his feet. Ammar Attayiar was also tortured at Bir Basha police station, where he was kept blindfolded and badly beaten during six days. A medical report found various burns and multiple bruises on different parts of his body. Although an official complaint has been filed with Sana'a's Attorney General, Alkarama is not aware of any person who has been brought to justice, or held responsible for these acts of torture.

<sup>91</sup> Alkarama (press release), *Yémen : 37 personnes arrêtées et détenues arbitrairement* (Yemen: 37 people arrested and detained arbitrarily), 20 Septembre 2007 ; available at

[http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=183](http://fr.alkarama.org/index.php?option=com_content&view=article&id=183); (accessed 18 December 2011)

<sup>92</sup> Arabic Network for Human Rights Information, *Press release from the //Civil Society //Coalition (Umum) on the death of detainee Hashim Hajar*, the Coalition of Civil (Umum), (5/10/2007) <http://www.anhri.net/yemen/makal/2007/pr1005-2.shtml> (accessed on 27 December 2011).

<sup>93</sup> Yemen Human Rights Observatory, *Report on the right to peaceful assembly*, November 2008, p. 14.

<sup>94</sup> Abdel Kareem al-Haduwi, *Another victim of Saleh's jails: Death of a prisoner and Houthi follower in Sa'ada hours after arriving at hospital*, Al-Ishtaraki Net, (20/10/2008) [http://www.aleshteraki.net/news\\_details.php?lng=arabic&sid=4685](http://www.aleshteraki.net/news_details.php?lng=arabic&sid=4685) <<http://www.anhri.net/en/discussion/2004/nchr.shtml>>, (accessed 15 October 2009).

<sup>95</sup> HOOD, the National Organization for Defending Rights and Freedoms, 1 July 2008, cited in Cairo Centre, *State of Human Rights in the Arab Region in 2008: From Exporting Terrorism to Exporting Repression*, December 2008, p.83.

<sup>96</sup> Alkarama (press release), *Yemen: Ammar Attayiar tortured in Ta'izz, held despite release orders*, 17 June 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=532](http://en.alkarama.org/index.php?option=com_content&view=article&id=532), (accessed 16 December 2011). The case was submitted to the Special Rapporteur on Torture by Alkarama requesting his intervention with the Yemeni authorities in order to carry out a full and impartial investigation into the allegations of torture suffered by Mr Attayiar.

104. **Omar Eid Namer Al-Haddad**, a Palestinian refugee living in Sana'a aged 54 and his two young sons aged 9 and 14 were arrested at midnight at their home on 2 June 2010 by officers of the Criminal Investigations' Counter-Terrorism Division. While his sons were released 7 days later, Mr Al-Haddad remained in detention. According to his family who visited him while in custody, Mr Al-Haddad had bruises across his face, and he told them he had been severely beaten the night before their visit by the arresting officers.<sup>97</sup>
105. Another victim is **Abdullah Al-Rimi**, who was arrested on 3 April 2008 by members of State Security. His family, who was able to visit him in prison for the first time only several months after his arrest, expressed their concerns because he showed obvious signs of torture.<sup>98</sup>

### 3.2.3 Impunity for Torture and Ill-treatment

106. The authorities claim that the victims of torture and ill-treatment can file complaints, and that those responsible for acts of torture are prosecuted and punished. While it is true that victims can theoretically bring such cases to the Attorney General's attention, who might initiate an investigation, in reality, such allegations are seldom investigated and prosecuted, and there appears to be a climate of total impunity for perpetrators of acts of torture and ill treatment. We cite for example the case of **Abdeladhim Ali Abdeljalil Al Hattar**, subject of a 2008 Opinion by the UN Working Group on Arbitrary Detention, who complained about torture to the judge trying him. The judge refused to accept these allegations were founded, but when the defence provided a video of one of the torture sessions as evidence, the judge ordered those identified as responsible for the torture be investigated. However, following the investigation, the people responsible for the torture had not been tried, or even charged.
107. A second example is that of **Maher Al Absi** of Ta'izz, who brought up allegations of torture before his judge. The judge ordered he receive medical treatment and stated that this would resolve the issue, without ordering an investigation or prosecuting anyone responsible.<sup>99</sup>
108. In effect, lawyers are obliged to prove that torture has occurred, contrary to international fair trial standards. This is nearly impossible, as detainees remain in detention until the signs of torture have disappeared and lawyers are not able to visit individuals who are being investigated. Nor do detainees have access to medical exams to obtain proof of torture.

### 3.2.4 Forced Return to Countries where Torture is Systematically Practiced

109. Alkarama notes that Yemen fails to provide in its periodic report any substantial information on the measures taken, if any, to protect foreign nationals and asylum-seekers from extradition and forced returns to countries where they are likely to be subjected to torture, ill-treatment or suffer serious human rights violations. Past records and information gathered by Alkarama, as set out below, demonstrate that Yemen has deported non-nationals to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture or inhuman and degrading treatment.
110. In February 2004, for example, Yemen handed over at least 23 Egyptian nationals who had been sentenced to death in absentia in their country to Egyptian intelligence services. These included **Seid Imam Abdulaziz Al Cherif, Mohamed Abdelaziz Al Jamal, Athman Al Semman, Tarek Naim Abdelajawed, Hilmi Shaaban** and **Fawzi Mohammed Atta**. They were arrested on their arrival in Egypt and held in secret, which meant our organization was unable to obtain any information about their fate.
111. On 17 July 2007, nine people: eight soldiers and a civilian, **Farj Athmane Mohamed, Mohamed Abdou Lahada, Gebrait Dwit Hailé Makele, Jamal Mahmoud Al Amine, Serradj Ahmed Daoud, Yassine Athmane Amar, Abdullah Ibrahim Mahmoud, Barkhat Yohanes Abraha** and **Mohamed Ahmed Abdullah**, all of Eritrean nationality, fled their country aboard a military vessel and landed at the port of Midi in the north-west of Yemen, where they surrendered themselves to the authorities. They were nevertheless placed in a detention center pending deportation. They did not have any opportunity to apply for asylum or

<sup>97</sup> Alkarama (press release), *Yemen: Omar Eid Al-Haddad, and two sons arrested and abused*, 9 June 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=534](http://en.alkarama.org/index.php?option=com_content&view=article&id=534), (accessed 16 December 2011)

<sup>98</sup> Alkarama (press release), *Arbitrary arrest and detention without due process of law by Mr Abdullah Al-Rimi*, 8 August 2008, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=129](http://en.alkarama.org/index.php?option=com_content&view=article&id=129) (accessed 15 October 2009).

<sup>99</sup> Interview by Alkarama researcher with lawyers from HOOD on 26 December 2011 in Sana'a, Yemen.



legally challenge their expulsion. They were finally deported back to their country in September 2007 and our organization has remained without news of them since.<sup>100</sup>

112. In another case, two brothers, **Ahmed Abdelwahab Abdelghani** and **Mohammed Abdelwahab Abdelghani**, of Syrian nationality, had travelled to Yemen in late 2001 to begin their studies at the University of Science and Technology. On 16 September 2003, they were arrested by Political Security with seven other men suspected of terrorist activities. After 17 months of harrowing detention in Sana'a prison, they were presented before the Special Criminal Court with their trial lasting until February 2006. Ahmed was sentenced to two years and 5 months, which he had already served, so he was released and forced to leave the country despite being sought by the Syrian authorities, known for their use of torture. His brother received a sentence of 3 years and 4 months. As for Mohammed, he continued to be arbitrarily detained in the Political Security detention centre after completing his sentence.

### **3.3 Arbitrary arrest and incommunicado detention (Art. 2, 9, 19)**

#### **3.3.1 Domestic law**

113. In conformity with international standards, including Article 9 of the Covenant, Article 48(a) of the Yemeni Constitution provides that "the law shall define the cases in which citizens' freedom may be restricted. Personal freedom can not be restricted without the decision of a competent court of law"<sup>101</sup>. Furthermore, Article 48(c) of the Yemeni Constitution specifies that "any person temporarily apprehended on suspicion of committing a crime shall be presented in front of a court within a maximum of 24 hours from the time of his detention" and that "the Judge or Public Prosecutor shall inform the detained individual of the reasons for his detention and questioning and shall enable the accused to state his defence and rebuttal."<sup>102</sup>
114. In addition, Article 73 of the Yemeni Criminal Procedure Law No.13 of 1994<sup>103</sup> provides that any person arrested shall be immediately informed of the reasons justifying his arrest, that any person has the right to be presented with the arrest warrant and to contact any person, who in his view, should be informed of the charges. He is also entitled to seek the assistance of legal counsel. Article 269 of the same law provides that any accusation brought against a person, who on this basis is placed in detention, must be examined without delay by a competent tribunal.<sup>104</sup>
115. However, reality on the ground shows that Yemen has failed in practice to provide hundreds, if not thousands, of detainees, including detainees held in National and Political Security detention centers - with the fundamental legal safeguards from the very outset of their detention.

