



Mwatana for Human Rights

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Yemen: Immediately release Baha'i man at risk of death sentence

Huthi-Saleh authorities in Yemen should immediately and unconditionally release Hamid Haydara as he is a prisoner of conscience who is being held and tried on account of his conscientiously held beliefs and peaceful activities as a member of the Baha'i community, said Amnesty International and Mwatana Organization for Human Rights (Mwatana) today, after he was transferred to solitary confinement.

52-year-old Hamid Kamal Muhammad bin Haydara, has been detained in Sana'a, the capital, since December 2013 and is at risk of being sentenced to death. Amnesty International and Mwatana learned today that he has been moved to solitary confinement. He is suffering from a range of health issues for which he requires medical attention.

Amnesty International and Mwatana wrote to relevant Sana'a-based officials¹ in March to raise serious concerns regarding the basis for Hamid Haydara's ongoing detention as well as the deeply flawed legal proceedings in his case, including excessive pre-trial detention, undue delays in his trial, torture and other ill-treatment, and lack of access to counsel during his interrogations. At the time of writing, no response had been received to these letters.

BASIS FOR CHARGES

According to court documents, Hamid Haydara has been charged with offences including "endeavouring on behalf of a foreign state...to spread the religion of Baha'ism in the Republic of Yemen and inciting the Yemenis to embrace the aforementioned religion and leave the religion of Islam" in order to "infringe upon the state's independence and the security of its lands" and forging documents including passports and ID cards for him and his family by providing false personal information and using these documents "for buying lands and start up enterprises with the intentions of recruiting a large number of Baha'is to settle within the territory of the Republic of Yemen, implementing the instructions of the Universal House of Justice in Israel".

Amnesty International and Mwatana are concerned that these and other charges against Hamid Haydara have been brought against him primarily because of his conscientiously held beliefs and his peaceful activities as a member of the Baha'i community.

¹ A copy of the letter was sent to Khaled Maori, Prosecutor General; Alia Alshabi, Sana'a-based Minister of Human Rights; Abdu Rajeh, Head of the Specialized Criminal Court; Abdulaziz al-Baghdadi, former Prosecutor General.

First, the charges against Hamid Haydara that relate to his alleged involvement in spreading “the religion of Baha’ism” on behalf of another state are not recognizably criminal offences consistent with international human rights law.

Additionally, whilst the organizations acknowledge that states are entitled to prosecute in fair trials anyone who is reasonably suspected of responsibility for a recognizable criminal offence – for example relating to forgery of documents – Amnesty International and Mwatana are concerned that these charges as formulated in the court documents are primarily motivated by Hamid Haydara’s conscientiously held beliefs and his peaceful activities as a member of the Baha’i community.

Prosecution, even if for a recognizable criminal offence, violates the principle of non-discrimination if it is selective on the basis of, or largely motivated by, an individual’s national or social origin or their religious beliefs. Moreover, any case where someone is detained solely for peacefully exercising their right to freedom of expression and manifestation of their conscientiously held beliefs, as set out in Articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) is arbitrary detention in violation of international law, and, in such a case, the individual should be immediately released.

According to information provided to Amnesty International and Mwatana, including some prosecution and defence documents, records of interrogations and interviews with Hamid Haydara’s wife and lawyers, it appears that the charges against Hamid Haydara relating to his alleged use of forged documents in order to buy land in Yemen are spurious.

The prosecution argues in its ‘catalogue of evidence’ that Hamid Haydara’s real name is Hamid Mirza Kamali Sirostani and that he changed his name unofficially without informing the Yemeni authorities, in order to forge documents to obtain Yemeni nationality for him and his family, so that he could “implement the Baha’i-Israeli plans in Yemen”. They cite that Hamid Haydara does not possess the official documentation to demonstrate his name change from Hamid Mirza Kamali Sirostani to Hamid Kamal Mohammad bin Haydara.

