

# The Charge: Being Jewish

## A Report on the Yemeni Detainee

Libby Salem Marhaby



INSAF Center for Defending Freedoms & Minorities Publications

March 2021

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**Libby Salem Marhabi**



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## **About the Center**

INSAF Center for Defending Freedoms & Minorities is a non-profit and non-governmental Yemeni organization, established in 2019. It seeks to defend public freedoms and minority rights in Yemen by documenting violations, providing support tools and advocacy, and conducting research and studies related to minorities, freedoms and human rights, as well as conducting capacity building in this field through organizing courses and workshops and holding seminars and events that enhance awareness regarding the importance of freedoms and protecting minorities.

Report Prepared by: Dr. Kholoud Al-Khatib (University Professor & Lawyer)

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## 1. Introduction:

In March 2016, Security forces under the control of the Houthis in the capital, Sanaa, arrested Yemeni Jewish citizen Salem Marhaby, along with another group of workers and employees of Sanaa airport, on charges of smuggling an ancient manuscript out of the country.

On 13 March 2018, an appellate judgment was issued by the Public Funds Section in the Capital condemning Libby Salem Musa Marhaby, Yahiya Ali Mohammad Al-Asam, Ammar Ali Mokoun Kitaai, and Samir Abdullah Nasser Shaya, as attributed to each of them in the public case of the incident of smuggling a manuscript outside the country and forgery by Ammar. They were punished with imprisonment. After two years of imprisonment, the Public Funds Appeals Division of the Capital sentenced Libby and his companions to imprisonment for three and a half years, and considered the period of imprisonment he spent.

On 29 July 2019, a decision was issued by the Public Funds Appeal Division in the Capital, to release defendant Libby Salem Musa Marhaby, like the other defendants.

Accordingly, on 04 August 2019, a decision was issued by Judge Ahmed Ahmed Abu Munser, Head of the Public Funds Appeal Prosecution Office of the Capital, to the Antiquities Prosecutor to implement the content of the court decision. In spite of the judicial ruling and the successive judicial notes that were directed to the Security and Intelligence Service to release Libby, he is still in detention despite dozens of summonses and requests for petition by Libby's family and his attorney.

The Security and Intelligence Service did not implement this ruling, as all the other detainees were released except for Libby, who remained the only detainee in this case despite orders and directives issued by the Public Prosecution, and other officials in the authorities under the control of the Houthis. Until this moment, Libby has been in the custody of the Security and Intelligence Service for more than five years, despite the issuance of a final ruling by the court and explicit instructions for his release. He suffers

from bad conditions, deterioration in his general health, health problems in the kidneys and lungs, in addition to losing all his teeth.

These practices constitute a violation of obligations under international human rights law, whereby agencies must respect human rights, including the rights to equality and non-discrimination, protection from arbitrary arrest, and fair trial, under penalty of being considered a breach of their legal responsibility.

This report discusses the most prominent problems, the basic obligations and the legal conditions imposed to respect the rights and guarantees of persons whose freedom is restricted in accordance with international standards that respect the human dignity of all detained persons, respect the law and follow the applicable rules, respect equality before the law and protect human rights.

This report is based on facts, testimonies, and legal documents submitted by Insaf Center for Defending Freedoms and Minorities, which indicate that Libby is detained without legal justification.

This report provides a general legal analyses of human rights standards related to restricting the freedom of persons and their detention. It outlines the violations that Libby was subjected to, as he is detained without legal justification following a judicial decision to release him. This report also shows discrimination against religious minorities, especially since all detainees in the same case, who are subject to the same circumstances, the same facts and the same criminal description, were released, except Libby who belongs to the Jewish minority.

This report recommends that the judicial authorities, the public prosecution, administrative agencies, security and intelligence forces in Yemen implement the legal standards legislated to respect the rights and guarantees of detained persons, and calls for immediate release of detainee Libby Salem Marhaby. This report also recommends that the judicial authorities, especially the Public Prosecution Office, investigate in a comprehensive, impartial, and prompt manner all allegations of violations against Libby, and prosecute members of the Security and Intelligence Services, who have evidence of

their criminal responsibility for not implementing the verdict, and keeping Libby detained arbitrarily without legal justification.

This report is based on a comprehensive approach to human rights, as the security services have the obligation (obliged by duty) and have a responsibility to respect, protect and commit to activating the basic human rights of individuals (rights holders) in accordance with international human rights law (international conventions and decisions, declarations, and general principles).

## 2. Methodology:

This report is guided by international human rights law and constitutional and national law in Yemen for providing legal characterization of the violations included in the facts and data prepared by Insaf Center for Defending Freedoms and Minorities, committed by the National Security and Intelligence Service, which did not release Libby and did not implement the ruling and the judicial order mentioned Above.

Accordingly, this report was prepared in accordance with the international standards contained in the following international instruments:

- Universal Declaration of Human Rights 1948.
- International Covenant on Civil and Political Rights 1966 (ICCPR)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly in 1988 including 39 principles.
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989.
- Summary actions recommended by the Economic and Social Council in its resolution 1989/65.
- United Nations Standard Minimum Rules for Non-Custodial Measures, or the (The Tokyo Rules) 1990.
- The Constitution of Yemen.
- Yemen Criminal and Penal Code.

The author of this report has reviewed many information, data, judicial rulings, memoranda and referrals in order to verify the violations contained in the report of Insaf Center for Defense of Freedoms and Minorities, in order to reach the highest degree of credibility and impartiality in considering the extent of the commitment of judicial, administrative and security agencies to the principles of respect, protection and fulfillment of the obligations of Yemen in accordance with international law and applicable national law.

The author of this report is keen to obtain information of a normative nature by reviewing multiple sources that document these violations, including reviewing the Society's employees responsible for preparing the data to reach the general context for committing these violations.