#### **3.3.2 Systematic policy of arbitrary arrests and incommunicado detentions**

116. In recent years, Yemeni security forces have carried out numerous campaigns to arrest persons wanted for their alleged connection to Al-Qaida or their involvement in "terrorist" activities, or for being critics of the state. Similarly, as mentioned above, many arbitrary arrests were conducted against people who participated in peaceful rallies and demonstrations across the country, especially since the outbreak of the 2011 Yemeni uprising.
117. Information received by Alkarama indicates that over a thousand people have been arbitrary detained or disappeared following their participation in peaceful rallies and demonstrations across the country in 2011.<sup>105</sup> While estimates by local civil society organizations numbers 3500, 1700 cases have been documented by HOOD since the protests broke out in February 2011. Of

<sup>100</sup> Alkarama (press release), *Yemen: Arrest and detention of 9 Eritrean asylum-seekers*, 8 August 2008, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=47:yemen-arrest-and-detention-of-nine-eritrean-asylum-seekers&catid=40:communiqu&Itemid=216](http://en.alkarama.org/index.php?option=com_content&view=article&id=47:yemen-arrest-and-detention-of-nine-eritrean-asylum-seekers&catid=40:communiqu&Itemid=216) (accessed 18 December 2011).

<sup>101</sup> Constitution of Yemen, as amended on 10 February 2001, available at: <http://www.unhcr.org/refworld/docid/3fc4c1e94.html> (accessed 29 December 2011)

<sup>102</sup> Constitution of Yemen, as amended on 10 February 2001, available at: <http://www.unhcr.org/refworld/docid/3fc4c1e94.html> (accessed 29 December 2011).

<sup>103</sup> Criminal Procedure Law No.13 of 1994 ; English version of the law is available at <http://www.unhcr.org/refworld/country.LEGAL.,LEGISLATION,YEM.,3fc4bc374,0.html> (accessed 16 December 2011).

<sup>104</sup> Criminal Procedure Law No.13 of 1994 ; English version of the law is available at <http://www.unhcr.org/refworld/country.LEGAL.,LEGISLATION,YEM.,3fc4bc374,0.html> (accessed 16 December 2011).

<sup>105</sup> See: HOOD, as cited in CNN, *Rights group: Hundreds of protesters abducted, tortured in Yemen*, 1 November 2011; *supra* note 82.

these, 600 remain in detention, with approximately only 200 having been sentenced (most often in hasty trials – please refer to section 3.5 for more information on the situation of the justice system).<sup>106</sup>

118. In one case, at the beginning of the uprising, in the early hours of 23 January 2011, members of the Yemeni security forces arbitrarily arrested political activist and President of the NGO Women Journalists without Chains, **Ms Tawakul Karaman**, outside her home after returning from a meeting with opposition figures<sup>107</sup>, with members of the security forces failing to present an arrest warrant. A few hours later, more than 30 other activists, including human rights activists **Khalid Alinsi** and **Ali Adaylami** of the National Organization for Defending Rights and Freedoms in Yemen, and Journalists **Hammoud Hazza'** and **Sa'id Ashara'bi** were arbitrarily arrested after participating in a protest sparked by Tawakul Karaman's arrest.<sup>108</sup> Most of those detained on 23 January 2011 were charged with taking part in an unlicensed protest, but released on bail the following day.
119. In addition, as in previous years, hundreds were detained on security grounds in the south of the country and in counter-terrorism operations, while in the north, especially in the region of Sa'ada, hundreds of civilians who were not involved in the conflict between military forces and the Houthi movement, were arrested either as a means of retaliation, to compel combatants to surrender or to take revenge – including women. Serious violations of the law and rights of detainees took place during these often violent operations.
120. In many cases, the armed forces violently enter the homes of suspects, terrify the family and search the premises without a warrant. Those concerned are brutally taken away, often to unknown destinations, where they were detained incommunicado for periods ranging from several days to several months, and without being brought before a judge.
121. According to information gathered by Alkarama and other human rights groups, during 2010, Political Security imprisoned<sup>109</sup> hundreds of people under the pretext of the counter-terrorism measures, yet none of these detainees were brought before a judge or other officer authorized by law to exercise judicial power. In addition they were deprived of their right to take proceedings to challenge the lawfulness of their detention. Many have been subject to prolonged periods of incommunicado detention by different agencies, such as the Political Security and the National Security that are not supervised by the judiciary, while others were tortured and ill-treated. Among these detainees, 200 victims were detained in the main detention centre in Sana'a, 24 in Al Mansoura Central Prison in Aden, approximately 15 others in the Fath and Tawahi prisons also in Aden, more than 60 in the Hadramaut governorate in the southeast, and more than 50 people in Political Security's Al Hadida branch in the west, along with dozens of others in Lahaj and Ta'izz and Ibb and other places.
122. Thus, for example, Alkarama informed the Working Group on Arbitrary Detention (WGAD) on 9 November 2010 of five men held at the Political Security detention center in Sana'a, Yemen, **Jamal Eddine Ahmed Abderahim Al-Masri** aged 47, **Ahmed Ahmed Ali Addili**, aged 30, **Adel Ali Mokbel Al-Watari** and **Abdelsamee Nasser Ahmed Al-Hadae**, both aged 25, and **Hezam Abdallah Hezam Al-Banna** aged 24.<sup>110</sup> All men were arrested between December 2008 and April 2010. The pattern of their detentions is similar: arrested by security most often

<sup>106</sup> Interview by Alkarama researcher with lawyers from HOOD on 26 December 2011 in Sana'a, Yemen.

<sup>107</sup> Alkarama (press release/Arabic), *Yemen: The authorities repress protests using force, arresting human rights activists and journalists*, 23 January 2011; available (in Arabic) at

[http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=4045:2011-01-24-13-27-59&catid=164:2009-03-08-12-08-04&Itemid=140](http://ar.alkarama.org/index.php?option=com_content&view=article&id=4045:2011-01-24-13-27-59&catid=164:2009-03-08-12-08-04&Itemid=140) (accessed 20 December 2011). On 7 October 2011, Tawakul Karaman was awarded the Nobel Peace jointly with Liberian President Ellen Johnson Sirleaf and her compatriot Leymah Gbowee. Nobel chairman said the women had been honored "for their non-violent struggle for the safety of women and for women's rights to full participation in peace-building work". See <http://www.bbc.co.uk/news/world-15211377> (accessed 28 December 2011)

<sup>108</sup> Alkarama (press release), *Yemen: Authorities release human rights activists; Alkarama demand the same treatment for others arbitrarily detained at political security prisons*, 23 January 2011; available (in Arabic) at

[http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=4048](http://ar.alkarama.org/index.php?option=com_content&view=article&id=4048), (accessed 20 December 2011)

<sup>109</sup> See detailed information in Alkarama (press release), *Yemen: Detainees' families protest against political security forces*, 14 February 2011; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=692](http://en.alkarama.org/index.php?option=com_content&view=article&id=692) (accessed 19 December 2011)

<sup>110</sup> Alkarama (press release), *Yemen : Five more detained without charges in Sana'a*, 12 November 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=627](http://en.alkarama.org/index.php?option=com_content&view=article&id=627) (accessed 19 December 2011).

Political Security, and in some cases, military forces without a warrant, taken to unknown locations and detained incommunicado between one and six weeks before finally being able to contact their families. These men had been held for several years and had not yet been tried or charged.