However, the organizations understand that Hamid Haydara, who was born in Socotra in 1964, officially obtained his Yemeni nationality in 1985 from his Iranian father who had arrived in Socotra in 1954 and was naturalized by the Sultan of Al-Mahra. Upon naturalization, the Sultan suggested that Hamid’s father’s name be changed from “Mirza Kamali Sirostani” to “Kamal Mohammed bin Haydara”. In turn, Hamid Haydara adopted his father’s new name, changing it from Hamid Mirza Kamali Sirostani to Hamid Kamal Mohammad bin Haydara.

The prosecution also alleges in its charge sheet that Hamid Haydara forged documents, including ID cards, for himself and his family in order to buy land in Yemen. In the catalogue of evidence, the prosecution cites blank and partially-filled ID cards found in his house as evidence of this forgery.

Amnesty International and Mwatana understand, however, that in the late 1990s, the authorities in Socotra gave Hamid Haydara blank ID cards for him and family members and it was left up to the individuals to complete these by hand. Hamid Haydara’s family says that whilst they obtained these ID cards, they were never properly utilized or filled in.

Finally, the prosecution alleges that Hamid Haydara bought 31 plots of land in Socotra, 31 in Mukallah and 4 in Aden under someone else’s name, and put it under the control of the Baha’i central forum in Yemen in order to create a reception centre for Baha’is, and build a worship house and residential units for Baha’is who are either in Socotra already or will later migrate to Socotra. However, according to information provided to Amnesty International and Mwatana, plots of land owned by Hamid Haydara in Mukallah, Socotra and Aden were all obtained by Hamid Haydara himself, and not in the name of anyone else, including family members.

In light of all these considerations, Amnesty International and Mwatana reiterate their call for his immediate and unconditional release.

EXCESSIVE PRE-TRIAL DETENTION AND UNDUE DELAYS IN COMPLETION OF TRIAL

According to court documents provided to Amnesty International and Mwatana, as well as information from his family, Hamid Haydara has been held in pre-trial detention for over three years, following his arrest on 3 December 2013 at Total Company, where he was employed, in the town of Balhaf in Shabwa Governorate.

The ICCPR, to which Yemen is a party, states in Article 9(3) that anyone detained on a criminal charge has the right to trial within a reasonable time or to release pending trial, and that it shall not be the general rule that persons awaiting trial shall be detained in custody. Detention once a trial has commenced still amounts to detention pending trial, which ends only upon judgment in the first instance.² The ICCPR also underlines, in Article 14(2), that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law, and, inter alia, to be tried without undue delay (Article 14(3)(c)). The obligation to respect these rights to presumption of innocence and to liberty means that if an accused person is detained pending trial, the state has an obligation to prioritize the case and expedite legal proceedings.³

The first court session in Hamid Haydara's trial was held at the Specialized Criminal Court in Sana'a on 8 January 2015, more than a year after he was arrested. Hamid Haydara was not brought to court to attend the session and the hearing was postponed until 22 February 2015.

According to information provided to Amnesty International and Mwatana, at least 24 further trial sessions have been held to date, although they have been repeatedly postponed for a variety of reasons, including due to Hamid Haydara's absence from court and because the judge was said to be travelling. Of the total 26 hearings, the organizations understand that Hamid Haydara was not brought to court for at least 10 sessions.

A lack of cars, petrol or security to bring Hamid Haydara to the court were amongst the explanations provided for failing to bring him to court. However on at least one occasion other detainees from the Sana'a Central Prison where he has been held since October 2014 were brought to the court whilst Hamid Haydara was not. On some occasions, no explanation was provided for failing to bring him to court.