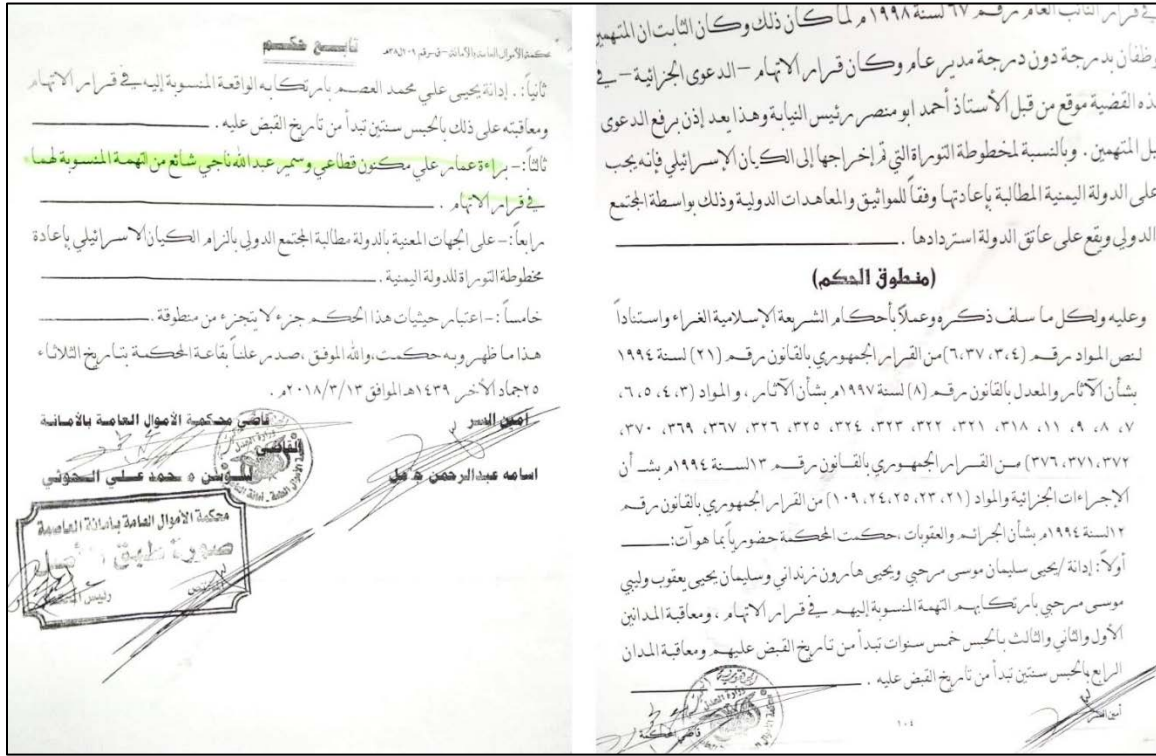
The author of this report reviewed information on violations during the period from January to February 2021 to the date of writing this report in order to update this information.

### 3. Facts

In March 2016, Yemeni Jew citizen, Libby Salem Musa Marhabi, was arrested on charges of smuggling an antique manuscript out of the country. On 13 March 2018, an appeals judgment was issued by the Public Funds Division of the capital condemning Libby Salem Musa Marhaby, Yahiya Ali Mohammad Al-Asam, Ammar Ali Mokoun Kitaai, and Samir Abdullah Nasser Shaya, as attributed to each one of them in the public lawsuit of smuggling a manuscript outside the country and forgery by Ammar and punished them with imprisonment.

On 29 July 2019, a decision was issued by the Public Funds Appeal Division of the capital, which ruled "the release of defendant Libby Salem Musa Marhaby, with adequate commercial guarantee, like other defendants." Accordingly, on 4 August 2019, a decision was issued by Judge Ahmed Ahmed Abu Munser, Head of the Public Funds Appeal Prosecution Office of the Capital, to the Antiquities Prosecutor to implement the content

of the decision: "the release of defendant Libby, with adequate commercial guarantee, like other defendants."



**Text of Letter:**

On Monday 26 Dhu al-Qi'dah 1440 H, 29 July 2019, the division held its public session with the attendance of Mr. Mohammed Muhsen Al-Madhaji, Public Prosecution member and Abdullah Abbas Al-Mansour, Division Secretary.

The appellant defendants, Yahiya Ali Mohammad Al-Asam, Libby Salem Musa Marhaby, Ammar Ali Mokoun, and Samir Abdullah Shaya were present with their attorney Ms. Nadia Al-Khalifi. It was decided to submit the opinion of the expert. When he was asked about that, expert Sufian Mohammed Abbas Al-thafri submitted a two-page report that was read during the session with the attendance of all parties and enclosed to the case file. Defendants were satisfied with what was included in the case file and requested to reserve the case for judgment. The Public Prosecution also read its comment on the response of the appellants Ammar Ali Mokoun, and Samir Abdullah Shaya which was two typed pages enclosed to the case file.

The Division decided to release defendant Libby Salem Musa Marhaby, with adequate commercial guarantee, like other released defendants and reserve the case for judgment and delay the verdict to session on Monday 24 Muharram 1441, 23 September 2019.

Document signed by fingerprint of; Yahiya Al-Asam, Libby Marhaby, Ammar Mokoun, and Samir Shaya.

Document signed by, Secretary, Prosecution member, two Division members and Head of Division.

End of text

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
وفي يوم الاثنين ٢٦ ذي القعدة ١٤٤١ الموافق ١٩/٩/٢٠١٩ عقدت جلسة  
العلنية بالهيئة ابا بقعة وحضور الاستاذ المحترم المدعي عضو النيابة العامة  
وحضور عبد الله عبد الصبور أمين رة الشعة  
وبالذواتين حضور المطبقين المستأنفين رة على محمد العاصم وليبي  
سالم موسى مرعي وحضور عماد علي مكون وحضور عبد الله شافع  
مع محاميهما الاستاذة ناوية الخليفة. حيث كان محدداً  
ان يصل رأي الخصير وسواءه عن ذلك أو وصل الخصير  
سفيان محمد عبا من القفري تقرر أن يكونا من صفتين أصلي  
في الجلسة وأرفق أصله بملف القضية وتم إتمامه  
حضور الأطرف في الجلسة ورافق المطبقين بما ارتحل  
عليه بملف القضية وطلبوا اجز القضية الحكم وذلك  
النيابة العامة بعد أن قدمت تعقيباً على رد استأف  
صديهما عماد علي مكون ورضي عبا شافع وكوفاً من صفتين  
مطلوعتين أرفقت بملف القضية. فقررت هيئة الشعة  
الافتراج عن الموقوف ليبي سالم موسى مرعي بالصمان  
التي اري الكافي لغيره من المطبقين المصروف عنهم وارجح  
القضية للحكم وتأجيل النطق به الى جلسة يوم الاثنين  
٢٤ محرم ١٤٤١ الموافق ١٩/٩/٢٠١٩

بسم الله  
عبد الله شافع  
ليبي سالم  
عبد الصبور  
عبد الله شافع  
عبد الصبور  
عبد الله شافع  
عبد الصبور



On 23 September 2019, an appellate ruling was issued by Judge Abd Al-Samad Al-Mutawakel, Head of the Public Funds Appeal Division, condemning Libby Salem Musa Marhaby, Yahiya Ali Mohammad Al-Asam, Ammar Ali Mokoun Qaqtai, and Samir Abdullah Nasser Shaya, for what was attributed to them of the incident of smuggling the manuscript and participating in smuggling it and forgery by Ammar, and they are punished with imprisonment for a period of three and a half years, provided that the period of imprisonment they spent in pretrial detention to be considered as it exceeded the sentence period.