123. Other past cases of arbitrary detention include the following:
124. **Mr Abdeljalil Abdeladhim Ali Al-Hattar**, the Imam of the Al-Haramayn mosque, was arrested by members of Political Security at dawn on 14 December 2007 at the mosque where he had led the Morning Prayer. He was handcuffed and taken to an unknown destination. No judicial warrant was presented, nor was he notified of the reasons for his arrest. Mr Al-Hattar was detained for the first three months without any contact with the outside world. When his family was allowed to contact him by phone, they learned that he had not been brought before a magistrate or other competent judicial official. On 24 November 2008, after receiving a submission about this case from Alkarama, the Working Group on Arbitrary Detention adopted Opinion Number 40/2008<sup>111</sup> in which it found that Al-Hattar was a victim of arbitrary detention in violation of Articles 9 (freedom from arbitrary arrest) and 10 (right to a fair trial) of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.<sup>112</sup>
125. On 7 April 2009, Alkarama submitted the case of three brothers, **Amir, Mouad and Mohammed Al Abbab** to the Working Group on Arbitrary Detention. They were arrested on 19 July 2007,<sup>113</sup> by Political Security, who failed to present a warrant or to inform them of the reasons for their arrest. It is believed, however, that they were arrested in place of their elder brother, Adel Al Abbab, a professor of Arabic who is sought by Political Security for his alleged links with Al-Qaida. During the first two months of their detention, they were held incommunicado; however, later they were in contact with their family, and their father was able to visit them once a week. They were not formally charged, brought before a judge or faced any other type of legal process. Informed of the case, the Working Group on Arbitrary Detention reached the conclusion<sup>114</sup> that the three Al Abbab brothers were arbitrary detained and requested the Government of Yemen to take the necessary steps to remedy the situation, "which, under the specific circumstance of the case, are the immediate release of, and the adequate reparation to the three Al Abbab brothers."<sup>115</sup>
126. In recent years, there have also been mass arrests at demonstrations and rallies in the south to protest against discrimination, as mentioned earlier. According to the Yemeni Observatory for Human Rights, in 2008 alone, there were 860 arrests at these rallies (including 402 in Aden and 230 in Lahij). Eighteen of those arrested were transferred to the Political Security prison in Sana'a – their detention has been acknowledged. Twenty others were reportedly detained incommunicado. No charges were brought against them and they were subsequently released without trial after several months of detention.
127. In the same way, military offensives in the region of Sa'ada in the north were accompanied with mass arrests of people suspected of supporting or sympathizing with the Houthi movement. On 20 September 2007, Alkarama submitted the cases of 37 individuals who had been arbitrary detained to the Working Group on Arbitrary Detention. These included minors, some of whom had been arrested and detained since 2006 without due process by Political Security. They were detained at a center in Nasiriyah in Hajjah (north-west).<sup>116</sup> Their families hold regular gatherings in Sana'a to protest against these arbitrary detentions. The statement from a

<sup>111</sup> Working Group on Arbitrary Detention, *Opinion No. 40/2008 (YEMEN)*, adopted on 24 November 2008.

<sup>112</sup> Working Group on Arbitrary Detention, *Opinion No. 40/2008 (YEMEN)*, adopted on 24 November 2008, para. 10; for Alkarama information, see Alkarama (press release), *Yemen: Condemnation for the arbitrary detention of Mr Abdeladhim Al-Hattar*, 3 April 2009, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=211](http://en.alkarama.org/index.php?option=com_content&view=article&id=211) (accessed 19 December 2011).

<sup>113</sup> Alkarama (press release), *Yemen: Arrest and arbitrary detention of 3 Al Abbab brothers*, 24 April 2009, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=223](http://en.alkarama.org/index.php?option=com_content&view=article&id=223) (accessed 19 December 2011).

<sup>114</sup> Working Group on Arbitrary Detention, *Opinion No. 13/2009 (YEMEN)*, adopted on 3 September 2009.

<sup>115</sup> Working Group on Arbitrary Detention, *Opinion No. 13/2009 (YEMEN)*, adopted on 3 September 2009, para. 15.

<sup>116</sup> Alkarama (press release) (French), *Yemen: 37 persons arrested and arbitrarily detained*, 20 September 2007, [http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=183](http://fr.alkarama.org/index.php?option=com_content&view=article&id=183) (accessed 20 December 2011).

meeting that took place on 20 September 2009 contained a list of about 70 people detained since 2007 and 2008 by Political Security.<sup>117</sup>

128. Many opponents, including human rights defenders and journalists, have been arrested and arbitrarily detained in recent years. Alkarama submitted the case of **Mr Louay Al-Muayyad** to the Working Group on Arbitrary Detention. He is a journalist and a member of the Organization for Human Rights and Democratic Freedoms, and he is the Executive Director of the portal 'Free Yemen'. On 30 June 2008, members of Political Security in civilian clothes accompanied by uniformed soldiers arrested him at home. He was taken to an unknown destination and held incommunicado. He was released on 12 September 2008 after 74 days of incommunicado detention. He was not subjected to legal proceedings during his detention and was released without ever being brought before a court.<sup>118</sup>
129. Arbitrary detention also affects people who have served their sentences but continue to be imprisoned due to unpaid debts. It is impossible to say how long they will be detained beyond the period of their sentence.

### 3.3.3 Cases of Arbitrary and Incommunicado Detention of Foreign Nationals

130. Many foreign nationals are detained arbitrarily in Yemeni prisons. They are often in a precarious position, since they receive no support from their families, and often denied any access to the outside world, with no one to intervene on their behalf, especially if their embassy does not become involved.
131. The case of the five Cameroonian nationals<sup>119</sup>: **Ludo Mouafo, Pierre Pengou, Baudelaire Mechoup, Zechariah Ouafo and Donatien Koagne**) who were arrested in March 1995 by Political Security forces and taken to its detention center in Sana'a, where they were arbitrarily detained for 15 years, is only one such example. According to the victims, the fifth Cameroonian, Donatien Koagne passed away sometime between December 2009 and January 2010 after being transferred from his cell to Sana'a General Hospital. The other four were finally released on 29 November 2010.
132. On 1 April 2010, Alkarama sent urgent appeals on their behalf to the Working Group on Arbitrary Detention (WGAD) and the Special Rapporteur on torture. Alkarama also informed the Committee against Torture (CAT) about the Cameroonians' situation in the context of Yemen's 2<sup>nd</sup> periodic review in November 2009. In its final concluding observations of Yemen's 2<sup>nd</sup> periodic review<sup>120</sup>, published in May 2010, the CAT mentioned the Cameroonians' case and asked Yemen "to provide an update on the case of four nationals of Cameroon - **Mouafo Ludo, Pengou Pierpe, Mechoup Baudelaire, Ouafo Zecharie**, who have been detained incommunicado and without legal process in Sana'a since 1995."<sup>121</sup>
133. After this mounting pressure, the four remaining individuals were released in late November 2010 and were able to return home to Yaoundé, the Cameroonian capital. Shortly after their return, Alkarama contacted Mouafo Ludo who provided detailed information regarding the conditions and details of his detention. According to his testimony, directly after his arrest, he was placed in a 2m<sup>2</sup> cell in the underbelly of the Political Security detention center in Sana'a. During the first few months of his detention he was regularly beaten, deprived of daylight and received only one meal and a single litre of water per day. A year later, four other Cameroonians were added to his cell. According to his testimony they were all tortured,

<sup>117</sup> Arab Network for Human Rights Information, *The twenty-seventh Sit, in front of the Al Saleh mosque to demand the release of the prisoners on the pretext of Sa'ada's events*, 20 January 2009 <http://www.anhri.net/yemen/yoddrf/2009/pr0920.shtml> (text in Arabic, accessed 20 December 2009).

<sup>118</sup> Alkarama (press release), *Yemen: Liberation of Mr Louay Al-Mouayyad, journalist and human rights activist*, 19 September 2008, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=140](http://en.alkarama.org/index.php?option=com_content&view=article&id=140) (accessed 20 December 2011).

<sup>119</sup> Alkarama (press release), *Yemen: four Cameroonian released after 15 years of secret detention*, 14 December 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=616](http://en.alkarama.org/index.php?option=com_content&view=article&id=616), (accessed 20 December 2010)

<sup>120</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010.

<sup>121</sup> Committee against Torture, , Consideration of report submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 44<sup>th</sup> session, 26 April-14 May 2010; CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para. 12.

electrocuted and hung by their wrists. None of the five detainees was ever brought before a court nor were they allowed to contact their embassy, gain access to a lawyer or call their families. To date, they have received no compensation for their detention and no investigation has been conducted to uncover the circumstances of their arrest and detention.

134. In a recent case, Mr **Hicham Gherras**, a Moroccan national, who arrived to Yemen on business on 12 February 2011, was arbitrary arrested a few days after his arrival in the country by plainclothes Political Security agents at his hotel in Sana'a.<sup>122</sup> Since his arrest, he has been held without charge and never brought before a judge, or given the opportunity to challenge his detention.

### **3.4 Inhuman Conditions in Detention Centres and Prisons (Art. 2, 7, 9, 10)**

#### **3.4.1 A proliferation of places of detention**

135. There is a prison in each provincial capital. According to domestic law, only persons convicted by a court are to be held in these prisons, administered by the Ministry of Interior. But in reality, people are detained in these prisons on the orders of tribal leaders or officials, without a mandate from any judicial authority. Police sections also have detention facilities. Under domestic law, police custody should not exceed 24 hours, but this limit is rarely respected.
136. There is also a plethora of other detention facilities managed by other government agencies. Those in charge of these facilities regularly arrest and detain people under various pretexts without a judicial warrant.
137. However, it is Political Security that hold the greatest number of people incommunicado in their centres across all provinces. Suspects can languish in these centres for periods ranging from days to several months, sometimes even years. National Security also has detention centres where detainees are held incommunicado, but it seems that the length of detention at these types of detention centres is never very long. After interrogation by this service's officers, suspects are transferred to other security services' detention facilities.
138. Foreigners awaiting deportation are held at the Visa Service, under the auspices the Ministry of the Interior; when they are suspected of terrorist activities, they are transferred to the Political Security centre where they await deportation.

