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Enforced Disappearance and Arbitrary Detention in Yemen (2014-2023)



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يناير 2024 م

One of a person's fundamental rights is the ability to live, which no one can trade or take away from him. Losing one's life due to illness is a natural occurrence, but living without realizing whether he is dead or alive is similar to enforced disappearance and arbitrary detention.

This forced the adoption of many international agreements and conventions in order to prevent such a violation of a basic human right from occurring without justification. The United Nations defined enforced disappearance as: arrest, detention, kidnapping, or any form of deprivation of freedom that occurs by agents of the State, or by persons or groups of individuals acting with the authorization, support, or approval of the State, followed by a refusal to acknowledge the deprivation of the person's liberty or concealment of the fate or whereabouts of the disappeared person, thereby depriving him or her of the protection of the law.

However, despite this, there are still many groups and even countries that practice enforced disappearance against citizens who have adopted opinions or positions that contradict the self-interests of the groups and those in power in those countries, and among those countries that have a record that cannot be overlooked in this aspect is the Republic of Yemen, especially in the period that witnessed the events of war between Yemeni-Yemeni parties after the Houthi group entered the capital, Sana'a, and seized power on September 21, 2014, and the subsequent fragmentation of Yemen into different regions, each region controlled by a specific group, and the accompanying intervention of the Arab coalition in Yemeni affairs under its declared slogan of restoring legitimacy to Yemen.

Based on the above, this study will seek to clarify the legal framework for enforced disappearance, starting with the International Charter, then the Regional Charter, then the National Charter of the Republic of Yemen, followed by tracing the practical path of the legal framework on the ground for the Republic of Yemen and clarifying the extent of its commitment to what it has signed in both the International and Regional Charter and what is stipulated in the National Charter during the period (2014–2023).

First: The Legal Framework for Forced Disappearance

The legal framework refers to the international, regional, and national charters, agreements and laws of the country under study that stipulate everything related to enforced disappearance, directly or indirectly.

1- The International Charter

The Universal Declaration of Human Rights in 1948 and the International Covenants on Political and Civil Rights and on Social and Economic Rights in 1966 represent the basic foundation on which the international law regarding enforced disappearance is based. In addition to other relevant international agreements and conventions.

A- The Universal Declaration of Human Rights, 1948

The text of the Universal Declaration of Human Rights states: No one shall be arbitrarily arrested, detained, or exiled, which indicates the absolute prohibition of any forcible arrest, detention, or exile of any human being.

B- International Covenant on Civil and Political Rights, 1966

This Covenant stipulates that everyone has the right to liberty and security. No one may be arbitrarily arrested or detained, and no one may be deprived of his liberty, except for reasons provided for by law and in accordance with the procedure established therefor. This declaration used the term "arrest" as an alternative to detention, which was mentioned in the Universal Declaration of Human Rights, but they are synonymous in meaning, and the term "arbitrarily" remained the same, which shows agreement that it is the appropriate term and at the same time refers to forced disappearance. This Covenant identified any of these procedures, such as arrest or detention without a legal basis, as a deprivation of human freedom.

C- The International Covenant on Social and Economic Rights 1966

This covenant, which was approved on February 16, 1966 and entered into force on March 23, 1976, did not stipulate in its articles anything referring to forced disappearance, since that is not within its jurisdiction.

D- International Agreements Related to The Crime of Enforced Disappearance

Many international agreements and conventions address forced disappearance in a direct and indirect way, which we can refer hereinafter:

- *Declaration on the Protection of All Persons from Enforced Disappearance 1992*

The General Assembly issued a declaration on the protection of all persons from enforced disappearance, as a set of principles applicable to all states.

This declaration consists of 21 articles, based on a group of previous international resolutions and agreements with regard to the title of the declaration. It was stated in its first article: It is considered Every act of enforced disappearance is a crime against human dignity and is condemned as a denial of the purposes of the Charter of the United Nations and a flagrant violation of human rights and fundamental freedoms contained in the Universal Declaration of Human Rights and reaffirmed and developed in the international instruments issued in this regard.

- *United Nations Standard Minimum Rules for the Treatment of Prisoners 1955 (Nelson Mandela Rules)*

Rule No. 7, under the management of prisoner files, stipulates that: It is not acceptable to admit any person into prison without a legitimate detention order, clarifying the information that must be available when admitting any prisoner to prison.