TORTURE AND OTHER ILL-TREATMENT

Amnesty International and Mwatana understand that upon his arrest on 3 December 2013, Hamid Haydara was blindfolded and handcuffed and taken in the boot of a car to the National Security Bureau (NSB) in Sana'a, where he was held incommunicado for seven months. He was not permitted to call his family until June 2014 and they were allowed to visit him only after nine months when, in September 2014, he was transferred to the Criminal Investigation Department (CID), also in Sana'a. On 3 October 2014, Hamid Haydara, whose trial at that stage had not even begun, was transferred to Sana'a Central Prison where he was held in a cell with convicted prisoners who had been sentenced to death, in breach of the rule that untried prisoners must be kept separate from convicted prisoners, set out in the UN Standard Minimum Rules.⁴

² See for example, the judgment of the European Court of Human Rights in *Solmaz v Turkey* (27561/02), (2007) §§23-26, available at: [http://hudoc.echr.coe.int/eng#{"itemid":\["001-79053"\]}](http://hudoc.echr.coe.int/eng#{)

³ See for example, the judgement of the Inter American Court of Human Rights in *Barreto Leiva v Venezuela*, (2009) §§120-122.

⁴ Rule 11(b), UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly Resolution 70/175, 17 December 2015.

Throughout the first nine months of his detention in the NSB, according to what Hamid Haydara told his family, he was physically and psychologically tortured during interrogations and his Baha'i faith was insulted. He was electrocuted and beaten with a metal rod, including on his fingers and genitals; suspended from the ceiling for long periods; gagged; and threatened that his daughters would be harmed. At times during the winter months he had cold water poured over his head and on one occasion he was injected in the neck with an unknown substance. According to the Public Prosecution's record of an interrogation conducted on 23 November 2014 whilst he was detained in CID, Hamid Haydara told the investigator that while detained in the NSB he had been beaten and threatened into "confessing" and putting his thumbprint on blank documents. The investigator then presented Hamid Haydara with his "confessions" dated 20 January 2014, and asked whether the statements and thumbprint belonged to him. Hamid responded that he did not know.

The prohibition of torture and other ill-treatment is absolute and allows of no limitation; it applies at all times and in all circumstances. The ICCPR explicitly states that no derogation from it is allowed, even in a situation of public emergency which threatens the life of the nation. The UN Human Rights Committee has reiterated that no justification or extenuating circumstances may be invoked to excuse a violation of this prohibition for any reasons. Statements and other forms of evidence obtained as a result of torture and other ill-treatment must be excluded from evidence in all proceedings, except in a case against an alleged perpetrator of torture or other ill-treatment.

According to medical reports from al-Thawra Modern General Hospital in Sana'a which were included in court documents, Hamid Haydara suffers from a range of health complaints including high blood pressure and cholesterol, and in December 2015 he was diagnosed with myocardial infarction and gall stones for which he requires treatment. His family has told Amnesty International that Hamid Haydara has never been provided with the tests, medication or treatment required for these conditions despite his requests to prison authorities.

The rights of detainees to access to the outside world, notably their families, to the assistance of a lawyer and to see a doctor are fundamental safeguards against human rights violations, including torture and other ill-treatment, and affect the ability of an accused person to prepare their defence. Access to a doctor is essential for the individual to be able to realise their right to health. The Human Rights Committee, in its concluding observations on states' parties reports, has stated that the rights of people held in police custody and pre-trial detention to access doctors, families and lawyers should be enshrined in law.

ACCESS TO LEGAL COUNSEL DURING INTERROGATION

Court documents reviewed by Amnesty International and Mwatana indicate that between 4 September 2014 and 4 December 2014, Hamid Haydara was subjected to at least 19 interrogation sessions whilst he was detained in CID. According to his family, Hamid Haydara's lawyer was present for only three such sessions despite records showing that Hamid Haydara explicitly requested his presence in interrogations on at least two other occasions. The organizations have not seen record of interrogations that are reported to have taken place whilst Hamid Haydara was held incommunicado in NSB, and during which Hamid Haydara alleges he was tortured and otherwise ill-treated.

