



# Yemen

## **Submission to the List of Issues to be taken up in connection with the consideration of Yemen's second periodic report by the Committee Against Torture**

**Alkarama for Human Rights, 27 February 2009**

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## **1. Background**

The periodic report presented by Yemen to the Committee against Torture<sup>1</sup> noted the progress made in the promotion and protection of human rights in the country. It is a fact that the Government has taken an important step in terms of legislation, but in practice the principles set forth in the internal legal arsenal are not sufficiently respected, and abuses committed by State agents or local tyrants are not prosecuted and punished. The Yemeni authorities themselves recognize that the national legislation and the principles of international law are not respected, but they say they are forced to do so to " 'fight against terrorism' and avert the risk of a U.S. military operation against Yemen, following the events of September 11." <sup>2</sup>

Alkarama wishes, in the context of the periodic review of the State party, to draw attention to the inadequacies and inconsistencies in the report and compare it with the reality on the ground, with the aim that the Yemeni State better discharge its responsibilities. The questions suggested to the Committee against Torture relate essentially to the primary violations in the case of Yemen: arbitrary and incommunicado detention, torture and the extradition of political opponents to their countries of origin where it is feared they may suffer torture and/or ill-treatment.

## **2. The definition of torture in domestic legislation (Art. 1 of the Convention)**

The Committee's latest recommendation relating to the adoption by the State party of a definition of torture in conformity with the first article of the Convention were not followed up and at present there is no definition of torture in domestic law.

On this issue, it is necessary to remind the Government of the importance of such a definition in domestic legislation.

## **3. Prolonged incommunicado detention consisting of torture and/or ill-treatment and measures taken by the State party (Art. 2 of the Convention)**

Alkarama has submitted numerous cases of prolonged and incommunicado detention in places belonging to the Department of Political Security to the Working Group on Arbitrary Detention. As an example, Mr Louay Al-Mouayyad, a member of the Organisation for Democratic Rights and Freedoms, journalist and executive director of the information portal 'Free Yemen' was arrested on 30 June 2008 at his home by members of the Political Security Services (Al Amn Assiyassi) in plain clothes, accompanied by a few military personnel. He was taken to an unknown destination and was in incommunicado detention from that date. He was released on 12 September 2008 after 74 days of secret detention. He was not the subject of legal proceedings during his detention and was released without ever being brought before a judicial authority.

Amongst the numerous similar cases recently identified by our organisation, at least 68 people detained incommunicado and without legal proceedings over several months by the Political Security Services were released at the beginning of February 2009, this being only from the main centre of the Department of Political Security in Sanaa. 25 other people were also released from the centre in Hadramaout, 10 from the one in Aden and 9 people from the centre in Al Hadida.

However, hundreds of others remain in incommunicado detention in the same conditions and without legal proceedings, so it is possible to state that this is a wide-spread practice.

Consequently, and in conjunction with the events which shook the region of Saada in January 2007, hundreds of people were arrested and detained incommunicado in several places, interrogated by the Political Security Services, sometimes for several weeks, without any possibility of contact with the outside world, without family visits and without the opportunity of being assisted by a lawyer.

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<sup>1</sup> CAT/C/YEM/2, 13 January 2009, p.58, § 138.

<sup>2</sup> Amnesty International, Yemen: The Rule of Law Sidelined in the Name of Security, AI Index: MDE 31/006/2003.

Most of these people reported having spent the first days of detention in harsh conditions, blindfolded and handcuffed; some claim to have been beaten and forced to sign documents they did not read. Alkarama submitted the cases of 37 people, including minors to the Working Group on Arbitrary Detention. Numerous detainees complained of torture and ill-treatment to the judicial authorities, but it does not appear that their complains received any follow-up or that inquiries on these practices were initiated by the competent authorities.

*What have the Yemeni authorities done, on the one hand, to investigate the massive practice of incommunicado detention and torture, and on the other, to prosecute those responsible for these violations?*

#### **4. Absence of control by the Prosecutor-General of detention centres run by the Department of Political Security**

The Government's periodic report indicates that the Prosecutor-General is obliged to make regular and surprise visits to detention centres under his constituency to ensure that no detention is illegal (§ 147). The reports also mentions visits made by the Minister for Human Rights in prisons and detention centres during the years 2005-2007 (§ 116).

The State regularly denies the allegation of the existence of secret detention within the Department of Political Security and uses as proof a meeting held between the Red Cross delegation and a few prisoners held by the Political Security Services, and by the fact that incommunicado detention is not mentioned in its report.<sup>3</sup> The State also affirms that there are no massive arrests and prolonged detention and that the only temporary detentions under the control of the Political Security Services are related to State security, and are monitored by the Prosecutor-General.

However, in numerous cases, people detained by the Department of Political Security for long periods were not presented to the Prosecutor-General and while the Attorney-General intervened to ensure that these detainees were brought before the justice, the Political Security Services declined to comply with his instructions.

In its report, the State party refers to paragraphs 6c and 7d of the concluding observations and comments of the Committee against Torture<sup>4</sup>, and interprets the term "incommunicado detention" as "solitary confinement" (isolation). Thus, it is stated in the Government's response to the concluding observations that the Penal Code provides for "solitary confinement" as a disciplinary measure.<sup>5</sup> In reality, the Government maintains the confusion between solitary confinement as a legally-defined disciplinary sanction provided for in art. 34 of the Prisons' Act to punish a prison who has committed a breach of the regulations and the measure of incommunicado detention in places not intended for this purpose, by, amongst others, the Political Security Services, outside the control of the law.