- *International Convention for the Protection of All Persons from Enforced Disappearance 2006*

On December 20, 2006, the General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance, by its resolution 177/61/RES/ A, which entered into force on December 23, 2010. The Convention consists of 45 articles divided into three parts. The first part is devoted to defining enforced disappearance, warning against it, and clarifying its types, and consists of 25 articles. The second part relates to the committee charged with following up on the implementation of the decision and clarifying its tasks and powers assigned to it in order to achieve the goal of its establishment. It consists of 11 articles, while the third part of the agreement is concerned with the procedures for signing and ratifying it. As well as clarifying the obligations of the parties signing it towards it.

It was stated in the preamble of this agreement that it stemmed from the signatory parties' awareness of the seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances determined by international law, constitutes a crime against humanity. It took into account the right of every person not to be subjected to enforced disappearance and the right of those who were subjected to this to justice and compensation.

2- The Regional Charter

A- Cairo Declaration of Human Rights 1969

The Cairo Declaration did not explicitly mention (enforced disappearance), but one of its articles stated in its introduction that “it is not permissible to arrest a person, restrict his freedom, exile him, or punish him without a legitimate reason...”. The article that followed stated that “taking a person as a hostage is forbidden in any way and for any purpose,” referring to forced disappearance, although the terminology differs.

B- Arab Charter on Human Rights 2004

The Arab Charter on Human Rights singled out an article consisting of seven paragraphs related to enforced disappearance under the term (arbitrary detention), in terms of its prohibition, the rights of those who are subjected to it, and the duties of the state in this regard. The first paragraph of the article stipulated: “Every person has the right to freedom and security and may not be arrested, detained, or arrested arbitrarily without legal basis.

The international and regional charters both aimed to prohibit forced and arbitrary disappearance in all of its forms, including arrest, detention, and exile, without any legal basis or justification, while denouncing the perpetrator and stipulating that he be held accountable. The texts of the two charters were almost identical, despite some terms being different.

3- The National Charter

A- The 1991 Yemeni Constitution and Its Amendments

the Yemeni constitution stipulates in chapter 2, which is titled basic rights and duties of citizens. one article in five paragraphs includes the prohibition of restricting anyone’s freedom except by a verdict from a competent court. the rest of the paragraphs indicate the legal procedures that must be followed when arresting a person, as well as the legal procedures related to the rights of those who are subjected to what is stipulated in the article that prohibits it. The amendments that took place in 1994 and 2001 did not address the issue of forced disappearance.

B- The Draft of The New Constitution Of 2013

The draft stipulates that “no individual may be arrested, searched, or have his freedom restricted except in the case of blating offence or by a reasoned judicial order required by investigation in accordance with the law.”

C- Yemeni Law

A republican decree was issued regarding combating the crimes of kidnapping and banditry, consisting of 12 articles, indicating criminal penalties for anyone who seeks to kidnap any person or plunder his property. Among those penalties is five years of imprisonment for officials who deprive people of their freedom by mistake.

Based on the afore mentioned, we conclude that the Republic of Yemen has complied with the terms of the international and regional charters that it accepted and signed, viewing forced disappearance as a crime for which those responsible must face consequences. This is reflected in both its constitutional and legal provisions. To that end, it has authorized a series of deterrent penalties for everyone who, through official or unofficial means, targets the liberty of others without lawful cause.

Second: Enforced Disappearance in Yemen (2014 - 2023)

Yemen is seen as one of the countries whose domestic policies are undermining its adherence to national and international legal frameworks as well as its constitution. One of the clearest instances of these behaviors is forced disappearance. Additionally, even with the previously described legal framework for forced disappearance, it appeared as though Yemen was experiencing a rise in the crime of forced disappearance committed against its residents since the Republic of Yemen was established on May 22, 1990. Particularly during the secession war in 1994 and the war against the Houthis from 2004 to 2008.

The events of the Arab Spring in 2011 came next. The crime of enforced disappearance impacted many activists and influential people, particularly during the period that followed the Houthi group's coup against the internationally recognized legitimate authority on September 21, 2014, and what transpired during this period of Arab coalition intervention aimed at restoring legitimacy in Yemen, as stated in its declaration. Additionally, Yemen was divided into three regions: the Ansar Allah Houthi group controlled one,

the internationally recognized legitimate government controlled the other, and the UAE-backed Transitional Council controlled the third region, which is allegedly being framed under the framework of the legitimate government and fighting against it at the same time.

