

General Allegation

130th session (8 -12 May 2023)

Yemen

The Working Group received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) in Yemen.

1. The Working Group received alarming allegations related to the armed conflict ongoing in the country since 2015, and concerning, in particular, the period from January 2017 to December 2022. The information gathered suggests that, during this period, there has been an increase in the commission of gross human rights violations, including enforced disappearance, in conjunction with the failure by the State to adopt effective preventive measures, to conduct investigations and search activities, and to ensure accountability.
2. According to the sources, next to enforced disappearances, also acts tantamount thereto are committed, which are disappearances attributable to actors exercising Government-like functions or *de facto* control over territory and population, such as the Houtis. The Working Groups has been informed that all parties involved in the armed conflict would be implicated – to different degrees – in the commission of enforced disappearances or acts tantamount thereto, in the country. In particular, sources documented 24 cases tantamount to enforced disappearance allegedly perpetrated between 2017 and 2022 in prisons controlled by the Houtis, especially against political opponents, women and members of religious minorities. Pursuant to the information received, these actors are allegedly not conducting search activities and investigations to clarify the fate and whereabouts of the disappeared persons. Neither is the State investigating those acts or attempting to bring those responsible to justice.
3. The Working Group received information that suggests that the Yemeni Government has not adopted adequate preventive measures and is failing to carry out effective search activities and investigations, whilst perpetrators are not held accountable and victims of enforced disappearance or acts tantamount thereto and their families do not obtain redress for the harm suffered. Indeed, according to the information submitted to the Working Group, Yemeni legislation and policies are at odds with international human rights law and, in particular, with the Declaration.
4. Firstly, enforced disappearance is not codified as an autonomous offence under the applicable criminal legislation. This, *per se*, hinders preventative efforts, as well as search activities, investigations and prosecution of those allegedly responsible for this crime.
5. Secondly, sources held that the divisions among the parties in the armed conflict reflected upon the judiciary and law enforcement agencies in the country, which were consequently polarised and fragmented. In particular, this fragmentation led to a deterioration of legal, judicial, and fair trial guarantees, among others, for persons deprived of their liberty, including those who may be subjected to enforced disappearance.
6. This, notably, would have led to several instances of secret detention and would have undermined the right to a prompt and effective remedy as a means of determining the

whereabouts or state of health of persons deprived of their liberty; the collection of accurate and updated information on all persons deprived of their liberty; and the disclosure of such information to relatives of persons deprived of their liberty or any other person having a legitimate interest.

7. Similarly, pursuant to the submission received by the Working Group, the situation described in the previous paragraphs is compounded by the lack of communication with the outside world of the persons deprived of their liberty, as well as their lack of access to legal counsel, and the impossibility to challenge the lawfulness of the deprivation of liberty and, in case of unlawful detention, to obtain a prompt release and redress.
8. In particular, the Working Group was informed that, in many cases, persons considered to be political opponents have been deprived of their liberty by State authorities without any warrant and kept in secret detention for periods from 5 to 8 months, while their families and legal representatives did not have any information on their fate or whereabouts. In all these cases, allegedly, the Public Prosecution failed to perform any monitoring role and authorities in charge of detention did not ensure the enjoyment of fundamental guarantees to those in custody. In one of the cases reported to the Working Group, the fate and whereabouts of the person deprived of his liberty remain unknown to date.
9. Allegedly, in many of the cases falling under the circumstances described in the previous paragraphs, while being held in secret detention, the persons concerned were ill-treated, forced to confess one or more crimes, charged with such crimes without having access to a lawyer to defend themselves and prosecuted, often by military tribunals, to be later sentenced to death. The Working Group has also learned that, oftentimes, those sentenced to death are not informed about when or how the capital sentence would be carried out. Pursuant to international human rights law, this amounts to a form of cruel, inhuman and degrading treatment.
10. Finally, the Working Group has been informed about the fact that the military judiciary is often involved in the investigation and prosecution of cases which might be related to enforced disappearance or acts tantamount to enforced disappearance. In the face of the described situation, perpetrators allegedly enjoy an almost total impunity and victims have not obtained any form of redress.

The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties, which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in

providing voluntarily information, which would contribute to clarifying cases of enforced disappearance.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearance.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

- 1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.*
- 2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*
- 3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.*
- 4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.*
- 5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.*
- 6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.*

Article 16

- 1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.*
- 2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.*
- 3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.*
- 4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.*

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the applicable criminal legal framework to deal with allegations of enforced disappearance and clarify whether the latter is codified as a separate criminal offence. In case of the absence of a separate crime of enforced disappearance under the Yemeni legislation, please inform on which are the offences used in criminal investigations concerning reports of disappeared persons. Kindly clarify whether there is any legislative reform envisaged in order to assure that enforced disappearance is codified as a separate offence under domestic criminal legislation.
3. Please provide information on the measures taken by the Yemeni Government to investigate on acts tantamount to enforced disappearance attributed to the Houthis and the measures undertaken to search for those disappeared and inform their families, representatives and any persons having a legitimate interest about their fate and whereabouts.
4. Please provide information on the applicable legislation concerning arrest warrants and how does it allow any person deprived of his or her liberty to take proceedings before a court so that the latter may decide without delay on the lawfulness of the deprivation of liberty. Kindly illustrate how the Yemeni legislation on pre-trial detention complies with international law. In particular, kindly detail the measures adopted to ensure that any person deprived of liberty is authorised to communicate with, and be visited by, his or her family, counsel or any other person of choice.
5. Please provide information on whether official up-to-date registers of all persons deprived of their liberty are maintained in every place of detention and the measures taken to ensure that relatives of persons deprived of their liberty, their counsel or any other person having legitimate interest have access to the information contained in such registers. Furthermore, please inform on the measures adopted to ensure that no one is held in secret detention.
6. Please provide detailed information on how your Government ensures that any person having knowledge or legitimate interest, who alleges that a person has been subjected to enforced disappearance is able to lodge a complaint to a competent and independent State authority. Furthermore, please inform on how your Government ensures that enforced disappearances are promptly, thoroughly and impartially investigated by the authorities, even if there has been no formal complaint.
7. Kindly inform on the measures taken to guarantee that any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to, or participates in, an enforced disappearance, is held criminally responsible.
8. Please provide detailed information on the measures adopted to guarantee that persons alleged to have committed an enforced disappearance are tried only by the competent ordinary courts and not by military courts. Moreover, kindly clarify whether and how, during the relevant investigations, the persons concerned are suspended from any official duties.
9. Please provide detailed information on the applicable legislation and the measures undertaken to ensure that any victim of enforced disappearance (thus including the disappeared person and any other person having suffered a direct harm) obtains adequate compensation and integral reparation, including measures of rehabilitation and satisfaction, for the harm suffered.

The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days.