The judge issued a decision to expedite the release of detainee Libby Salem Musa Marhabi, provided that he bear all his legal expenses.







**Text of Decision:**

Republic of Yemen

Public Prosecution

Public Funds Appeal Division

No.: 1515

Date: 04 August 2019

Enclosures: copy of session minutes

To: Antiquities Prosecutor

Greetings

According to the appeal decision of Public Funds Appeal Division at the capital in its session held on Monday 29 July 2019 regarding case no. 20 for 2018 which ruled the release of defendant Libby Salem Musa Marhaby, with adequate commercial guarantee, like other defendants, copy of session minutes attached to proceed accordingly.

Greetings

Judge

Ahmed Ahmed Abu Munser

Public Funds Appeal Prosecution Office of the Capital

Document signed and stamped

**End of text** \_\_\_\_\_

On 08 October 2019, the Head of the Public Funds Prosecution Office, Prosecutor Fahad Al-Barghashi, issued a written memorandum sent to the Head of the Public Funds Prosecution Office, indicating that the order to release Libby Salem Musa Marhaby had been issued in implementation of the judgment issued by the Appeals Division, but it was



No.: 95

Date: 08 August 2019

Enclosures:

To: Public Funds Prosecutor

Greetings

It is to be noted that there is an order to release Libby Salem Musa Marhaby had been issued in implementation of the judgment issued by the Appeals Division, but it was not executed by the National Security Agency, so it is requested to communicate with the National Security Agency

For your review and guidance to take necessary action. Copy of the release order attached.

Thanking you

Prosecutor Fahad Al-Barghashi

Document signed and stamped

**End of text** \_\_\_\_\_

On 22 October 2019, Judge Ahmed Ahmed Abu Munser, Head of the Public Funds Appeals Prosecution Office, issued a memorandum attached to his previous memorandum addressed to the General Attorney of Public Funds and addressed through it, the Security and Intelligence Service to release detainee Libby Salem Musa Marhaby, because the judgment of Appeal Public Funds, which include the release of detainee Libby Salem Musa and considering his previous imprisonment period was not implemented.

The judge's decision was followed by a memorandum issued by Mujahid Ahmed Abdullah sent to the Public Prosecutor on 28 October 2019, with a copy of the verdict issued by the Public Funds Appeal Division addressing the Head of the Security and Intelligence Service regarding the Public Prosecution's request to implement the court's ruling.



### Text of Memorandum

Republic of Yemen

Public Prosecution

Public Prosecutor Office

No.: 173

Date: 28 October 2019

To: Public Prosecutor

Greetings

Attached is a memorandum from the Head of the Public Funds Appeals no. [illegible] dated 25 October 2019 and copy of the Court session minutes and verdict issued by Public Funds Appeals Division in the capital dated 23 September 2019 in case no. 21 for 2018

appellant which condemned defendants including Libby Salem Musa Marhaby and ruled to imprison them for three years and a half considering the period they spend in pretrial detention at the National Security and to release defendant Libby Salem Musa Marhaby but the decision is not implemented until now.

Therefore,

It is necessary to submit to you for your review and instruction to communicate with Head of Security and Intelligence regarding the Prosecution request.

Thanking you

Judge Mujahid Ahmed Abdullah

28 October 2019

Document signed

**End of text**



Despite the final court ruling and successive judicial warrants, the security did not release Libby and kept him in detention.

الجمهورية اليمنية  
النسائية العامة  
مكتب النائب العام  
إدارة السكرتارية

تم إرسال (الكلف - المدكرة) برقم (.....) ٩٣٢  
والتاريخ: ٢٠٢٠ / ٣ / ٠٤  
الموافق: ١٤٤١ / ٧ / ٠٩

الجهة الصادر إليها: .....  
الموضوع: .....

رقم البصمة باليد: (.....) وتاريخ: .....  
مدير إدارة السكرتارية

**Text of receipt:**

Republic of Yemen

Public Prosecution

Public Prosecutor Office

Secretary administration

File no. 932 was sent on 04 March 2020, 09/07/1441 H

File sent to: Head of Security and Intelligence

Subject:

Post sent no.:

Date:

Associate

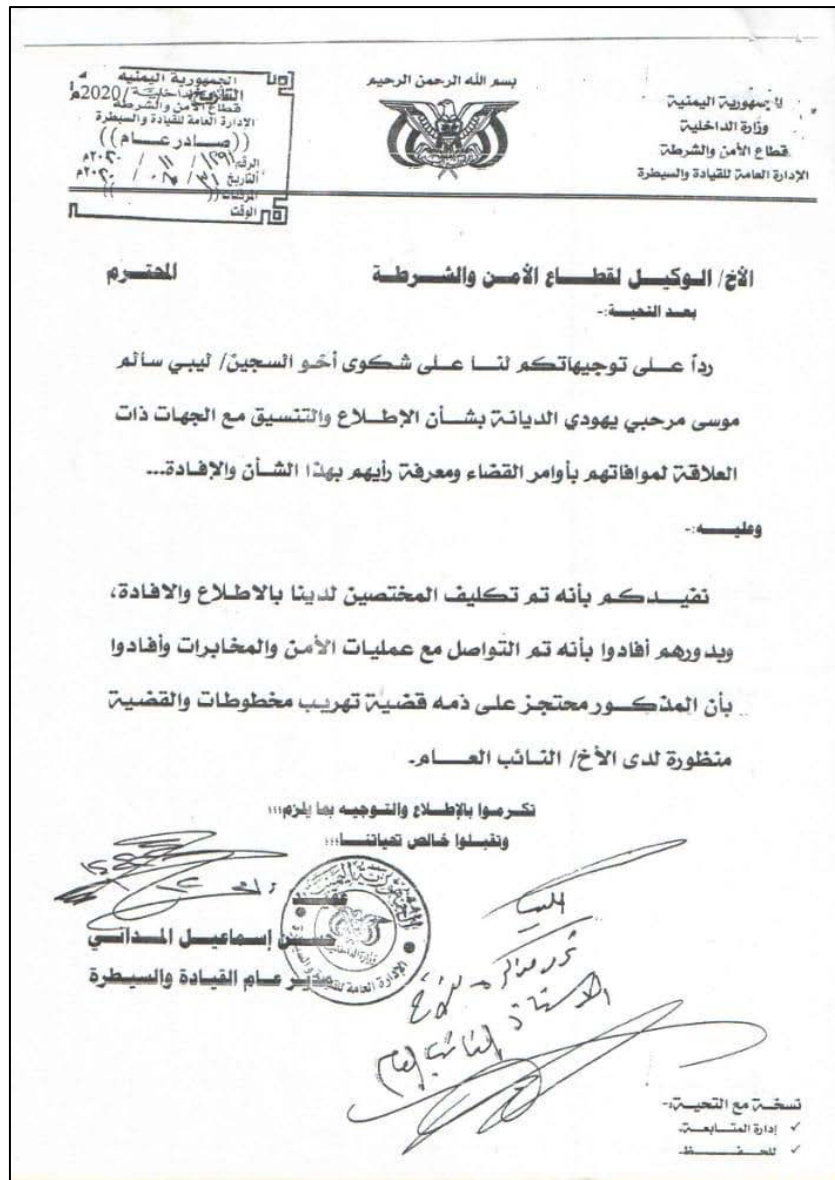
Head of Secretary administration

Document signed

**End of text** \_\_\_\_\_



Brigadier General Hassan Ismail Al-Madani, Director General of Command and Control, according to a memorandum issued on 31 August 2020, responded as follows: "After reviewing and coordinating with the relevant authorities and informing them of the orders of the judiciary and knowing their opinion in this regard, specialists were assigned to review and advise, and they reported that they had been contacted the Security and intelligence operations, and they reported that the aforementioned is being held pending a manuscript smuggling case, and the case is being heard by the Public Prosecutor.





**Text of Letter:**

To: Undersecretary of the Ministry of Interior for the Police and Security

Subject: To end the injustice against my brother, Libby Salem Mousa Marhabi, detained at the Security and Intelligence since 2015.

With reference to the above mentioned topic, I present to you the injustice practiced against my above mentioned brother as he was detained at the Security and Intelligence for more than five years in spite of final court judicial verdict and clear instructions to release him (copy of verdict and memos attached) as follows:

**Schedule of list of memos illegible**

Handwritten note on the document:

To: Director General of Command and Control

For review and coordination with the relevant authorities to inform them of the orders of the judiciary and know their opinion in this regard.

Thank you

Document signed

**End of text** \_\_\_\_\_

On 13 September 2020, Major General Rizk Saleh Musleh Al-Joufi, Undersecretary for the Security and Police, sent a memorandum to the Attorney General, referring to the Director General of Command and Control memorandum no. 1291/11/2020 dated 31 August 2020 which includes a review of the complaint submitted by the brother of the aforementioned detainee, and coordination with the relevant security authorities to find out the location of detention of the aforementioned detainee. The response included the statement that security operations have been contacted.



**Text of Memorandum:**

Republic of Yemen

Ministry of Interior

Undersecretary for the Security and Police

No.: 4/38/34/2020

Date: 30 September 2020, 25/01/1442 H

Enclosures:

To: Public Prosecutor

Greetings

Subject: detainee Libby Salem Mousa Marhabi (Jewish)

With reference to the memorandum no. 1291/11/2020 of Director General of Command and Control, dated 31 August 2020, which includes a review of the complaint submitted by the brother of the aforementioned detainee, and coordination with the relevant security authorities to find out the location of detention of the aforementioned detainee. The response included the statement that Security and Intelligence Operations have been contacted and stated that the aforementioned is being held pending a manuscript smuggling case, and the case is being heard. (copy of relevant documents attached)

Please review and advise.

Thanking you

Major General Rizk Saleh Musleh Al-Joufi

Undersecretary for the Security and Police

Document signed

**End of text** \_\_\_\_\_

This follow-up of the judicial rulings and the successive memoranda issued for the release of Libby and the refusal of the Security and Intelligence Service to implement the verdict's content indicates that there are serious violations of the law and human rights principles that guarantee equal treatment and non-discrimination against religious minorities and protection from arbitrary detention. These practices also contradict standards that guarantee the right to a fair trial during detention and human treatment of suspects or detainees based on the basic principles of the rule of law and non-discrimination.

The two International Covenants on Human Rights define the duties of governments and their role in ensuring that all human rights are respected and fulfilled. Article 2 of the International Covenant on Civil and Political Rights requires state parties to respect and guarantee the rights recognized in the Covenant and to take the necessary actions to implement these rights. The Yemeni constitution and the basic agreements that Yemen has ratified or acceded to are as follows:

- The obligation to respect: Not to violate human rights and not to impose more restrictions than necessary in order to fulfill its obligations as a state and in order to protect the rights of individuals.
- The obligation to protect: Protect all people from violations of their rights
- The obligation to fulfil: Take positive measures to ensure the implementation of basic human rights.

#### 4. The criminal liability of the Security and Intelligence Service

Freedom is one of the basic rights of the human being and has been inherent in him since his birth. International law has outlined a variety of principles and foundations to protect this right and the rights of people whose personal freedom is restricted. Depriving a person of his freedom is one of the most severe intervention measures that the state can take, and one of the most common means used to maintain security and combat crime, so it must be limited to specific circumstances in accordance with the law. Even if detainees lose their freedom in detention, they should be treated humanely and their basic rights must be respected.

These standards require that the freedom of persons be not restricted and detained except within a legal framework and when necessary, and that this authority is not arbitrarily exercised, and that torture and other cruel, inhuman or degrading treatment be prohibited.

It is evident from the facts, statements and legal documents submitted by Insaf Center for Defending Freedoms and Minorities that the Security and Intelligence Service committed a criminal violation of Yemen Constitution and the Yemen Crimes and Penalties Law.