Yemeni citizens became vulnerable to enforced disappearance due to accusations such as cooperating with the other party and other allegations to justify the enforced disappearance and arbitrary detention against citizens.

The First Party: Ansar Allah Houthi Group

Since the Houthi group (Ansar Allah) entered the capital, Sana'a, it has begun to use the "weapon of arbitrary kidnapping" and enforced disappearance against everyone who stands against it, including journalists, media figures, political activists, mosque preachers, and even university professors, etc. A report issued by the Euro-Mediterranean Observatory for Human Rights and the Yemeni Coalition for Human Rights, which includes one hundred Yemeni human rights and humanitarian organizations, states that during the period (July 2014–October 2015), the group and the forces of former President Saleh at that time committed 7,049 cases of kidnapping, including 1,910 cases of forced disappearance, of whom 4,571 were released later. While 2,478 were still being kidnapped, they were subjected to various forms of torture that caused the deaths of some of them and faced physical or psychological disabilities and injuries.

Saleh Al-Bishri, a political activist from Yemen, was abducted together with three other people during a protest against the group's coup against the lawful government. He suffered from terrible torture and eventually died as a result. The torture the others endured left them in a state of ill health when they were liberated. This figure did not represent the total number of people kidnapped by the Houthi group (Ansar Allah); according to a human rights source, the group's abduction toll has surpassed 16,000 abductions and forced disappearances between 2015 and 2019, with the majority of those abducted having been freed.

SAM Organization for Human Rights also indicates in its report issued on August 30 (International Day of the Forcibly Disappeared) that the Houthi group "Ansar Allah" ranked first among the parties to the conflict in the volume of enforced disappearance crimes, with 904 cases of arbitrary detention, 353 cases of enforced disappearance, and 138 cases of torture, including 27 cases of death in detention.

From the foregoing, it is evident that the Houthi group has continued to commit arbitrary arrests and enforced disappearances that have affected different segments of society under various justifications. It is worth noting that everyone who sought to claim or search for one of the kidnapped or forcibly disappeared persons was also subjected to enforced disappearance. Someone mentioned to me that one of his relatives was subjected to enforced disappearance for five years just because he demanded his brother's freedom.

The Second Party: The Internationally Recognized Legitimate Government

According to local and international human rights organizations, the legitimate government participates in human rights violations alongside the parties to the conflict, though the government is using different tools and techniques. This is despite the fact that the legitimate government represents the state before the international community and is primarily concerned with implementing all the international charters, treaties, and laws.

The SAM Organization for Human Rights holds the internationally recognized Yemeni government accountable for 282 arbitrary and abusive detentions, 90 forced disappearance practices, and 65 torture practices, including 14 deaths in detention. Enforced disappearance is one of the practices for which the legitimate government shares responsibility. One of the main causes of someone being held in secret prisons outside the legal system, where they endure different forms of torture and anyone who tries to get them out is also likely to be arrested, is the suspicion that they belong to the opposing party.

Consequently, it is evident that the legitimate government bears some of the blame due to the cases of enforced disappearance and arbitrary arrests impacting citizens because it is the legitimate, internationally recognized body, thus it holds a greater degree of accountability. The strategies and tactics of enforced disappearance and arbitrary confinement also exhibit certain similarities.

Third Party: The UAE-backed Transitional Council

The UAE-backed Transitional Council is the third party to the conflict and the third party that bears responsibility for the crimes of enforced disappearance and arbitrary detention. SAM also points out that the UAE forces and their armed groups, in reference to the Transitional Council they support, bear

responsibility for 419 cases of arbitrary detention practices, 327 incidents of enforced disappearance, and 141 incidents of torture, including 25 deaths in places of detention. The report also indicates that the UAE deals with forcibly disappeared civilians as if they were an outlaw group, which makes it practice the most heinous violations against them without regard to humanitarian and legal values or the sovereignty of the Yemeni state. In a previous report, the organization revealed the existence of 18 secret prisons established by the UAE in various cities and areas it controls, not to mention the Balhaf facility, where a group of civilians are hidden under the pretext of fighting terrorism.

The UAE-backed Transitional Council was not much better than the previous parties. Rather, it is ranked second in terms of committing the crime of enforced disappearance after the Houthi group “Ansar Allah” and before the internationally recognized legitimate government. This party has the added feature of openly admitting its reliance on a foreign party and its readiness to sacrifice Yemeni civilians in exchange for continued financial support and weaponry.