*Is the Department for Political Security under the control of the civil authority? What are its powers of arrest and detention? What does the State party do to avoid incommunicado detention in centres under the control of this department? What are the measures taken by the Government to place detainees in these centres under the protection of the law and under the authority of the General Prosecutor?*

*Does the General Prosecutor also have access to these detention centres under the control of the Department for Political Security? Which centres are visited? Were cases of prolonged or illegal detentions found? Were reports on this rendered public? What findings have been made and what practical measures have been taken following these visits?*

<sup>3</sup> CAT/C/YEM/2, 13 January 2009, p.59, § 145.

<sup>4</sup> CAT/C/CR/31/4. (Concluding Observations/Comments)

<sup>5</sup> CAT/C/CR/31/4/Add.1, § 11.

- Testimonies have also been made with regard to arrests and detention in premises outside the control of the law by henchmen of tribal leaders or local tyrants, and that this was known by the public authorities, without them reacting to this information.

*What measures have the State party taken to ban these unlawful arrests and detentions, to protect victims, to place them where necessary under the control of the law and to prosecute those responsible and their sponsors?*

## **5. The expulsion, refoulement and extradition of persons to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture (Art.3 of the Convention)**

Alkarama has learned of numerous cases of forced return of this nature without the people concerned being able to oppose it by means of an effective remedy. In February 2004, at least 23 Egyptian nationals, including Mssrs. Seid Abdulaziz Imam Al Cherif, Mohamed Abdelaziz Al Jamal, Athmane Al Semmane, Tarek Naïm Abdelajawed, Hilmi Chaabane and Fawzi Mohammed Atta, all of whom had been sentenced to death in absentia in their country, were handed over by Yemen to the Egyptian intelligence services. As was feared, most of these people were detained incommunicado and tortured by the Egyptian authorities.

On 17 July 2007, nine people, eight soldiers and one civilian, Mssrs. Farj Athmane Mohamed, Mohamed Abdou Lahada, Gebrait Dwit Haïlé Makele, Jamal Mahmoud Al Amine, Serradj Ahmed Daoud, Yassine Athmane Amar, Abdullah Ibrahim Mahmoud, Barkhat Yohanes Abraha and Mohamed Ahmed Abdullah, all of Eritreans nationality, having fled their country aboard a military vessel and disembarked at the port of Midi in northern Yemen, and immediately surrendered themselves to the authorities. They were however placed in a detention centre to await deportation. These nine people were not able to apply for asylum or to legally contest their deportation. They were finally refouled to their country that September and our organization has not had any news of them since.

Our organization has received much information confirming that this is a wide-spread practice and that numerous asylum-seekers from the Horn of Africa coming by sea have been sent back to their country of origin.

The periodic report mentions (§ 166) that, according to the law, a foreigner cannot be extradited if he has authorization to stay, except if he threatens the security of the country.

*What are the criteria to determine an individual is a threat to the country? What actions do the Yemeni authorities take if there is reason to believe he will be tortured in the country to which he is extradited?*

*What occurs to the asylum seekers who do not have a permit to stay? Is the decision to send them back made after a decision by the courts? Does domestic law offer an effective remedy against forced return? Does an appeal in the context of the examination of an asylum request have an effect of suspending the forced return?*

## **6. Impunity of State agents responsible for acts of torture (Art. 4 of the Convention)**

The Committee against Torture had requested the State party to present detailed statistics on complaints, inquiries, prosecutions and legal sanctions in cases of torture. The Yemeni authorities find in their periodic report (§ 124-125) that cases of torture exist, but that they are isolated and committed by "sick minds". The law strongly represses all use of torture.

The statistics given are not very precise. In 2003, the justice system was seized of 54 cases of violations committed by members of the security forces in previous years. Some of those responsible

were judged. However, it seems that the cases presented are not only related to cases of torture, but also other criminal offences.

The Ministry for Human Rights, has according to the periodic report, received 11 complaints during 2007-2008, which it transmitted to the competent administrations.

*What follow up was given to these complaints? Were criminal or administrative sanctions taken against those responsible and what legal dispositions were applied in these cases? From what services were the agents that were prosecuted?*

## **7. Detentions and 'renditions' of people arrested in the context of counter-terrorism**

Several people who were arrested by the coalition forces and detained in secret prisons administrated by the Americans, their allies or in Guantanamo Bay were repatriated to Yemen, but, at the request of the United States, were kept in detention for long periods of time without being judged. In particular, this includes Walid Mohamed Shahir Al Qadasi, transferred from Guantanamo Bay to Yemen in April 2004. He was released without charge in March 2006. As for Muhammad Abdullah Salah al Assad, he was arrested in December 2003 in Tanzania and detained incommunicado in different places. Mohamed Faraj Ahmed Bashmilah and Salah Nasser Salim Ali were arrested in August and October 2003 in Indonesia, where they lived, and transferred to different secret centres. All three were extradited to Yemen in May 2005. They were only finally judged in February 2006, sentenced for falsifying documents and released the next month.

According to the United States authorities, several dozen Yemeni nationals currently detained at the US base in Guantanamo Bay should be released before the closure of the detention facility. Our organisation expresses concern about the treatment these detainees could face in their country in the case they are sent back.

*What measures does the State party intend to take with regards to Guantanamo detainees upon their arrival in the country?*