#### **3.4.2 Dire Detention Conditions**

139. Detention conditions in Yemeni prisons and other places of detention are appalling in every respect: unhygienic with poor sanitation, overcrowding, lack of medical care, insufficient food, which have worsened dramatically since the beginning of the uprising. All these factors create difficult conditions bordering on inhuman and degrading treatment, especially in cases of incommunicado detentions. Former detainees testify that the worst conditions are in the Sana'a centres of National Security, Political Security, Criminal Investigation, the Al Sawad barracks of the Republican Guards and the Special Forces' Al Sabaha's barracks. In addition, lawyers do not have access to these places of detention. Since the outbreak of the uprising, there has been little supervision of what goes inside places of detention by the central authorities, and it seems that detaining authorities have been given free rein to do as they please.
140. The authorities categorically refuse to grant permission to visit places of detention under the control of the security and military forces to the judicial authorities or civil society. There is therefore no judicial oversight of these places of detention. On paper, civil society generally has access to central prisons and police stations, and visits have been possible on some occasions. However, authorities continue to deny some visits: for example, in 2008, the Yemeni Observatory for Human Rights obtained no visiting permits, except for Hajjah prison. In 2004, the International Committee of the Red Cross (ICRC) suspended its visits to prisons, citing the failure to agree to the ICRC's universally applied manner of conducting visits, which includes regular access to, and private interviews with, all detainees. In July 2010, and after an

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<sup>122</sup> Alkarama (press release), *Yemen: Moroccan national hospitalized following hunger strike*, 21 April 2011; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=722](http://en.alkarama.org/index.php?option=com_content&view=article&id=722), (accessed 20 December 2011)



interruption of several years, the ICRC resumed its prisons visits in Yemen, "to assess [detainees'] conditions of detention and [...] treatment [of detainees]".<sup>123</sup>

141. Between January and March 2007, the Parliamentary Committee on Civil Liberties and Human Rights conducted a series of visits in central prisons, detention centers and temporary places of detention in the provinces of Ibb, Dhamar and Al-Bayda. It released its report 16 June 2008.<sup>124</sup> In particular, the Committee noted overcrowding, the presence of a dozen young children in prison with their mothers, and adolescents aged between 15 and 18 detained with adults.
142. As for physical conditions, it noted that there was insufficient food, and that prison budgets had been reduced for 2006 compared with previous years, in spite of price increases. The amount of water available to inmates was insufficient; there was a lack of medicine and care, and training for inmates was inadequate, as was the number of staff and security guards.
143. On the legal front, the Committee noted that prisoners were held beyond the term of their sentence; some were imprisoned for years without trial.
144. In the Attorney General's detention centres, the Committee found overcrowded and unhygienic conditions, and excessive delays in proceedings. It has also received numerous complaints of abuse during interrogations.
145. The National Forum for Human Rights (NFHR), a Yemeni NGO which was permitted to visit some of Hodeida Governorate's prisons and detention centres in March 2010, described how overcrowded the detention facilities were. For example, the NFHR found that the Hodeida Central Prison housed 1,500 prisoners, despite it having been built to house only 350 inmates. According to the organization about 160 were being detained illegally. It also gave an alarming account of the lack of food and water in prisons and the unsanitary conditions, having to share 70 uniforms that they wear in turn when they are transported to court. Many of those who were detained or imprisoned were tortured according to the NFHR.<sup>125</sup> The report notably focused on female prisoners who were vulnerable to rape and other types of violence.<sup>126</sup>

### 3.5 The Right to Fair Trial and Equality Before Tribunals (Art. 14)

#### 3.5.1 Justice System's Lack of Institutional Independence

146. In theory, Yemen's judiciary is independent. Article 149 of Yemen's constitution states that "the Judiciary (authority) is an autonomous authority in its judicial, financial and administrative aspects and the General Prosecution is one of its sub-bodies. The courts shall judge all disputes and crimes. The judges are independent and not subject to any authority, except the law. No other body may interfere in any way in the affairs and procedures of justice. Such interference shall be considered a crime that must be punished by law. A charge regarding such interference cannot be nullified with the passing of time."<sup>127</sup>
147. In reality, however, Yemen's Judicial Authority Law, which provides further definition of how the judiciary is managed, includes provisions that raise serious questions regarding the independence of the judicial system in the country, since the executive authorities of the State are able to exercise great influence over the judicial system. Thus for example, the president of

<sup>123</sup> ICRC, *The ICRC in Yemen – Overview*, 1 October 2011; available at <http://www.icrc.org/eng/where-we-work/middle-east/yemen/overview-yemen.htm>, (accessed 20 December 2011)

<sup>124</sup> Committee of Public Freedoms and Human Rights, *Report of the Committee of Public Freedoms and Human Rights on the results of its visit to the temporary and central prisons and places of provisional detention of the governorates of Ibb and Al Baida*, Yemen, 16 June 2008.

<sup>125</sup> ReliefWeb, *Briefing kit for Yemen*, May 2010, available at [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/briefingkit-422a497b85fcada723c5e068cb1f0926.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/briefingkit-422a497b85fcada723c5e068cb1f0926.pdf) (accessed 20 December 2011)

<sup>126</sup> ReliefWeb, *Briefing kit for Yemen*, May 2010, available at [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/briefingkit-422a497b85fcada723c5e068cb1f0926.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/briefingkit-422a497b85fcada723c5e068cb1f0926.pdf) (accessed 20 December 2011).

<sup>127</sup> See the Constitution of Yemen. For the official Arabic text of the Constitution, as amended via public referendum, held on 20 February 2001, see بوابة الحكومة اليمنية (Yemeni Government's Web Portal), available in Arabic at: <http://www.yemen.gov.ye/portal/Default.aspx?tabid=2618>, (accessed 5 December 2011). For an unofficial English translation of the constitution, see: <http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,YEM,4562d8cf2,3fc4c1e94,0.html> (accessed 5 December 2011).

the Supreme Judicial Council (SJC), which oversees and manages the affairs of the judicial system in Yemen according to its domestic law, is appointed directly by the Yemeni President. In addition, the Minister of Justice sits on the SJC, and his ministry appraises the work and competence of judges, and can affect their promotion and lead to disciplinary actions. As a result, the executive maintains a strong degree of control over the judicial branch.

148. Alkarama believes that this situation is contrary to the principle of an independent tribunal, as stipulated by article 14(1) of the Covenant. In that regard, the Human Rights Committee, in its General Comment 32<sup>128</sup>, has already stated that "a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal."<sup>129</sup>

### 3.5.2 The Existence of a 'Special Criminal Court' and the Principle of Fair Trial

149. In 1999, President Saleh, through Decree No. 391, established a Special Criminal Court (المحكمة الجزائية المتخصصة) Al Mahkamat Al Jinaiat Al Mutakhassissa – also referred to as the SCC or State Security Court) to try terrorism-related cases. When it was first established, the court was vested with the jurisdiction to try the crime of *Hiraba* (حرابة), which in Yemeni Penal Code covers the kidnapping of foreigners and aeronautical or marine piracy; sabotage of oil interests or any other economic interests; theft, murder or harassment by armed bandits; forced confiscation of private or public means of transportation by armed groups or by armed individuals; association with gangs that confiscate public or private lands; and any crime against a member of the judicial system or their families. In 2004, Presidential Decree no. 8 expanded the jurisdiction of the SCC to include "offences harmful to state security and offenses with serious repercussion for society and economy".
150. Many Yemeni lawyers believe that this court is unconstitutional, since the Yemeni Constitution prohibits the establishment of such specialized courts<sup>130</sup>, and also because its existence was not discussed or approved by the Parliament. In addition they criticize the fact that the Attorney General has the power to refer all cases to this Court.
151. Many security suspects, journalist, critics of the Yemeni regime and opposition members have been tried before this court rather than the ordinary criminal system, and serious problems have been raised concerning the fairness of their trials. Alkarama believes that the international standards for fair trial, and in particular those stipulated in Article 14 of the Covenant, are not met by this special court, which places it outside the legal system.
152. In that regard many lawyers and human rights defenders highlight several issues concerning the administration of justice in the SCC: judgments are hurried and the procedures are expeditious, which mean that lawyers are unable to defend their clients effectively. Therefore, the right to defence is not always respected. Lawyers complain of not having access to their clients' files, and of not being allowed to visit clients in provisional detention. The right to legal assistance for defendants is not respected, and "confessions" obtained under torture and recorded as statements are routinely used by the court as evidence, in contradiction, for example, with Article 14(3)(g) of the Covenant, which provide that accused people have the right not to be compelled to testify against themselves or to confess guilt.<sup>131</sup> Furthermore, the court never investigates allegations of torture, ill-treatment or prolonged incommunicado detention. Defendants' families have been prevented from attending hearings, even though they are public.