Under international law and standards, everyone arrested or detained and everyone facing a criminal charge has the right to the assistance of legal counsel, to enable them to protect their rights and begin to prepare their defence and to enable them to challenge their detention. This right also serves as an important safeguard against torture and other ill-treatment and coerced "confessions". The right to legal counsel pre-trial includes the rights of access to a lawyer, to have time to consult the lawyer in confidence, and have the lawyer present during questioning and be able to consult them during questioning. While the ICCPR does not expressly state the right to assistance of a lawyer during detention, questioning and preliminary investigation, the Human Rights Committee, in its General Comment 32 on the right to fair trial and its concluding observations on states parties' reports, has clarified that it is required for the meaningful exercise of the right to a fair trial set out in Article 14 of the ICCPR.

DEATH PENALTY

Finally, Amnesty International and Mwatana are concerned that some of the charges against Hamid Haydara are mandatorily punishable by death under Yemeni law.

The Human Rights Committee sees the mandatory imposition of death sentences as a violation of the right to life.⁵ In addition, the Special Rapporteur on extrajudicial executions has stated that “in death penalty cases, individualized sentencing by the judiciary is required to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life” and that “[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment”.⁶

Article 6(2) of the ICCPR states that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes”. The Human Rights Committee has stated that “the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure”.⁷ The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, recommend that crimes punishable by death should “not go beyond intentional crimes with lethal or other extremely grave consequences”,⁸ and in this regard the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has clarified that the death penalty “may be imposed only for those crimes that involve intentional killing”.⁹ This is confirmed in the Human Rights Committee's current draft of an updated general comment on the right to life, which states that the term “the most serious crimes” must be read restrictively and appertain to crimes of extreme gravity such as those involving premeditated murder. The charges brought against Hamid Haydara which carry the death penalty do not meet these criteria.

Amnesty International and Mwatana's concerns on this point are heightened by the violations of right to fair trial and other violations noted above.

Safeguard 5 of the UN Safeguards for Protection of the Rights of Those Facing the Death Penalty states: "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

The Human Rights Committee has underlined that the fundamental principles of fair trial, including the presumption of innocence, must be complied with at all times, including in states of emergency. In particular it has expressly underlined that in such situations any trial leading to the imposition of the death penalty must conform to the provisions of the ICCPR, including all the requirements of Article 14, and no statements or confessions obtained in violation of the prohibition on torture or other ill-treatment may be invoked as evidence in any proceedings.¹⁰

Amnesty International and Mwatana oppose the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; the guilt, innocence or other characteristics of the offender; or the method used by the state to carry out the execution. The death penalty violates the

⁵ Concluding Observations of HRC: Botswana, UN Doc. CCPR/C/BWA/CO/1 (2008) s13; HRC: Johnson v Ghana, UN Doc. CCPR/C/110/D/2177/2012 (2014) s7.3

⁶ Reports of the Special Rapporteur on extrajudicial executions: UN Doc A/HRC/4/20, p. 2 s4; UN Doc. E/ CN.4/2005/7 (2004) s.80; UN Doc. E/CN.4/1999/39, (1999) s63, 82

⁷ Human Rights Committee, General Comment No. 6 on the Right to Life, para. 7.

⁸ Safeguard No. 1 of UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984.

⁹ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 9 August 2012, A/67/275, para.122.

¹⁰ Human Rights Committee General Comment 32, para. 6.

right to life as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

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In light of the concerns outlined above, Amnesty International and Mwatana urge Huthi-Saleh authorities to release Hamid Haydara immediately and unconditionally. Pending his release, the organizations call on them to intervene to ensure that:

- Hamid Haydara is protected from torture and other ill-treatment;
- He is granted immediate access to adequate medical treatment for his conditions and access to regular check-ups in hospitals where he can receive specialist care;
- He is granted regular access to his lawyer and family.

With regard to his allegations of torture and other ill-treatment used to extract “confessions” Amnesty International and Mwatana are calling on Huthi-Saleh authorities to ensure that:

- His allegations are promptly, impartially and effectively investigated;
- He has access to an effective remedy and receives adequate reparation, including compensation; and
- If there is sufficient admissible evidence those suspected of responsibility for these crimes are prosecuted and brought to trial in proceedings which meet international law and standards on fair trial.