First: Constitution

Article 47 of Yemen Constitution states that “Criminal liability is personal. No crime or punishment shall be undertaken without a provision in the Shari'ah or the law. The accused is innocent until proven guilty by a final judicial sentence, and no law may be enacted to put a person to trial for acts committed retroactively.”

Article 48 states that:

- a. The state shall guarantee to its citizens their personal freedom, preserve their dignity and their security. The law shall define the cases in which citizens’ freedom may be restricted. Personal freedom cannot be restricted without the decision of a competent court of law.
- b. No individual can be arrested, searched or detained unless caught in the act (in flagrant delicto) or served with a summons from a judge or the Public Prosecutor, which is necessary for the progress of an investigation or the maintenance of security.

## Second: Law

Article (165): Any public employee who carries out the following shall be punished for a maximum of three years or the payment of a fine:

1. Any public employee who uses the authority of his position to hinder the implementation of the laws, procedures or rules, or refuses to carry out the orders or rulings of a court or any concerned authority, or who willfully refuses to execute any of the previously cited provisions which falls within his responsibility.

Article (167): Any public employee who orders or by himself carries out any punishment that is different from the punishment sentenced to a person, or a punishment that is more severe, or if he refuses to implement the release order of the person to be released; he is as such responsible for this, or if he intentionally keeps the person in imprisonment beyond the sentence meted out to him, shall in all cases be dismissed from employment.

### Third: International Covenants and Obligations

In a letter referred by the Ministry of Foreign Affairs (in the government of Sanaa, which is under the control of the Houthis) to the office of the head of the Group of Eminent International and Regional Experts on Yemen (Group of Experts) number Kh/A/ 581 dated 30 May 2019<sup>1</sup>, in which the Minister of Foreign Affairs Hisham Sharaf Abdullah shows a list of inquiries to be answered by The National Forces on the expert group's letter addressed to them on 10 April 2018, number GEEY/18/2019.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الرقم: 581-أ-خ  
التاريخ:  
الموافق: 30-5-2019

الجمهورية اليمنية  
وزارة الخارجية  
مكتب الوزير

"عاجل وهام"

تهدي وزارة خارجية الجمهورية اليمنية أطيب تحياتها إلى مكتب رئيس فريق الخبراء الإقليميين والدوليين البارزين المعني باليمن؛

وتود أن ترفق بهذا رسالة موجهة من الأخ المهندس / هشام شرف عبدالله، وزير الخارجية بحكومة الإنقاذ الوطني بصنعاء، إلى سعادة الأخ/ كمال الجندوبي، رئيس فريق الخبراء الإقليميين والدوليين البارزين المعني باليمن، برقم خ/580 وتاريخ 30/5/2019، وبطلبها الردود على استفسارات فريق الخبراء الموجهة للقوى الوطنية بتاريخ 10 أبريل 2019. وتأمل الوزارة من المكتب الموقر إيصال الرسالة ومرفقها إلى وجهتها الكريمة في أقرب وقت ممكن.

تفتتم وزارة خارجية الجمهورية اليمنية هذه المناسبة لتعرب لمكتب رئيس فريق الخبراء الإقليميين والدوليين البارزين المعني باليمن عن خالص تقديرها واحترامها .

إلى /  
مكتب رئيس فريق الخبراء الإقليميين والدوليين البارزين المعني باليمن .

الخارجية  
المنشورية  
الوزارة الخارجية

<sup>1</sup> [https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2019\\_Houthis\\_Response\\_list\\_of\\_issues\\_AR.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2019_Houthis_Response_list_of_issues_AR.pdf)

**Text of the response:**

Republic of Yemen

Ministry of Interior

Office of the Minister

No.: 581/Kh/A

Date: 30 May 2019

Urgent

The Ministry of Foreign Affairs of the Republic of Yemen dedicates its best regards to the office of the head of the Group of Eminent International and Regional Experts on Yemen, and would like to attach to this a letter addressed from engineer Hisham Sharaf Abdullah, Minister of Foreign Affairs of the National Salvation Government in Sana'a to Mr. Kamal Al-Jandoubi, Head of the Group of Eminent International and Regional Experts on Yemen under no. 581/Kh/A and dated 30 May 2019 including response to inquiries made by Experts Group to the National Forces on 10 April 2019.

The Ministry hopes that the distinguished office will deliver the letter and the attachment to its gracious destination as soon as possible.

Yemen Ministry of Interior would like to seize this opportunity to express sincere appreciation and respect to Head of the Group of Eminent International and Regional Experts on Yemen

To: to the office of the Head of the Group of Eminent International and Regional Experts on Yemen

Document signed and stamped

**End of text** \_\_\_\_\_

Among the list of inquiries was Paragraph F, page 8, in which the detention team inquires about detention standards, detention facilities, the number of persons detained by the Political Security and the Preventive Security, and how the De facto authorities monitor the conditions of detainees. The response of the Minister of Foreign Affairs stated the following:

All detention facilities and prisons are affiliated with the Ministry of Interior and under the supervision of the Public Prosecution Office in accordance with the law in areas under the control of the National Salvation Government in Sana'a. Regarding the number of detainees from the Political Security, it was reported that there is one detention facility in Sana'a, the capital, for a limited number of suspects who are being held temporarily in preparation for transferring them to the prosecution offices and various authorities. The International Committee of the Red Cross is allowed to visit detention facilities.

In response, he stated that there is a supreme committee to take care of prisoners and help insolvent people. The General Administration of Human Rights and the Prisons Authority at the Ministry of Interior are also responsible for checking the conditions of detainees and ensuring that they enjoy their human rights. There are health centers in prisons that provide primary medical care, in addition to an office for the Ministry of Human Rights. The International Committee of the Red Cross is also allowed to visit prisons and verify the conditions of detainees.

He added that the Criminal Procedures Law No. 13 of 1994 defines this mechanism and stipulates a set of principles and texts related to the rights of detainees. Yemen laws prohibit inhuman treatment and torture in detention facilities. The Republic of Yemen respects its obligations related to the protection of detainees in accordance with international human law and international human rights law. In addition, detainees have the right to submit complaints to the Public Prosecution in the event of any violation, noting that Yemen is one of the few countries in the region that allows the International



Committee of the Red Cross to visit the Yemeni prison and check on prisoners and ensure that they are not subjected to any violation of their human rights.