<sup>128</sup> Human Rights Committee, *General Comment no. 32*, UN Doc CCPR/C/GC/32, 23 August 2007.

<sup>129</sup> Human Rights Committee, *General Comment no. 32*, UN Doc CCPR/C/GC/32, 23 August 2007, para 19.

<sup>130</sup> According to Article 148 of the Yemeni Constitution, "exceptional courts may not be established under any conditions." For the official Arabic text of the Constitution, as amended via public referendum, held on 20 February 2001, see بوابة الحكومة اليمنية (Yemeni Government's Web Portal), available in Arabic at: <http://www.yemen.gov.ye/portal/Default.aspx?tabid=2618>, (accessed 5 December 2011). For an unofficial English translation of the constitution, see: <http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,YEM,4562d8cf2,3fc4c1e94,0.html> (accessed 5 December 2011).

<sup>131</sup> In addition, Article 15 of the UN Convention against torture, explicitly prohibits the admissibility of statements obtained by torture in any proceedings, except against a person accused of torture as evidence that the statement was made.



153. Alkarama would like to recall that the Human Rights Committee, in its General Comment 32<sup>132</sup>, while noting that the Covenant does not prohibit the trial of civilians in military or special courts, it nevertheless requires that such trials “are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned”<sup>133</sup>.

### 3.5.3 Unfair trials Before the Special Criminal Court

154. Following are few examples of cases of unfair trials brought before SCC which Alkarama has received in recent years.
155. On 26 January 2010, Sana'a's SCC ruled against **Mohamed Qasim Ali Al-Ghouli** and **Amin Al-Naggar**<sup>134</sup>, two cases which Alkarama had previously submitted to the UN special procedures. The court handed out sentences of ten years for Mr Al-Ghouli and seven years for Al-Naggar. Both Mohamed Al-Ghouli and Amin Al-Naggar were among a group of seven individuals accused and tried for belonging to Al-Qaida. They have always denied the charges. Following arbitrary arrests and detention, all of which were devoid of any judicial authority or relevant proceedings, the trial was conclusively considered as unfair by local lawyers and human rights activists, who criticize the Court for its lack of independence and inability to meet the criteria of a fair trial. In this specific case, Mohamed Al-Ghouli was denied legal representation not only during the first three hearings of his trial, but also during interrogations prior to his trial, following arbitrary arrest, disappearance and detention.
156. This year, on 18 January 2011, the same SCC sentenced Yemeni journalist and media figure, **Abdul Ilah Haydar Sha'i**<sup>135</sup>, to five years in prison, for allegedly collaborating with Al-Qaida. Sha'i, who is known to have exposed a massacre caused by an American bombing raid, which killed dozens of civilian in late 2009, was arrested by Yemeni police for the first time on 11 July 2010 in Sana'a<sup>136</sup>, and later released after six hours of questioning. He was then arrested another time at his home on 16 August 2010 and was detained in a secret National Security detention center in Sana'a<sup>137</sup>, disappeared for 35 days, before being transferred to a Political Security detention centre. According to his lawyers, he bore the marks of torture on his chest and other parts of his body and one of his teeth was broken. During his first hearing at the SCC, Mr Sha'i asked the court to investigate his complaints with regard to the human rights violations carried out against him. The court refused to do so, prompting the defence team to withdraw.
157. On 17 January 2010, **Yasser Al-Wazir** was sentenced to 8 years imprisonment by the SCC in Sana'a.<sup>138</sup> Alkarama had previously submitted his case as an urgent appeal to the Special Rapporteur on Human Rights Defenders on 20 November 2009.<sup>139</sup> Mr Al-Wazir is a member of the Yemeni Organisation for the Defense of Human Rights and Democratic Freedoms and

<sup>132</sup> Human Rights Committee, *General Comment no. 32*, UN Doc CCPR/C/GC/32, 23 August 2007.

<sup>133</sup> Human Rights Committee, *General Comment no. 32*, UN Doc CCPR/C/GC/32, 23 August 2007, para 22.

<sup>134</sup> Alkarama (press release), *Yemen: Al-Ghouli and Al-Naggar sentenced after unfair trial at Sana'a's Specialized State Security Court*, 27 January 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=420](http://en.alkarama.org/index.php?option=com_content&view=article&id=420), (accessed 22 December 2011)

<sup>135</sup> Reporters Without Borders, *Reporter sentenced to five years in prison for alleged Al-Qaeda links*, 18 January 2011; available at <http://en.rsf.org/yemen-reporter-sentenced-to-five-years-18-01-2011,39348.html>, (accessed 22 December 2011)

<sup>136</sup> Alkarama (press release), *Yemen: Yemeni journalist on trial for terrorist links after exposing US-bomb raid in November 2009*, 26 October 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=634](http://en.alkarama.org/index.php?option=com_content&view=article&id=634), (accessed 22 December 2011).

<sup>137</sup> The disappearances and arrests of Abd Al-Ilah Haidar Shayie and fellow cartoonist Kamal Yahya Sharaf (the later was released on 5 October 2010) triggered a wave of local and international protests. Alkarama sent urgent appeals to both the Special Rapporteur on Torture and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, urging them to intervene on behalf of the two journalists. See: Alkarama (press release), *Cartoonist released while fellow journalist remain in detention*, 5 October 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=583](http://en.alkarama.org/index.php?option=com_content&view=article&id=583), (accessed 22 December 2011).

<sup>138</sup> Alkarama (press release), *Yemen: Yasser Al-Weir sentenced to 8 years imprisonment in unfair trial*, 20 January 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=408](http://en.alkarama.org/index.php?option=com_content&view=article&id=408), (accessed 22 December 2011). A group of 25 Arab Human rights organizations, including Local Yemeni NGOs, published on 4 February 2010 a press release on this matter, available at [http://www.ifex.org/yemen/2010/02/04/al-wazir\\_sentenced/](http://www.ifex.org/yemen/2010/02/04/al-wazir_sentenced/) (accessed 22 December 2011)

<sup>139</sup> See Alkarama (press release), *Yemen: on going arbitrary detention and unfair trial of human rights defender Yasser Al-Wazir*, 20 November 2009; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=362](http://en.alkarama.org/index.php?option=com_content&view=article&id=362), (accessed 22 December 2011)

campaigned regularly for the protection of the rights of detainees in Yemen, particularly those related to the conflict in Sa'ada. His trial was indisputably unfair: prior to his trial Mr Al-Wazir was held incommunicado for three months and suffered torture and ill-treatment at the hands of State Security, and spent long stretches of time in solitary confinement during this period. Al-Wazir remained detained without charge until the authorities referred him to trial on trumped-up charges, including charges of forming an armed group, although Al-Wazir was never questioned about this accusation during the entire period of his detention. His trial was conducted in semi-secret conditions, *in camera*, and Al-Wazir was not informed about the trial dates of the hearings. A lawyer appointed by Al-Wazir's family was forced to abandon the cause later, in protest at the lack of basic guarantees of a fair trial.

158. On 7 November 2007 **Abdul Rahman Al-Hossami** was sentenced by Sana'a's SCC to two and a half years in prison, starting from the date of his arrest. During the proceedings of his trial, the SCC used confessions extracted under duress and torture. He was released only after having served six months over and beyond his prison sentence.<sup>140</sup>

### 3.6 Restriction on Freedom of Expression (Art. 17, 19)

159. In the Arab World, Yemen was considered to be an exception in terms of its respect of freedom of expression. However, the situation has changed dramatically in the last few years, with the government resorting to restrictive provisions of domestic laws and state regulations to criminally prosecute and repress the press and the freedom of expression, especially when journalists or political opponents attempt to address 'sensitive issues'. As one observer rightly noted, "there are subjects better left untouched by journalists who value their skins. They have learned by trial and error not to delve on four key topics: The president's family and especially the question of whether his elder son Ahmad will succeed him; the country's sovereignty with reference to secessionism in the south and rebellion in the north-west; religion; and military."<sup>141</sup>
160. This negative tendency has intensified since May 2009, when the Supreme Judicial Council in Yemen announced the creation of a Specialized Press and Publications Court, which many journalists and human rights defenders in Yemen consider unconstitutional (see below). In addition, a draft amendment to different provisions of the penal law and a 2010 draft Law on the Organization of Private Audiovisual Media and Electronic Media will add - if approved, further restrictions on the right to freedom of expression in Yemen.<sup>142</sup>

#### 3.6.1 Domestic Legislation Restricting Freedom of Expression

161. Alkarama believes that the current applicable domestic legal framework in Yemen, as it exists today, already imposes severe restrictions on the freedom of expression. These restrictions are not compatible with the Covenant and go far beyond the strictly defined parameters of Article 19(3) of the Covenant, which stipulate that:
- "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals".
162. Thus, Article 42 of the Yemeni Constitution recognizes the right to freedom of expression, and state that "...the State shall guarantee freedom of thought and expression of opinion in speech,

<sup>140</sup> Alkarama (press release), Yemen : *Abdul Rahman Al-Hossami released after three years of imprisonment, arbitrary detention and unfair trial*, 7 January 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=395](http://en.alkarama.org/index.php?option=com_content&view=article&id=395), (accessed 23 December 2011).