In general, enforced disappearance and arbitrary detention are crimes that do not have a statute of limitations, and their perpetrators must be referred to a fair trial. All parties are now using "fair trial" in an attempt to give legal character to the cases of enforced disappearance and arbitrary detention carried out against civilians. It is worth noting that the crime of enforced disappearance casts a shadow over the families of the detainees; they lose their breadwinners, children grow up far from their parents and families, and their loved ones are languishing behind detention bars without legal justification. According to Tawfiq Al-Hamdi, head of the SAM Organization for Rights and Liberties in his statement to the Humedia website, families are ultimately forced to pay bribes of enormous sums of money, amounting to ten million. This puts a burden on the detainee's family, who may be forced to sell everything they own in order to return their kidnapped relatives. While on the other side, in an attempt to respond to the cries, a mother whose heart is aching with longing for her son, the mothers of the remaining abducted and hidden individuals continue to demonstrate in front of the relevant ministries and human rights organizations while sitting under the scorching sun.

After all of this, the kidnapped person might have become sick and needed medical attention, or he might have died from the severe torment he endured while being held captive.

Third: United Nations efforts regarding the forcibly disappeared in Yemen (2014 - 2023)

In 2018, the United Nations sponsored an agreement to exchange prisoners between the parties to the conflict in Yemen, which was signed in the city of Stockholm, Sweden. The agreement became known from then on as the Stockholm Agreement. The agreement stipulated five basic principles and ten implementation mechanisms according to which all forcibly disappeared, and arbitrarily detained persons would be released with no prior conditions or exceptions. However, the parties did not agree to immediately release a first group of 1,081 detainees and prisoners according to the agreed-upon lists of names except in September 2020 in Switzerland, in which the parties renewed their commitment to the Stockholm Agreement to exchange prisoners.

Several rounds of negotiations sponsored by the United Nations took place after that, which did not lead to an agreement similar to the 2020 agreement, as the legitimate government and the Houthi group "Ansar Allah" signed in March 2022 an agreement leading to the exchange of more than 2,200 prisoners from both sides, but the launch process faltered amid mutual accusations of obstructing it, and once again the UN envoy to Yemen, Hans Grundberg, announced in March of that year that new negotiations had begun between the legitimate government and the Houthis in Switzerland to exchange prisoners between the two sides. An additional agreement was reached to swap 887 prisoners, including the four journalists who had previously been given death sentences by the Houthi organization "Ansar Allah." This agreement is regarded as the second after the first one from 2020 and the unsuccessful negotiations that ensued. A month after the agreement's text was signed, the deal was put into effect in April of that same year.

In comparison to the numbers previously mentioned by human rights organizations, the United Nations' previous efforts only helped to release a small number of detainees and people who had been forcibly disappeared by all parties. In addition, the majority of those released were prisoners of war rather than civilians who had been the victims of arbitrary detention without cause or justification. As a result, the UN must step up its efforts to release everyone who has been forcibly disappeared by all parties as soon as possible. This issue should also be a top priority for any future political agreement that would address Yemen's conflict.

Recommendations:

Based on the above, the researcher concludes with some recommendations that should be taken into consideration regarding the cases of forcibly disappeared and arbitrarily detained persons, which are as follows:

1. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. Immediately stop the practice of arbitrary arrest and detention, enforced disappearance, torture and other ill-treatment and immediately release all arbitrarily detained persons, including enabling them to exercise their fundamental rights.
3. Publish official lists of the names of all individuals currently in detention centers and those who have died in detention and provide immediate and unhindered access for independent humanitarian agencies to all official and unofficial detention facilities, without prior notification.
4. Investigate all reported incidents of torture in accordance with international standards and take immediate measures to hold those responsible accountable and provide redress to victims.
5. Conduct prompt, thorough, and impartial investigations into allegations of arbitrary detention, torture, enforced disappearance, and deaths in custody; bring perpetrators to justice; and suspend members of the security forces against whom there are credible allegations of human rights violations, pending investigations.
6. 6. Immediately allow international monitoring teams of the International Committee of the Red Cross (ICRC) to conduct inspections of all prisons and detention centers.
7. 7. Allow people who are freed to go to any area of the Republic of Yemen where their families live.
8. Rehabilitation of those released who had their reputations tarnished during their detention.

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