This statement, made by the Ministry of Foreign Affairs, indicates that the government of Sana'a, which is under the control of the Houthis, declares its commitment to respect international standards and protect all detainees from arbitrary arrest. However, their insistence on unlawfully keeping Libby in detention confirms that it does not respect this commitment and pledge.

## 5. Human Rights standards in respect of restricting personal freedom

Seizing the freedom of detainee Libby without a legal justification amounts to arbitrary detention. We will explain basic human rights violations in accordance with human rights standards when restricting personal freedom.

### First: Detention Guarantees

Providing adequate protection for individuals' rights during detention is no longer limited to the internal protection provided by national laws, but rather to creating a set of international human rights standards. The purpose of these standards is to respect human dignity and human rights, which obligate all judicial authorities and administrative and security agencies to be subject to the provisions and the rule of law.

These standards aim to create real guarantees during the implementation of the trial procedures in accordance with the legal procedures in preparation for referring them to the competent court for trial and a judgment of acquittal or conviction according to the law.

At most, these international and national covenants do not address what the security services must do, but rather specify actions that the police cannot take, otherwise depriving a person of his freedom unjustly is considered a crime.

"Everyone has the right to life, liberty, and security of person."

## Second: Protection from arbitrary detention

Personal freedom and the individual's right to freedom, safety, and movement are among the most fundamental individual rights. The procedural safeguards that protect against arbitrary detention are guaranteed to everyone according to the conventions ratified by Yemen and the relevant legislation and human rights principles at the international level and in accordance with the constitution and basic laws at the national level.

Failure to observe the legal provisions by the Security and Intelligence Agency contradicts the fundamental principles that lead to the protection of fundamental rights and freedoms, as no human being may be arbitrarily arrested, detained, or exiled according to Article 9 of the Universal Declaration of Human Rights 1948.

“Arbitrary” detention means:

- Not based on legal grounds
- Not respecting legal procedures
- Not reasonable/appropriate in the circumstances
- Not proportional to the legal objectives
- Discriminatory
- Unpredictable
- Without fair, solid and substantial cause
- Unduly intrusive vis-à-vis other rights

Returning to the facts of the case, it becomes clear to us that all concepts of arbitrary detention were approached by the Security and Intelligence Service.

The detention took place outside the frame of the law and the judiciary. It did not respect the judicial decisions and did not implement the legal procedures that led to the release of Libby. It also involves discrimination, especially since Libby belongs to the Jewish minority. This unjustified aggravated detention is outside the law and amounts to arbitrary detention.

### Third: Prohibition of Detention except by a decision of the Public Prosecution/ the Competent Judiciary

The decision to detain or deprive persons of liberty must be made in accordance with national law, as any detention of individuals and denial of their freedoms in a manner inconsistent with national law and international standards guaranteeing non-arbitrary restriction of personal freedom is illegal with respect to domestic and international laws. Everyone has the right to freedom and security of person. No one shall be arbitrarily arrested or detained. No one may be deprived of his liberty without reasons stipulated by law and in accordance with the procedure established therein. It must also ensure that detention has a legal justification, taking into account the essential legal principles in the investigation, provide guarantees for the detainee and the exercise of his legal rights, and not arbitrarily.

Another principle branching off from this right is the right to release the defendant who is detained when he is tried and spent the ruled period of punishment. In general, it is not necessary to continue the detention of a person accused of committing a criminal offense until his trial except in certain cases in which the security authorities may restrict the freedom of the accused until trial in order to prevent him from fleeing outside the country, or to prevent him from influencing witnesses, or if his release would pose a danger to others.<sup>2</sup> The third paragraph of Article 9 of the International Covenant on Civil and Political Rights affirmed that: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."<sup>3</sup>

It appears from the facts of the case that detainee Libby is not accused in another case rather than the case of smuggling the manuscript. According to a memorandum issued on 31 August 2020, and stated the following: "After reviewing and coordinating with the

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<sup>2</sup> International protection of human rights during the investigation phase, Lawyer Laith Kamal Nasraween <http://www.amnestymena.org/ar/magazine/issue18/HRProtectionDuringInvestigation.aspx?articleID=1066&media=print>

<sup>3</sup> International Covenant on Civil and Political Rights, University of Minnesota, Human Rights Library

relevant authorities and informing them of the orders of the judiciary and knowing their opinion in this regard, specialists were assigned to review and advise, and they reported that they had been contacted the Security and intelligence operations, and they reported that the aforementioned is being held pending a manuscript smuggling case, and the case is being heard by the Public Prosecutor”.

#### Fourth: Measures to respect the rights of the suspected person

The two essential criteria for detention measures are the legality of detention and the period of detention. Adherence to human rights principles of detention requires that it is to be implemented "on the basis and procedures established by law" and to be in accordance with international human rights instruments.

According to the international standard, everyone has the right to freedom and security of person (Article 9 of the Universal Declaration of Human Rights 1948), and no one shall be arbitrarily arrested or detained. No one may be deprived of his liberty except for reasons stipulated by law and in accordance with the procedure established therein (Article 14 of the International Covenant on Civil and Political Rights 1966). Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority. (Protection of All Persons under Any Form of Detention or Imprisonment - Principle 4).

Accordingly, the Security and Intelligence Service must indicate the legal basis that justifies the deprivation of liberty, as any neglect in the legal briefing of all legal procedures and guarantees is considered as a violation of the inherent rights guaranteed by the constitution and legally. Consequently, the police are not allowed to violate it and issue an order to arrest a person or to maintain his detention without permission from the Public Prosecution Office, regardless of the acts or crimes that are the subject of the investigation, serious or even shameful, except in the case of a legal reason.

#### Fifth: Right to Medical Care

Libby suffers from serious illnesses, including stroke and lung problems, in addition to vision impairment, which began to gradually weaken, thus posing a threat to his life due to his continued detention.

The right to medical care is a fundamental right that every detainee enjoys throughout his detention. This right represents an important guarantee against ill-treatment of any detained person and is not limited only to detainees who need medical care. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. (Basic Principles for the Treatment of Prisoners, Principle 9).

According to the international standard, a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge. (Principles of Detention, Principle 24).<sup>4</sup> The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law. (Principles of Detention, Principle 26).

These measures were not implemented in the case of Libby, on the contrary, his health condition is constantly deteriorating.