<sup>141</sup> Victoria Clark, *Yemen - dancing on the heads of snakes*, Yale University Press (2010); p. 277.

<sup>142</sup> According to different sources, the Yemeni parliament is still considering amending the Press and Publication Law with two different drafts tabled for discussion, including a governmental draft, which was made public first in 2005, and a later draft prepared by the Ministry of Justice. However, both drafts maintain the severe prohibitions currently existing in the Press and Publications Law, and would even further some of these restrictions, all in contradiction with the Covenant (see detailed discussion in para. 157 onwards). The draft Law on the Organization of Private Audiovisual Media and Electronic Media Audio propose subjecting employees of radio and television companies and websites to the Press and Publications Law, with the restrictions on the freedom of expression that it contains.

writing and photography within the limits of the law".<sup>143</sup> However, Article 103 of the Law No. 25 (1990) on the Press and Publications<sup>144</sup> lists 12 different restrictions, some of them broader than the two permitted limitative areas of restrictions on the right to freedom of expression, according to Article 19(3) of the Covenant, and which may only relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals, as mentioned above.

163. One such restriction provides that media professionals must abstain from printing, publishing, circulating or broadcasting content, which "criticise(s) the person of the head of state, or to attribute(s) to him declarations or pictures unless the declarations were made or the picture taken during a public speech. These provisions do not necessarily apply to constructive criticism."<sup>145</sup> In that regard, Alkarama believes that this provision, as well as similar ones (see below), runs directly in contradiction with well established principle, according to which public officials, including heads of states, are required to tolerate more criticism than ordinary persons. The recently published General Comment 34 of the Human Rights Committee<sup>146</sup>, where the Committee expressed its concern regarding laws on such matters, as, "lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials"<sup>147</sup>, affirms this principle, and states in the clearest terms that "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."<sup>148</sup>
164. In addition, the above-mentioned Publication and Press law foresees sanction of imprisonment of journalists. It stipulates in its article 104 that "[W]ithout prejudice to any more severe penalty under another law, any person who contravenes the provisions of this law shall be subject to a fine not exceeding ten thousand riyals or a period of imprisonment not exceeding one year".<sup>149</sup> Similarly, the Republican Decree for Law No. 12 for the Year 1994 concerning Crimes and Penalties<sup>150</sup>, another law used by Yemeni government to curtail and violate the right to freedom of expression, go as far as criminalizing "[W]hoever insult in public the President of the state so as to offend him or damage his personality in society"<sup>151</sup>. The person violating this provision might even risk a harsher imprisonment for a period of up to 2 years. Yet, all these provisions contradict the other principle, as laid down by the Human Rights Committee, according to which laws "should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned"<sup>152</sup>.
165. Moreover, Yemeni law prescribes other restrictions which are vaguely formulated, and have been interpreted by the authorities in a sweeping manner to put further restrictions on the right to freedom of expression. Examples for such restrictions could be found in the above-mentioned Article 103 of Law No. 25 (1990) on the Press and Publications, which stipulate, *inter alia*, that media professionals shall be bound to abstain from printing, publishing circulating or broadcasting "[A]nything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds"<sup>153</sup>, as well as "Anything which leads to the spread of ideas

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<sup>143</sup> See the unofficial translation from the Arabic original of the Yemeni Constitution as amended via public referendum, held on 20 February 2001, available at <http://www.unhcr.org/refworld/docid/3fc4c1e94.html> (accessed 25 December 2011)

<sup>144</sup> Law No. 25 (1990) on the Press and Publications; unofficial English text available at: <http://www.albab.com/yemen/gov/off4.htm> (accessed 25 December 2011)

<sup>145</sup> Law No. 25 (1990) on the Press and Publications, Article 103 (l).

<sup>146</sup> Human Rights Committee, *General Comment no. 34*, UN Doc CCPR/C/GC/34, 11 September 2011; available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (accessed 26 December 2011).

<sup>147</sup> Human Rights Committee, *General Comment no. 34*, ( CCPR/C/GC/34), 11 September 2011, para 38.

<sup>148</sup> Human Rights Committee, *General Comment no. 34*, (CCPR/C/GC/34), 11 September 2011, para 38.

<sup>149</sup> Law No. 25 (1990) on the Press and Publications, Article 104.

<sup>150</sup> Republican Decree for Law No. 12 for the Year 1994 concerning Crimes and Penalties; Unofficial version of the law is available at [http://www.unhcr.org/refworld/country\\_LEGAL,,LEGISLATION,YEM,4562d8cf2,3fec62f17,0.html](http://www.unhcr.org/refworld/country_LEGAL,,LEGISLATION,YEM,4562d8cf2,3fec62f17,0.html) (accessed 25 December 2011)

<sup>151</sup> Republican Decree for Law No. 12 for the Year 1994 concerning Crimes and Penalties; Unofficial version of the law is available at [http://www.unhcr.org/refworld/country\\_LEGAL,,LEGISLATION,YEM,4562d8cf2,3fec62f17,0.html](http://www.unhcr.org/refworld/country_LEGAL,,LEGISLATION,YEM,4562d8cf2,3fec62f17,0.html) (accessed 25 December 2011), Article 197.

<sup>152</sup> Human Rights Committee, *General Comment no. 34*, UN Doc CCPR/C/GC/34, 12 September 2011, para 38.

<sup>153</sup> Law No. 25 (1990) on the Press and Publications, Article 103 (a)

contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage."<sup>154</sup>

166. In that regard, and while bearing in mind that prohibitions of displays of lack of respect for a religion or other belief systems are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20(2)<sup>155</sup> of the Covenant, Alkarama believes that most of these provisions lack the sufficient precision to enable individuals to regulate their conduct accordingly, and do not provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.<sup>156</sup> Concepts such as 'national unity' or 'principles of the Yemeni Revolution' are vague concepts and have a great potential of being interpreted by those in charge with the execution of the law, as reality has demonstrated in Yemen in recent years.<sup>157</sup>
167. Another matter of concern is the Specialized Press and Publications Court, which was created on 11 May 2009. Many Yemeni lawyers and human rights defenders believe that the establishment of this court contradicts Article 150 of the Yemeni Constitution, which states that "it is not permissible to establish exceptional courts under any circumstances"<sup>158</sup>. The Yemeni government has argued that this court is not an 'exceptional' court, and compared it to the case of other tribunals dedicated to things such as civil business matters or commercial courts. However, Yemeni lawyers have indicated several crucial differences, including the fact that this Press and Publication Court only exists in Sana'a<sup>159</sup>, while other types of courts are organized by geography, and their jurisdiction is limited to the place where the alleged offence took place. This is an obstacle to many accused person who wish to exercise their right to an effective defence and access to justice who are not based in Sana'a. More importantly, lawyers contend that the Attorney General, who is a political appointee of the Minister of Justice, selectively picks cases using arbitrary standards, to send them to this court, unlike legitimate specialized tribunals, that handle all cases of certain types. In addition, the press and publication court, unlike other tribunals, is mandated to handle provisions on penal code, not only those relating to the press and publication law.

### 3.6.2 Cases concerning violations of the right to freedom of expression

168. Information received by Alkarama, as well as other human rights organizations, indicate that the country is witnessing one of its worst periods in terms of respecting the rights to freedom of expression and opinion, particularly since the beginning of the uprising. However, violations to the freedom of expression are not limited to 2011, as illustrated below. In the following paragraphs Alkarama provides a few examples of cases that were treated by our organization through urgent appeals and other mechanisms of the UN Special Procedures.
169. **Mr Mohamed Al-Magaleh**, aged 50, is a well-known journalist and editor of the Yemeni Socialist Party news website Aleshtiraki. He was abducted on 17 September 2009 by members of the Security Services in Sana'a at 11pm outside his home by several armed men in civilian clothes, who took him to an unknown destination.<sup>160</sup> In the past, Mr Al-Magaleh had repeatedly been arrested and detained incommunicado without legal process by Political Security, before

<sup>154</sup> Law No. 25 (1990) on the Press and Publications, Article 103 (d)

<sup>155</sup> Article 20 (2) of the Covenant stipulate that "[A]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

<sup>156</sup> Human Rights Committee, *General Comment no. 34*, (CCPR/C/GC/34), 11 September 2011, para. 25.