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<sup>4</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988, <https://www.ohchr.org/ar/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx#:~:text=%D8%AA%D8%B2%D9%8A%D8%AF%20%D8%B9%D9%86%20%D8%A3%D9%8A%D8%A7%D9%85.-,%D8%A7%D9%84%D9%85%D8%A8%D8%AF%D8%A3%2016,%D9%88%D8%A8%D8%A7%D9%84%D9%85%D9%83%D8%A7%D9%86%20%D8%A7%D9%84%D8%B0%D9%8A%20%D9%87%D9%88%20%D9%85%D8%AD%D8%AA%D8%AC%D8%B2%20%D9%81%D9%8A%D9%87.>

## Sixth: Legality of measures during freedom restriction

The essence of legitimacy of the procedures during the restriction of freedom is based on three criteria:

- a. Rule of law and compliance with applicable rules.
- b. Equality before the law / non-discrimination.
- c. Respect the dignity, security and safety of the person whose freedom is restricted.

### a. Rule of law

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person, in accordance with the provisions of the International Covenant on Civil and Political Rights 1966, Article 10 (1). These measures are specified in accordance with the law that guarantee equal decent treatment for all individuals when they are suspected of having committed criminal acts, and are sufficient to avoid prejudice in determining the procedures to be followed by the judicial and administrative authorities.

The failure of the Security and Intelligence Service to implement court decisions is a crime punishable by law.

### b. Equality before the law / non-discrimination

The principle of non-discrimination and equality before the law is one of the basic principles of international human rights law. Any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin and which aims or results in disrupting or obstructing the recognition, enjoyment or exercise of human rights and fundamental freedoms, is equally prohibited.

The principle of non-discrimination is a fundamental principle of human rights law, as the Convention on the Elimination of All Forms of Racial Discrimination prohibits any discrimination based on race, color, descent, or national or ethnic origin.

Discrimination is also prohibited by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the United Nations Declaration on

the Rights of Minorities), which was adopted and published by the United Nations General Assembly Resolution 47/135 of 18 December 1992.

Legal protection of minorities, preventing discrimination against them and enabling them to exercise their human rights is one of the most important issues that are the focus of attention of the entire international community, especially since most countries in the world today are multi-ethnic and multi-national states that include various national, ethnic, religious, and linguistic minorities, etc.

The Security and Intelligence Service released all detainees in this case who have the same conditions, facts, and the same criminal description, except detainee Libby who belongs to the Jewish minority, and this is discrimination against religious minorities.

c. [Respect the dignity, security and safety of the person whose freedom is restricted](#)

International human rights law places strict restrictions to guarantee the right to human dignity for all detainees. Accordingly, it is necessary to ensure decent and equal treatment of all individuals suspected of committing acts in violation of the law, and adhere to the principles of integrity and respect for professional secrecy, and not to place prejudice or form personal opinions.

## 6. Conclusion

INSAF Center for Defense of Freedoms and Minorities is concerned about the persistence of arbitrary arrests and calls for prompt, comprehensive and effective investigations into the case of Libby and referral of those responsible for failure to implement judicial decisions in the frame of fair trials. The center has prepared many legal notes and regulations and organized several advocacy campaigns nationally and internationally through statements and publications, interviewing diplomats and officials locally and internationally in order to press for the release of Libby, but unfortunately, to date, he is still detained.

### **Recommendations:**

The Center demands the following:

**First: From Sanaa Authorities:**

1. Immediately and unconditionally release detainee citizen Libby and provide him with the necessary medical care.
2. Ensure that the decisions of the courts that ordered the release of detainee Libby are respected and implemented in an expeditious manner, and that appropriate measures are taken against those who do not respect those orders, including institutions and individuals.
3. We call on the Bar Association to do its duty and take escalatory measures to ensure that court decisions, rights and freedoms are respected.
4. Provide adequate and immediate means of redress and protection for detainee Libby, and redress for any harm he suffers.

**Second: From local and international organizations, the United Nations and the international community:**

1. Pressuring the Houthi authority in Sana'a, which violates the rights of minorities, and imposing sanctions against the violators.
2. Coordinate efforts between local and international organizations and the international community to pressure the Houthi authority in Sana'a for the immediate release of detainee Libby.

## 7. Annexes

Copy of statements made by the Center:



2020/11/21

المرجع: 58 م . أ

### اليهودي اليمني (ليبي سالم) المسجون ظلماً

لأكثر من أربع سنوات يقبع اليهودي اليمني ليبي سالم مرحبي في سجون الأمن القومي في صنعاء ظلماً، فقد اعتقلته قوات الأمن الواقعة تحت سيطرة الحوثيين في العاصمة صنعاء في مارس من العام 2016 مع مجموعة أخرى من عمال وموظفي مطار صنعاء بتهمة تهريب مخطوطة أثرية. وبعد عامين من السجن والمحاكمات قررت شعبة استئناف الأموال العامة بأمانة العاصمة سرعة الإفراج عن ليبي والاكْتفاء بمدة الحبس التي قضاها، ولكن لم يتم تنفيذ هذا الحكم، فيما تم الإفراج عن كافة المعتقلين الآخرين. وعلى الرغم من الأوامر والتوجيهات الصادرة من النيابة العامة، ومن مسؤولين آخرين في السلطات الواقعة تحت سيطرة الحوثيين، فإنه ما يزال قابعا في السجن حتى الآن.



**INSAF**

2020/7/24

المرجع: 52 م . أ

المحترم

السيد مارتن غريفت المبعوث الخاص للأمن العام للأمم المتحدة في اليمن

السيدات والسادة في

الصليب الأحمر

السفراء وممثلي الدول الأجنبية في اليمن

المحترمون

ممثلو المنظمات الدولية والمحلية المهتمة بحقوق الإنسان والحريات

تحية طيبة وبعد،

المواطن اليمني اليهودي ليبي سالم موسى مرحبي اعتقلته الأجهزة الأمنية الواقعة تحت سلطة الحوثيين في مارس 2016 بعد اتهمه مع مجموعة من المواطنين اليمنيين الآخرين بتهريب مخطوطة يمنية تاريخية، وبعد انقضاء ثلاث سنوات في سجون المخابرات، قضت شعبة الأموال العامة بمحكمة الأمانة بالإفراج عن المتهم بتاريخ 23/9/2019، كما وجهت النيابة بنفس اليوم مذكرة إلى رئيس جهاز الأمن والمخابرات بتنفيذ حكم المحكمة والإفراج الفوري عن المذكور بدون ضمانات وبدون قيد أو شرط. ومع كل هذه الاجراءات القانونية فإن



Ref. 57 a. m

19/10/2020

## Release all Captives & Detainees

At a time when hundreds of families and homes are filled with joy in Yemen, thousands of others are still waiting for their relatives who are still languishing in the basements of prisons and detention centers, or were hidden with their families knowing nothing about their whereabouts. We share in the joy of all those who were released and returned to their families and loved ones, which is a late but important step towards achieving peace.