<sup>157</sup> In that regard, it is useful to recall the concerns expressed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning defamation laws that cover the "the protection of subjective values, such as sense of national identity, religions, State symbols, institutions or even representatives such as the Head of State". According to him, "under no circumstances should criticism of the nation, its symbols, the Government, its members and their action be seen as offence." See *Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo submitted to the Human Rights Council at its seventh session*, 28 February 2008, (A/HRC/7/14); para. 40 and 79 consecutively; available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/10/PDF/G0811210.pdf?OpenElement>, (accessed 26 December 2011).

<sup>158</sup> Article 150 of the Yemeni Constitution; available at [http://www.unhcr.org/refworld/country\\_LEGAL\\_LEGISLATION\\_YEM\\_4562d8cf2\\_3fc4c1e94\\_0.html](http://www.unhcr.org/refworld/country_LEGAL_LEGISLATION_YEM_4562d8cf2_3fc4c1e94_0.html) (accessed 26 December 2011).

<sup>159</sup> The Specialized Press and Publications Court is established in Sana'a as a court of first instance with one single judge. Appeals are heard before ordinary criminal appeal courts in Sana'a.

<sup>160</sup> See Alkarama (press release), *Yemen: Journalist, Mohamed Al-Magaleh, enforced disappearance*, 25 September 2009; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=305](http://en.alkarama.org/index.php?option=com_content&view=article&id=305) (accessed 26 December 2011)



being released several months later without trial. During each of his lengthy incommunicado detentions, including this latest ordeal, he was tortured and ill-treated, while being criticized for his articles and public statements, particularly his damning coverage of the government's ongoing repression of the Houthi rebels in the north and south, and for his criticisms of human rights abuses by the Government. The Yemeni Government denied for several months that it was holding him under its custody. It was only following pressure from civil society, including demands made by the National Union of Journalists that authorities disclosed the fact that he was under their custody and allowed his family to speak with him over the phone for less than two minutes on 31 January 2010, the first time since his abduction. Mr Al-Magaleh then faced criminal proceedings in two separate exceptional courts: the Special Criminal Court, and the Specialized Press and Publications Court,<sup>161</sup> but was then pardoned by the President, who according to Yemen News Agency SABA pardoned "all journalists on trial and those sentenced due to public right cases".<sup>162</sup>

Mr Al-Magaleh was released at the end of May 2010, without it being clear whether the charges against him in both specialized courts were actually dismissed or if they remained pending. This ambiguous situation means that the threat of a trial against him in the future is not diminished and could be used at any time as a mean of deterring him from exercising his right to freedom of expression in the future.

170. On 2 May 2010, the Press and Publications Court in Sana'a found **Hussein Mohammad Al-Liswas**, editor of the news Web site Sana Press, guilty of "undermining national foundations, the revolution, and the republic"<sup>163</sup>. It sentenced him to one year in prison, and instituted an open-ended reporting ban against him, after he published articles critical of corruption in Yemen in the Al-Tajdid newspaper. Al-Liswas was released later in the month, following President Saleh's decision to pardon journalists (see case of Mohamed Al-Magaleh, above, for more information on the Presidential pardon). Later in the same month, the Press and Publications Court sentenced another four journalists: Editor **Sami Ghaleb**, and reporters **Abdel Aziz al-Majidi**, **Fouad Mas'ad**, and **Shafee' al-Abd** of the independent weekly Al-Nida' to a three-month suspended jail for "publishing false reports liable to incite violence"<sup>164</sup>. The charges against the journalists were related to articles written in 2009 dealing with the situation in the south of the country and the Yemeni Government's response to it. Neither the defendants nor their lawyers were present at the verdict because the court did not inform them of the hearing date.<sup>165</sup> Their sentences were finally cancelled following the Presidential amnesty for journalists.
171. On the evening of Monday 16 August 2010, National Security, accompanied by a well-armed "anti-terrorist" security force, raided the houses of the journalist **Abdul Ilah Haydar Sha'i** (see paragraph 156 above) and the cartoonist **Kamal Yahya Sharaf**, in Sana'a.<sup>166</sup> The forces carried out illegal house searches and then took them at gunpoint to an unknown location. They later turned out to be in the custody of the National Security forces, according to the account of the Anti-Terrorism and State Security Prosecution Service, which admitted, under

<sup>161</sup> See Alkarama (press release – Arabic), اليمن: الصحفي المقالحي يواجه محاكمة غير عادلة ويكشف تعرضه للتعذيب خلال اعتقاله (Journalist Al-Magaleh Faces Unfair Trail, Faces Details Concerning Torture During his Detention and Enforced Disappearance), 23 February 2010; available in Arabic at [http://ar.alkarama.org/index.php?option=com\\_content&view=article&id=3749:2010-02-23-08-56-00&catid=164:2009-03-08-12-08-04&Itemid=140](http://ar.alkarama.org/index.php?option=com_content&view=article&id=3749:2010-02-23-08-56-00&catid=164:2009-03-08-12-08-04&Itemid=140), (accessed 26 December 2011).

<sup>162</sup> See : SABA (YEMEN NEWS AGENCY), *Saleh pardons convicted journalists*, 22 May 2010; available at <http://www.sabanews.net/en/news215058.htm> (accessed on 27 December 2011).

<sup>163</sup> Committee to Protect Journalists, *Yemen jail editor in ongoing media onslaught*, 12 May 2010, available at <http://www.cpj.org/2010/05/yemen-jails-editor-in-ongoing-media-onslaught.php> (accessed on 27 December 2011); See also Yemeni media report (in Arabic) at AL-SAHWA, *طاهر: الأحكام الصادرة بحق الصحفيين تستند لقوانين ظالمة*, 2 May 2010, available at [http://www.alsahwa-yemen.net/view\\_news.asp?sub\\_no=1\\_2010\\_05\\_02\\_77906](http://www.alsahwa-yemen.net/view_news.asp?sub_no=1_2010_05_02_77906), (accessed 27 December 2011)

<sup>164</sup> Committee to Protect Journalists, *Yemeni court gives five journalists suspended jail terms*, 25 May 2011; available at <http://www.cpj.org/2010/05/yemeni-court-gives-five-journalists-suspended-jail.php> (accessed 27 December 2011)

<sup>165</sup> Committee to Protect Journalists, *Yemeni court gives five journalists suspended jail terms*, 25 May 2011; available at <http://www.cpj.org/2010/05/yemeni-court-gives-five-journalists-suspended-jail.php> (accessed 27 December 2011).

<sup>166</sup> Alkarama (press release), *Yemen: Peaceful sit-in protest in solidarity with detained journalists*, 27 August 2010; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=646:yemen-peaceful-sit-in-protest-in-solidarity-with-detained-journalists&catid=40:communiqu&Itemid=216](http://en.alkarama.org/index.php?option=com_content&view=article&id=646:yemen-peaceful-sit-in-protest-in-solidarity-with-detained-journalists&catid=40:communiqu&Itemid=216), (accessed 26 December 2011). For more details on the case of journalist Abdul Ilah Haydar Sha'i, see para. 155 above.

pressure from the victims' families and human rights agencies, that it had issued an arrest warrant, and requested that their files be transferred to them. On 5 October 2010 Yemeni authorities released cartoonist Sharaf, after the National Security services had forcibly disappeared him for over a month. He continued to be detained at Political Security headquarters for 13 days following a State Security judge ruling that he should be released.