We at INSAF Center closely followed the release process of the first and second batch of prisoners that were exchanged between the Houthis, the legitimate government and the southern resistance, due to the agreement sponsored by the United Nations and the Special Envoy of the Secretary-General to Yemen last month in Geneva, which provided for the release of 1081 prisoners. We were pleased to learn that among those released were a group of journalists and prisoners of conscience who had spent more than four years in prison.

Links of Campaigns implemented by the Centre, Arabic and English:

- <https://insaf-ye.org/ar/archives/2311>
- <https://insaf-ye.org/archives/2308>
- <https://insaf-ye.org/ar/archives/2384>
- <https://insaf-ye.org/archives/2380>
- <https://insaf-ye.org/ar/archives/2332>
- <https://insaf-ye.org/archives/2326>

[https://secure.avaaz.org/community\\_petitions/en/international\\_community\\_international\\_organization\\_an\\_appeal\\_to\\_release\\_the\\_yemeni\\_jewish\\_libby\\_salem\\_from\\_houthi\\_prisons/?zCfsTrb&fbclid=IwARODjToJangmmJAucvdMu\\_kZ83kpvSv5Bo-JSrZJaPKGjLUEqbD7ahUqXg](https://secure.avaaz.org/community_petitions/en/international_community_international_organization_an_appeal_to_release_the_yemeni_jewish_libby_salem_from_houthi_prisons/?zCfsTrb&fbclid=IwARODjToJangmmJAucvdMu_kZ83kpvSv5Bo-JSrZJaPKGjLUEqbD7ahUqXg)

Documents and referrals in the case of Libby

No.	Type of document	Date	Author	Recipient	Content	Result
1.	Verdict	13/03/2018				
2.	Memorandum	04/08/2019	Judge Ahmed Ahmed Abu Munsir, Head of Public Funds Appeals Prosecution, Capital	Antiquities Prosecutor	According to the appeal decision of Public Funds Appeal Division at the capital in its session held on Monday 29 July 2019 regarding case no. 20 for 2018 which ruled the release of defendant Libby Salem Musa Marhaby, with adequate commercial guarantee, like other defendants, copy of session minutes attached to proceed accordingly.	
3.	23/09/2019	Court sentence	Judge Abd Al-Samad Al-Mutawakel, Head of the Public Funds Appeal Division		Condemning Libby Salem Musa Marhaby, and other defendants for smuggling the manuscript and punishing them with imprisonment for a period of three and a half years, provided that the period of imprisonment they spent in pretrial detention to be considered	

					and release defendant Libby Salem Marhaby	
4.	Memorandum	08/10/2019	Prosecutor Fahad Al-Barghashi	Head of the Public Funds Prosecution Office	indicating that the order to release Libby Salem Musa Marhaby had been issued in implementation of the judgment issued by the Appeals Division, but it was not executed by the National Security Agency, so he requested to communicate with the National Security Agency and attached priorities	
5.	Memorandum	22/10/2019	Judge Ahmed Ahmed Abu Munsir, Head of Public Funds Appeals Prosecution, Capital	General Attorney	Referring to memorandum no. 1961 dated 09/10/2019 and addressed to Head of Security and Intelligence requesting implementation of verdict of Public Funds Appeals Division dated 23/09/2019 on case no. 21 for 2018 which condemned Libby Salem Musa Marhaby, and other defendants for smuggling the manuscript and punishing them	

					with imprisonment for a period of three years and a half, provided that the period of imprisonment they spent in pretrial detention to be considered and release defendant Libby Salem Marhaby but the verdict was not implemented. It requested contact with Security and Intelligence to release him.	
6.	Memorandum	28/10/2019	Mujahid Ahmed Abdullah	Public Prosecutor	Attached a memorandum from the Head of the Public Funds Appeals dated 25 October 2019 and copy of the Court session minutes and verdict issued by Public Funds Appeals Division in the capital dated 23 September 2019 in case no. 21 for 2018 which ruled to release defendant Libby Salem Musa Marhaby but it is not implemented until now. Therefore, He requested communication with Head of	

					Security and Intelligence regarding the Prosecution request.	
7.	Receipt	04/03/2020	Head of Security and Intelligence Office			
8.	Receipt	04/03/2020	Head of Criminal Prosecution			
9.	Complaint	16/08/2020	Haboub Salem Mousa Marhabi	Undersecretary of the Ministry of Interior for the Police and Security	Schedule with dates, rulings, and memos issued in the case of Libby with copies of them.	Advice from Undersecretary of the Ministry of Interior for the Police and Security to Director General of Command and Control for review and coordination with the relevant authorities to inform them of the orders of the judiciary and know their opinion in this regard.
10.	Memorandum	31/08/2020	Brigadier General Hassan Ismail Al-Madani	Undersecretary of the Ministry of Interior for the Police and Security	After reviewing and coordinating with the relevant authorities and informing them of the orders of the judiciary and knowing their opinion in this regard, specialists were assigned to	

					<p>review and advise, and they reported that they had been contacted the Security and intelligence operations, and they reported that the aforementioned is being held pending a manuscript smuggling case, and the case is being heard by the Public Prosecutor.</p>	
11.	Memorandum	13/09/2020	Major General Rizk Saleh Musleh Al-Joufi	Attorney General	<p>Referring to the Director General of Command and Control memorandum no. 1291/11/2020 dated 31 August 2020 which includes a review of the complaint submitted by the brother of the detainee, and coordination with the relevant security authorities to find out the location of detention of the detainee. The response included the statement that security operations have been contacted and the detainee is detained</p>	

					pending a manuscript smuggling case, and the case is being heard.	
12.	Receipt	27/09/2020	Undersecretary of the Ministry of Interior for the Police and Security			