172. During 2011, and particularly since the outbreak of Popular Youth Revolution, journalists have been a particular target of the authorities, in an attempt to restrict their rights to freedom of opinion and expression and to prevent them from reporting on human rights violations in Yemen. On 29 July 2011, Alkarama submitted the cases of 7 journalists, including 2 women, who have suffered persecution because of their activities reporting on, and participating in, protests in Yemen to the UN Special Rapporteur on Freedom of Opinion and Expression. These journalists were subjected to various types of harassment including being arrested, enforcedly disappeared, detained arbitrarily and in secret, and receiving death threats.<sup>167</sup> We refer in particular to the following cases as examples:
173. Mr Abdel Ali Mohamed Abdel Mughni, 32, who was filming clashes between security forces and demonstrators demanding the departure of the regime on 17 February 2011 when he was shot at by the security services. When the shots missed him, he was detained for a short period by the security services, beaten and had his camera confiscated.
174. Mr Mohamed Mostafa Al Amrany, 30, who received a number of death threats by phone, starting on 5 March 2011. Shortly before these threats began, he published an article stating the names of government officials involved in the repression in Yemen.
175. Mr Khalil Ali Ahmed Al-Barah, 30, went out on 11 February 2011 to cover a peaceful demonstration for the news website he edits. He was arrested, kept in a car belonging to the security services for some time and beaten and insulted. The agents also took his camera and deleted all the photos he had taken.
176. Mr Mohammed Ahmad Al Mohammadi, a TV journalist aged 30, was abducted in the middle of the night of 16 April 2011 by officers from the Office of the Commander of the Republican Guard (overseen by the President's son). They offered him a new, well-paid job at another TV channel which supports the President, and requested that he also work for them as an informant, which he refused. In retaliation, the agents took his mobile phones and detained him in secret at the National Security Service Headquarters for five days. He was then released on 21 April 2011.
177. In sum, as set out above, despite starting off on a positive note space for freedom of expression has been gradually reduced in the last few years, and very clearly since the beginning of the 2011 uprising close to a year ago now. Alkarama has gathered, in partnership with the Yemeni Journalists Union, multiples examples of violations, including extra-judicial executions and assaults, arbitrary arrests, detentions and unfair trials, death threats and harassment of journalists, the expulsion of foreign correspondents, the closing of websites and newspaper offices, confiscations and destructions of property and other violations by security forces on media reporting on the protests. As outlined above, the crackdown on the media and other forms of freedom of expression over the last few years has unfortunately been supported by changes in the legislation, including the establishment of a specialised court dealing with the press and publications offences.

## 4 Conclusion

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178. The political situation in Yemen is quickly deteriorating – at present there are even fears that the country could disintegrate into separate entities. Some observers have been warning, for years now, of the “Somalisation of Yemen” due to the conflict between the central government and the Houthi movement in the north; the political and social demands of the southern part of Yemen, which are increasingly expressed in secessionist terms; the presence in Yemen of groups affiliated to Al-Qaida; and finally the challenges posed to the central government due to

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<sup>167</sup> Alkarama (press release), *Yemen: Journalists suffer persecution for reporting on protests*, 29 July 2011; available at [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=796](http://en.alkarama.org/index.php?option=com_content&view=article&id=796), (accessed 26 December 2011).

social and political demands for democracy and regime change, as articulated by the youth movement that continue to lead the peaceful civil protest movement since January 2011. These conflicts are exacerbated by a continuing heavy pressure from the United States including via their direct military interventions in the country. During the last confrontation between the Yemeni military and the Houthi movement in the north, the Saudi military bombarded some of the northern regions of Yemen.

179. Following a period of relative stability in the beginning of the 1990s which allowed an improvement of the human rights situation and public freedoms in Yemen, the current explosive situation has led to serious transgressions with regards to the respect for human rights. Today, the progress previously achieved is again open to question, on a daily basis these achievements are falling apart and the authority of the State is increasingly undermined. The weakened central Government leans heavily on its repressive apparatus made up of numerous security services which are all *de facto* under the direct control of the President, Ali Abdallah Saleh and members of his family, which has led to the appearance of new non-state actors who also commit human rights violations.
180. The lack of an independent judiciary, the absence of civilian control over security and military structures set up to fight against terrorism, and the lack of sanctions for perpetrators are key factors in the perpetuation of grave human rights violations in Yemen.
181. In that regard, Alkarama would like to stress that the amnesty law approved by the interim Cabinet on 8 January 2012, and which was finally adopted by Parliament on 21 January 2012 granting President Saleh and those officials who acted under his rule<sup>168</sup> immunity from prosecution will further the climate of impunity, a climate that unfortunately has dominated Yemen's justice system in recent years. This is in total violation of Yemen's obligation to ensure that any person whose rights or freedom - as recognized by the Covenant - are violated, shall have an effective remedy, notwithstanding that these violations has been committed by persons acting in an official capacity. The right to justice for all victims in Yemen, whether related to the authorities' ongoing repression of pro-democracy movements, or to other campaigns of repression – the unrests in the south, the conflict in the north and the fight against Al-Qaida, should be fully endorsed, in order to ensure respect of political and civil rights in the future.

In the following chapter, Alkarama will list some of its key recommendation to the Government of Yemen which, we hope, can also be useful for the experts of the Human Rights Committee during their examination of Yemen's fifth periodic report.

## 5 Recommendations

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182. **With regard to excessive and disproportionate use of force against protesters and extrajudicial killings of civilians, and other serious human rights violations:**
  - Yemen should issue orders to all its law enforcements and security agencies not to use live ammunition and other types of lethal force against protesters who are not posing a risk to their lives or to the lives of others. Such force should only be used as a last resort when lives are under direct threat.
  - Yemen should promptly take effective steps to launch a transparent and independent investigation, in accordance with international standards, into all allegations of involvement of members of its law enforcement and security agencies in the killings of civilians, excessive use of force against civilians, arbitrary detention and torture and ill-treatment, whether this is related to its ongoing repression of pro-democracy movements, or to other campaigns of repressions – the unrests in the south, the conflict in the north and the fight against Al-Qaida's presence in Yemen. Depending on the finding of the investigation, it should institute proceedings and ensure that perpetrators are held accountable, notwithstanding that the violations has been

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<sup>168</sup> According to media, the wording of the law "provides Saleh... and those who worked with him, including in civilian, military and security institutions during the period of his presidency, legal and judicial immunity" – See Aljazeera.net *Yemen cabinet approves immunity law for Saleh*, 9 January 2012, available from <http://www.aljazeera.com/news/middleeast/2012/01/2012182225777417.html> (accessed 13 January 2012).



committed by persons acting in their official capacity. It should also provide remedies to victims, and where applicable, to victim's families who suffered harm.

**183. Torture and Ill-treatment:**

- Yemen should incorporate a comprehensive definition of the crime of torture into its domestic law and ensure that such a definition complies with international standards, so that torture is not defined only as being coercion with a view to obtaining confessions during arrest, investigation, detention and imprisonment. It should also amend its domestic law, so that punishment is not limited to individuals who order or carry out torture, but also extends to those who are otherwise complicit in such acts. In addition, Yemen should amend its Criminal Procedure Law, so as to enable criminal lawsuits to be filed against law enforcement or public officials for any crime committed while carrying out his or her work. Any statute of limitations concerning crimes involving torture in its domestic legislation should be lifted.
- Yemen should take immediate steps to prevent acts of torture and ill-treatment and to announce a policy of eradication of torture and ill-treatment by State officials. It should guarantee the right of torture victims to file complaints without fear of reprisal or persecution of any kind, even if the results do not prove their allegations, and to seek and obtain redress if those allegations are confirmed.

**184. Arbitrary Arrest and Incommunicado Detention:**

- Yemen should take all appropriate measures to counter enforced disappearances and the practice of arrests without warrant, and eradicate incommunicado detention as well as ensuring that all persons held incommunicado are released, or charged and tried under due process.
- Ensure that all detainees are accorded all fundamental legal safeguards from the very outset of their detention, including the right to have a prompt access to legal counsel and an independent medical examination, to notify a relative and to be informed of their right at the time of detention, including concerning the charges laid against them, as well as the right to appear before a judge promptly in accordance with international standards.
- Yemen should take effective steps so that all its security agencies, including Political Security, National Security and the Counter-Terrorism Unit, are under the control of civil authorities, and that all places of detention are placed under the control of the judicial authorities. Yemen should formally prohibit any private place of detention that does not come under the control of the State, and prosecute individuals who detain individuals in private places of detention.

**185. Independence of the Judiciary:**

- Take adequate measures to ensure the full independence and impartiality of the judiciary. It should guarantee that the judiciary is free from any interference, especially from the executive branch, in law and in practice.
- Insure that the Specialized Criminal Court meets, in law and in practice, international fair trial standards in all cases, and disclose the grounds and procedures governing restrictions on public access to specialized court sessions.
- Ensure that judges receive training on international human rights law and their application in domestic courts.

**186. Freedom of Expression:**

- Immediately and unconditionally release all persons detained for the peaceful exercise of their freedom of expression and assembly.
- Abolish the Specialized Press and Publication Court. All cases against media professionals should be tried by regular courts.

- Revoke all restrictions criminalizing criticism against public figures, including those exercising the highest political authority such as heads of state and government. Revoke other restrictions on the freedom of expression which are vaguely formulated, and lack the sufficient precision to enable individuals to regulate their conduct accordingly, and do not provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are restricted and which are not.

187. **Establishment of a National Human Rights Institution:**

- Expedite steps to establish a national human rights institution, in accordance with the Paris Principles, as agreed during the UPR in 2009.

188. **International Law**

- Ratify the Optional Protocols of the International Covenant on Civil and Political Rights.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- Make the declaration provided for under articles 21 and 22 of the Convention against Torture and ratify the Optional Protocol to the Convention.
- Ratify the Rome Statute of the International Criminal Court.
- Extend a standing invitation to UN Special Procedures.